NEW JERSEY DEPARTMENT OF EDUCATION

In the Matter of The Tenure Charges Proffered by	X	
BOARD OF EDUCATION OF THE CITY OF NEWARK	X	Agency Docket No. 222-8/22
"Petitioner"	X	
-against-	X	
LATEEFAH HENDERSON	X	
"Respondent"	X	
	X	

APPEARANCES

FOR PETITIONER

OFFICES OF THE GENERAL COUNSEL
By: Bernard Mercado, Esq.

FOR RESPONDENT

Lateefah Henderson, pro se

BEFORE: Earl R. Pfeffer, Arbitrator

BACKGROUND

In Notice of Tenure Charges of Conduct Unbecoming and Other Just Cause ("Charges"), sworn on July 29, 2022, Roger León, Superintendent of the Board of Education of the City of Newark ("Petitioner" or "the Board"), made allegations against Respondent, Lateefah Henderson, of absenteeism, unbecoming conduct and other just cause upon which the Board requested Respondent's suspension and dismissal, and Respondent was served with same on August 1, 2022. On August 26, 2022, without a response to the Charges having been submitted, Board President Dawn Haynes certified that the Board, at a meeting held on August 25, 2022, considered the Charges and supporting statement of evidence, and determined that probable cause exists to credit the evidence submitted in support of the Charges and that same is sufficient to warrant dismissal or reduction in salary, and directed that the Charges and the Board's Determination be forwarded to the Commissioner of Education.

The Charges thereafter were submitted to the Commissioner of Education on August 29, 2022, and on that same date were again served upon Respondent, as well as her Attorneys. The Board suspended Respondent effective August 30, 2022, for 120 days under N.J.S.A. 18A:6-14. Respondent's Answer thereafter, on September 9, 2022, was submitted to the Acting Commissioner through the Department's Bureau of Controversies and Disputes,

and on September 12, 2022, the Acting Commissioner found the Charges were sufficient, if true, to warrant dismissal or reduction in salary, subject to determination by an arbitrator of Respondent's defenses and any motions, and same were referred to me for a hearing and decision.

Respondent, in her answer, disputes the Charges, alleging that the allegations of conduct unbecoming or other just cause for her termination are false, unsupported and exaggerated, as well as distortions of the truth, and fail to state of cause of action for which relief may be granted. She further alleges that the District failed to comply with its governing policies and procedures with respect to her work assignments and leave of absence requests. Respondent demands an Order dismissing the Charges in their entirety, reinstating her to active employment and repaying her for all monies lost during the period of her suspension and all other emoluments of employment.

On September 27, 2022, the Prudential Insurance Company, Disability Management Services, completed its review of Respondent's claim for Long Term disability (LTD) benefits and approved her claim effective July 18, 2022. By email to the Board on January 6, 2023, Respondent demanded she be restored to pay status on the 121st day of her suspension, pursuant to New Jersey Rev. Statutes Section 18A:6-14. The Board Responded through its Assistant Superintendent advising Respondent that

based upon her inability to work due to her disability, she was not able to be returned to work and, as she had no available sick leave, she would continue to be in unpaid status. She was further advised that upon her submission of medical documentation of her fitness for duty she would be required to report to work pending the outcome of these proceedings.

By letter dated January 19, 2023, Prudential advised the Board that Respondent's LTD claim had been approved beyond the initial 12 months, and that her benefits would continue as long as she met the definition of disability.[1] The Board asserts Respondent's LTD benefits have been awarded at least until July 2024. Respondent has not disputed that assertion, or presented evidence she has submitted to the Board medical documentation of her fitness for duty. In short, according to the record, Respondent remains in no pay status with no expected date on which she will be fit for duty.

Prior to the commencement of hearings, in correspondence

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[1] In an email dated January 6, 2023, Assistant Superintendent Yolanda Méndez informed Respondent of the Board's receipt of notice of her application to the State Treasurer of New Jersey for long-term disability benefits demonstrating an inability to work. She was advised her suspension without pay, accordingly, will continue, and instructed, "[i]f and when you are able to return to duty, please submit medical documentation of your fitness for duty, and you will be required to report to work pending the outcome of the tenure charges." Respondent Exhibit 13. There is no record evidence Respondent has submitted medical documentation of her fitness for duty, or otherwise is able to work as a teacher.

dated January 8, 2023, Respondent's counsel advised me that he no longer represented her and that I therefore should communicate with her directly. A previously scheduled Pre-Hearing Conference was convened via Zoom on January 9, 2023, and hearings were scheduled for March 13, 2023, and March 14, 2023. I advised Respondent I would consider a postponement of the hearings if she advised me she was retaining new counsel or was medically incapable of participating in such proceedings. Thereafter, the March 13 and March 14, 2023, hearings were held via Zoom, as was a third hearing on May 23, 2023. In the course of the proceedings the parties each were afforded full opportunity to present evidence and argument in support of their respective positions. Respondent submitted hundreds of pages of documents, which were entered into the hearing record. At the close of the May 23, 2023, hearing, the parties each were afforded opportunity to submit post-hearing briefs by June 23, 2023, and did so. The hearing record closed on July 14, 2023.

The Charges essentially track correspondence to Respondent from the Board regarding her attendance and leave history, including of recitation of the periods of leave granted to her under the Family Medical Leave Act of 1993 (FMLA), 29 U.S.C. §2601 et seq., since May 2021, as well as the Board's denials of her requests for additional leave after her entitlement to FMLA leave had run out. Para. 2 of the Charges references an

"Approval Notice" emailed to Respondent by the Board's Human Resources (HR) Office on May 5, 2021, notifying her that her request for FMLA leave for two (2) weeks and two (2) days from April 22, 2021, through May 7, 2021, had been granted, using her available sick days. Board Exhibit A.[2] The notice instructed her she must timely submit a request for an extension of leave with updated medical documentation, if she needed to remain on leave after May 7, 2021, and otherwise she must report to her work location by May 10, 2021, to avoid AWOL charges.

Respondent did, in fact, request an extension of her FMLA, and as alleged in para. 3 of the Charges she was granted additional FMLA leave from May 7, 2021, through June 25, 2021. As recited in a May 14, 2021, email notice from HR, said additional period of leave was designated as seven (7) weeks and one (1) day of FMLA leave. Board Exh. B. The notice advised Respondent she was scheduled to return to work on August 31, 2021 at her work location. She was cautioned that if she failed to report as directed, she might be subject to AWOL charges.

Thereafter, Respondent did report to her work location at the Cleveland Elementary School at the start of the 2021-2022 school year. Respondent Exh. 5. Cleveland's Principal, Yakima

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[2] Under the FMLA, 29 U.S.C. §2612(a)(1)(D), an eligible employee is entitled to a total of 12 workweeks of leave during any 12-month period "because of a serious health condition that makes the employee unable to perform the functions of the position of such employee."

Jackson, assigned her to an 8th Grade special education class.[3] Id. At some point during the first month of the school year, Respondent complained that the 8th grade assignment was outside her training. Jackson thereupon checked Respondent's certification, and upon learning Respondent was certified to teach K-6, she transferred Respondent, as a substitute teacher, to a 4th Grade Special Education classroom effective October 12, 2021.[4] Board records indicate that Respondent possessed three (3) standard Certificates during the relevant period under which she was licensed as (1) a Teacher of Students with Disabilities (Standard), (2) an Elementary School Teacher in Grades K-6 (Standard) and (3) a Teacher of Culinary Arts (Standard), all as of 2012. Respondent Exh. 11.

Starting in approximately late October 2021, Respondent sent multiple emails to various persons complaining that she did not

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[3]Jackson's surname at the time was Johnson. Because of her name change, some of the record documents refer to her as Ms. Johnson. To avoid confusion, I refer to her in this Decision as Ms. Jackson.

[4]Respondent submitted documentation, Respondent Exh. 11, indicating that in 2018 she taught a tenth grade language arts/literacy class at Malcolm X Shabazz High School under supervision of Ms. Jackson. In the Formal Observation Report, Jackson determined that Respondent's teaching was "effective." On this record, I do not conclude Jackson's incorrect belief Respondent was licensed to teach an 8th grade class was anything other than a short-lived mistake, which Jackson promptly corrected, rather than a connivance to harass, as Respondent contends. See Respondent Exh. 3; See also Respondent Opening Statement, ¶1.

possess the training or experience to teach elementary school students. She contends she is qualified "as a Culinary Arts Teacher, Inclusion Teacher and a resource teacher" where lesson plans are provided to her. Respondent Exh. 15. She complained to Jackson and to the Union that being required to teach outside her training and experience was "causing great stress." Id. She asserted that her assignment to her 4th grade class and the teaching demands placed on her constituted "harassment, intimidation and bullying." Id. She stated, "I plan on filing a complaint." Id. In a December 8, 2021, email to Jackson, the Newark Teachers Union and Superintendent León, Respondent wrote:

> **I am trying my best to assist the 4th grade LDS classroom. I sent an email in September stating that my training is in career and technical education as a Culinary Arts Teacher. I attended the career and technical education alternate route program. I also received training in Teacher of Students with Disabilities. I took and passed the NJ K-5 praxis exam but I do not have any educational experience nor background training in teaching elementary school students. This new position is causing great stress to me and I live in fear and anxiety of Ms. [Jackson] and her actions. I have reached out to Newark Board of Education Affirmative Actions department concerning Ms. [Jackson's] harassment, intimidation and bullying this year and last year, yet still it continues.**

Respondent Exh. 15. Subsequently, she was absent from School on "occasional absences" on December 10 and December 19, 2021, and thereafter from January 19 through January 26, 2022. In connection with prior multiple instances of "occasional absences," Respondent received a disciplinary letter on January

26, 2022. Board Exh. D.[5]

The next day, Respondent was approved for FMLA leave without pay for the period January 27, 2022, through February 14, 2022. In an approval letter sent via email on February 10, 2022, HR Representative Cenobina Patterson advised Respondent her total approved leave of absence "is for two (2) weeks and two (2) days with a scheduled date to return to work on February 15, 2022." Board Exh. E.[6] Patterson's February 10, 2022, email advised Respondent, "[u]pon the employee['s] return, please send an email to confirm so our office can update accordingly. . . All employees returning to work from an FMLA . . . leave of absence, **MUST** obtain clearance from their physicians indicating diagnosis, and clearance date you expect to return prior to your return to work date. . . . You **MUST** attach the medical clearance documentation in order to be reinstated." Board Exh. E (emph. in orig.).

As alleged in para. 8 of the Charges, Respondent, on or

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[5]Documents referenced in para. 5 and para. 6 of the Charges, memorialize counseling and discipline in connection with Respondent's "occasional absences" on 9/8/2021, 9/16/2021, 9/30/2021, 10/1/2021, 10/14/2021, 10/15/2021, 10/22/2021, 11/17/2021 and 12/02/2021. See Board Exh. C (10/18/2021 notice of 10/20/2021 AIP conference "to discuss your absenteeism and the state standard) and Board Exh. D (1/26/2022 warning letter that "continued absenteeism will result in more harsh disciplinary action being taken against you.")

[6]According to Board Exhs. A, B and E, Respondent was granted twelve (12) weeks of FMLA leave between April 22, 2021, and February 14, 2022.

about February 10, 2022, asked for an extension of her FMLA leave until March 15, 2022, which was denied on February 10, 2022, because she had "exhausted" her leave time. Board Exh. F. She was instructed by Patterson, "to maintain your status as an employee **you must report back to work on Tuesday, February 15, 2022**." Id. (emph. in orig.). She did not return to work on February 15, 2022, as alleged in para. 9 of the Charges.

Nor did she return thereafter, instead requesting, effective February 15, 2022, a "leave of absence without pay," from February 15, 2022 through April 30, 2022, for "medical" reasons. Board Exh. G, Respondent Exh. 14. Respondent asserts she submitted medical documentation in support of her request for the "medical leave" extension. Respondent Exh. 14.

Patterson forwarded Respondent's unpaid medical leave request to Jackson and other Board personnel, including Assistant Superintendent for the East Central Ward, Dr. Shakirah Harrington, on February 16, 2022, with a request to "advise our offices if you approve or deny the personal leave request." Board Exh. H. Jackson responded, "[t]his request is denied due

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Under the Board's Leave of Absence Policy, Respondent Exh. 13, "[t]he Board of Education understands that there will be times when an employee will need to take time off from employment. The district further recognizes that in such circumstances, it may be in the best interest of the district and the employee that a leave of absence be considered. Therefore, it is the policy of the district to provide the opportunity to take a leave of absence without regard to the employee's race, color, national origin, ancestry, age, sex, sexual orientation,

to the hardship that the teacher's absence will have on our students' learning." Assistant Superintendent Harrington responded, "I am in agreement with that denial." Jackson's and Harrington's respective denials were forwarded to Respondent by email dated February 17, 2022. Board Exh. H.

In response to Respondent's query why her personal leave request was denied, Patterson sent her copies of Jackson's and Dr. Harrington's hardship determinations, and explained to her that "personal leave is only approved if the principal and Assistant Superintendent approved the leave. As you can see below, the leave was denied due to a hardship it will cause the school." Id.; See fn. 7, supra.

At this juncture, the Union interceded. Eugene Liss, General Counsel for the Newark Teachers Union (the "Union") on February 23, 2022, submitted on Respondent's behalf a "Reconsideration Request for Denied Illness Leave" to Patterson, with copies to Scott Carbone, Esq., Director of Labor Relations and Superintendent León. Liss noted the Union's awareness Respondent's leave extension had been "denied due to the hardship

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marital status, gender identity, religion, liability for service in the Armed Forces of the United States, or atypical hereditary cellular or blood trait. . . . The district will provide leaves of absence based on valid reasons. Where applicable, and in accordance with the law, the district reserves the right to . . . deny the request for leave if the district finds that the employee's absence will cause harm to the educational program and/or operation of the district." (emph. supp.)

that her absence will have on the students' instructional learning per the District of Newark," and requested that the denial "be reconsidered and granted until April 30, 2022, as outlined in the updated report of Joseph LaBelle, MA, LAC, NBCC attached hereto." LaBelle, a psychotherapist at the Montclair Personal Development Center, submitted on Respondent's behalf two letters, on February 14, 2022, and February 23, 2022, which stated "[t]he clinical severity of [Respondent's] diagnoses hinder[s her] from: planning, preparing, and delivering lesson plans, interactions, and instruction in ways that facilitate active learning as well as care to students under her management. . . . [She is] clinically unable to perform her professional [duties]." Respondent Exh. 21.[3]

The hearing record does not indicate whether the Board directly responded to Liss or LaBelle. In any case, Respondent did not return to work from her FMLA leave that expired on February 14, 2022. Jackson, noting the "serious matter" of Respondent's "substantial number of occasional absences" from September 8, 2021, through February 23, 2022, as well as the counseling she received on October 21, 2021, and the warning letter issued on January 26, 2022, sent Respondent a February 24,

[3]Respondent redacted a substantial portion of the record copies of LaBelle's letters. Respondent Exh. 21. Her diagnoses are not part of the hearing record, although the symptoms have been described.

2022, notice of her Request for Disciplinary Action, in which she recited the Board's reservation of its right "to take action against you as a result of your absenteeism," including tenure charges, disciplinary action, loss of increment and separation of employment.[9] Board Exh. I. Jackson advised Respondent she was forwarding that notice to Labor Relations for disciplinary action, with a copy to the Union. Id.

The Board subsequently, on April 1, 2022, sent Respondent via certified mail, a notice of Unauthorized Leave of Absence. The April 1, 2022, Notice restated that Respondent's FMLA leave had been exhausted as of February 14, 2022, and noted that she twice had applied for and been denied unpaid leaves of absence following her FMLA leave.

The Notice erroneously asserted that Respondent's absences since January 12, 2022, had been recorded as AWOL,[10] and directed Respondent she "must return to work by or before **April 11, 2022** with documentation covering the unauthorized dates of absence." Board Exh. J (emph. in orig.). A letter to Respondent from Jackson dated April 5, 2022, indicated the correct dates of her

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[9] As noted, Respondent did not report back to work following the denial of her request for unpaid medical leave effective February 15, 2022, and had been absent from February 15, 2022, through February 23, 2022, when Jackson sent the February 24, 2022, Request for Disciplinary Action. Board Exh. I.

[10] This error was corrected in subsequent letters. Board Exhs. I and J.

unauthorized absences, which totaled fifty (50) from September 8, 2021, through March 30, 2022. Board Exh. K. Jackson reiterated the previous caution to Respondent that "continued absenteeism will result in a Request for major disciplinary action." Id.[11]

Respondent, in an April 5, 2022, email to the Board's Employee Relations Officer, Jacqueline Chavis, objected to the April 1, 2022, Notice of Unauthorized Leave (Board Exh. J) and the April 5, 2022, warning from Jackson of excessive absenteeism (Board Exh. K). She stated to Chavis:

> **Good Day,**
> **This mental harassment and retaliation is causing me additional emotional distress, pain and suffering.**

Respondent Exh. 2. Respondent copied Superintendent León, Jackson, Union Representative Michael Maillaro, Dr. Harrington, Dr. Mendez, and Scott Carbone, Esq., Director of the Board's Office of Labor and Employee Relations, among others. According to Jackson, Respondent did not file a grievance or otherwise provide particulars for her claim of discrimination beyond the apparent assertion that the April 1, 2022, attendance notice and the April 5, 2022, warning letter, with their cautions that

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[11] In addition to the 25 Absence Occurrences Jackson had listed in her February 24, 2022, Request for Disciplinary Action, Board Exh. I, she noted the following additional 25 Occurrences: 2/24/22, 2/25/22, 2/28/22, 3/1/22, 3/2/22, 3/3/22, 3/4/22, 3/7/22, 3/8/22, 3/9/22, 310/22, 3/11/22, 3/14/22, 3/15/22, 3/16/22, 3/17/22, 3/18/22, 3/21/22, 3/22/22, 3/23/22, 3/24/22, 3/25/22, 3/28/22, 3/29/22 and 3/30/22.

Respondent must return to work or face discipline, alone constituted harassment and retaliation.

Carbone thereafter, on April 11, 2022, offered Respondent a last chance "opportunity to return to work" by April 25, 2022, which referenced her continued absenteeism since February 15, 2022, despite written instructions to return to work that were sent on February 10 2022, and which noted her failure to return by April 11, 2022, despite a clear directive given on April 1, 2022. Board Exh. L. Carbone's April 11, 2022, last-chance notice stated,

> **The purpose of this letter is to give you one last opportunity to return to work. You must return to work. You must return to work by April 25, 2022 with documentation covering the unauthorized dates of absence. Failure to return to work will result in disciplinary action being taken against you up to and including termination.**

Id., Respondent Exh. 16 (emph. in orig.).

Respondent replied to the April 11, 2022, last-chance letter in an April 12, 2022, email stating, "[p]lease assist me with this matter. I look forward to hearing from you." Respondent Exh. 3. Attached to the email was a 2½ page, single spaced document entitled "Harassment 4.docx." The email and the "Harassment letter" were sent to Chavis, Supt. León, Newark Mayor Baraka, Jackson, Dr. Harrington, Maillaro and Carbone, among others. Id.

The Harassment letter recites many of the contentions

Respondent makes in this proceeding, some of which I highlight: She stated, "I am being bullied, intimidated, harassed and forced into completing 'teacher responsibilities' as stated by Ms. Yakima [Jackson] in which I have no formal teaching instruction or educational training. This harassment has caused me health and anxiety issues." She asserted, "[m]y training is in Teacher of Culinary Arts," and "I have served NPS as a high school Culinary Arts Teacher and Special Education Resource English Teacher." Respondent Exh. 3.

Respondent, in addition, noted her loss in October 2020 of a close family member who also was her 9th grade student, and she stated that her physician advised her at the end of the 2020-2021 school year to take FMLA leave. She complained that during that leave Ms. Jackson and Ms. Lawson, another school administrator, "would contact me concerning teacher responsibilities." She asserted, "I was harassed and bullied by Ms. [Jackson} and Ms. Lawson." She added that she contacted the Board about that matter. Respondent Exh. 3.

The "Harassment" letter further states that Respondent was assigned at the start of the 2021-2022 school year to report to Cleveland Elementary School, where she was told to report to the 8th grade "LCS Special Education classroom," despite not having "any formal teaching instruction or training in teaching elementary school students." According to Respondent, the

equipment in the classroom did not work, and essential materials and resources "were not readily available." Respondent Exh. 3.[12] There is no record evidence Respondent filed a grievance in connection with the claims stated in the Harassment Letter.

Moreover, Respondent did not thereafter return to work, although Maillaro had advised her by email on April 5, 2022, "[t]he law only obligates the district to give the 12 weeks of FMLA per year. There is nothing in the [Americans with Disabilities Act] that contradicts that. As I told you before, you need to work with our Employee Assistance Program. Keeping your protections under Chapter 69 would be the most viable option here." Respondent Exh. 16.[13]

Respondent enlisted the support of additional persons who, on her behalf, emphasized to the Board that she was in treatment.

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[12]In fact, at the time, Respondent had three (3) certificates: Teacher of Students with Disabilities, Teacher of Culinary Arts, and Elementary School teacher in Grades K-6. Jackson testified she was not aware at the time that Respondent's license did not include 8th grade students. Thus, as acknowledged in Respondent's Harassment letter, Jackson by early October 2021 promptly corrected Respondent's misassignment, first by placing her in 4th and 5th grade special education classrooms as a substitute teacher, starting October 11, 2021, and on October 22, 2021, by naming her the teacher of record for a 4th grade special education class. See Respondent Exh. 3.

[13]Under L.2011, c. 69, a May 9, 2011, amendment to the New Jersey Employer-Employee Relations Act, N.J.A.C. §34:13A-40 et.seq. ("Chapter 69"), the state created certain protections for employees of New Jersey public employers in connection with said employees' receipt of various forms of assistance, including advice and counseling, from their employer's "employee assistance program."

On April 6, 2022, Terry Livorsi a Certified Employee Assistance Professional with Union Workforce Initiative, wrote to the Board's Executive Director of Health Services, Dr. Margaret Leuze, that Respondent "submitted herself to the Newark Education Association EAP on 3/2/22 "in an effort to determine and access the appropriate behavioral health medical treatment." Respondent Exhs. 13 and 14. Livorsi asserted "Chapter 69 PL 2011 protects Ms. Henderson from any further disciplinary actions until a behavior health medical program and appropriate protocols are established for her. It is our shared goal for Ms. Henderson to return to work in a restored capacity." Id. Livorsi stated, "Ms. Henderson fully understands the gravity of the situation and is seeking help in the appropriate fashion," and added, "we estimate that she will be able to return to work as successful contributor to her position within 45-60 days." Id.[14]

On or about April 6, 2022, Tash Duplain, MA, AC, NCC, and Salman Abouzied, respectively a Counselor and a Psychiatric Nurse at The Counseling Center at Clark, New Jersey, wrote Leuze "to inform [her] that Ms. Lateefah Henderson was admitted to our program for a behavioral health medical condition on March 30th, 2022. Ms. Henderson's estimated length of attendance in our program is a minimum of 30 days, which will be re-evaluated on

[14]That assessment projected Respondent would be medically fit to return to work sometime between May 21 and June 5, 2022.

April 29th, 2022." Respondent Exhs. 13, 16.

Respondent thereafter remained in treatment with LaBelle, Respondent Exh. 12, and continued receiving services from the Counseling Center.[13] Liss remained in contact with her and met with her as late as July 19, 2023. Respondent Exh. 16. Also on July 19, 2022, Maillaro wrote to Carbone:

> **Since last September, we have been trying to help a teacher named Lateefah Henderson. Long story short, she was hired into the district via alternate route from her previous life running her own restaurant. She's a culinary arts teacher and has seniority over at least three staff still in that position. Last year, the district moved her into a spot that was an awful fit for her, and she never had any real support from her administrator. She was certified as an elementary teacher because she took the Praxis but had no experience or training as an elementary teacher. The**

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[13] Respondent submitted into evidence, Respondent Exh. 13, an August 10, 2022, follow-up letter from the Counseling Center, this time from Counselor Adil Yurekli, LSW, and Medical Director Gregory Bundt, stating that Respondent, following her March 30, 2022, admission to its "program for a behavioral health medical condition," was re-evaluated on April 28, May 26, July 13 and August 4, 2022, and "[i]t has been determined that Ms. Henderson is recommended to remain in the program and will be re-assessed in 30 days." The Counseling Center subsequently discharged Respondent from its program, effective September 28, 2022. Id. According to the Counseling Center,

> At this time Lateefah is no longer using group and/or services therapeutically. She has reported that she felt as though she is not getting any help from the facility and feeling as though nothing was getting resolved.

Id. (emph. supp.) She was recommended to transition to individual services with LaBelle. Id.

whole situation was awful and resulted in bad evaluations, a withholding of increment, and students not receiving the service they needed because she was forced into a situation that was not the right fit for anyone. She ended up relinquishing her elementary certification to the state in the last week or so.

The district still seems to have opening in culinary arts posted on the district website, and she has seniority over other culinary arts teachers. She has been in the district since 2011 doing culinary arts and later resource and inclusion for special ed students. Isn't there anything that can be done to help make her situation better?

Respondent Exh. 16.

On July 29, 2022, the instant Charges were filed.

DISCUSSION AND FINDINGS

Issues Presented

The issues presented in the case are:

1. Has the Board satisfied its burden of substantiating the Tenure Charges it has proffered against Respondent?

2. If so, what discipline, if any, is warranted?

DISCUSSION

Positions of the Parties

The Board asserts the record evidence demonstrates that Respondent, during the 2021-2022 school year was excessively absent and AWOL for several months, and ignored the multiple directives she received from the Board to return to duty.

According to the Board, Respondent knew she was out of leave time when she remained absent in the wake of directives she return to work. As such, the Board contends her unbecoming conduct was intentional and disregarded the educational needs of her students.

Moreover, the Board adds, beyond the fact Respondent was excessively absent and AWOL, and as demonstrated through her testimony and argument, remorseless about the hardship she created for her students, she also demonstrated she is incapable of returning to duty in any teaching capacity. As noted by the Board, she admits to being disabled indefinitely, and in addition has given up her Elementary School Teacher license, Respondent Exh. 16, effectively disqualifying her from being a K-6 Teacher of Students with Disabilities.

Indeed, the Board argues, Respondent did not, and cannot, dispute the allegation she was absent without leave from February 15, 2022, until the end of the 2021-2022 school year. Nor can she overcome the evidence she is not capable of returning to work, despite her insistence it was only the Board's intransigence which kept her from working. The Board stresses that Respondent admitted in her testimony she no longer is licensed to teach elementary students, and further, after the instant charges were served, she applied for and received long-term disability benefits from Prudential. The Board asks that I

infer from Respondent's failure to comply with my directive to produce a record of what she told Prudential regarding her capacity to work, that her disability precludes her return to work.

Nor, the Board adds, can Respondent fairly claim she did not know that the consequences of her excessive absenteeism and interminable AWOL would be tenure charges seeking her termination. She was expressly warned that would be the Board's recourse in multiple letters and emails that she admits she received. The Board adds that Respondent offered no evidence to refute Jackson's testimony that Respondent never contacted her or anyone else in Cleveland School administration to explain why she was AWOL.

Moreover, the Board argues, Respondent did not, and cannot, dispute Jackson's testimony that Respondent's excessive absenteeism disrupted the delivery of instruction to her students and disrupted school operations in that other staff members had to be switched from their educational duties to address Respondent's absenteeism.

According to the Board, Respondent's claim she was misassigned to teach an 8th grade class at the beginning of the school year is not justification for her absenteeism and recurring AWOL. For a few weeks early in the school year, Jackson has admitted, Respondent was assigned outside her

license, but by early October 2022, she was placed in an elementary class that was within her certification. The Board adds that a technical misidentification of dates in Carbone's April 1, 2022, letter, or in any of Jackson's letters, does not constitute lack of notice to Respondent that she had been absent on fifty (50) occasions, and had been AWOL since February 15, 2022. Those facts were well known to Respondent, the Board argues, and she has failed to demonstrate that she was confused or uncertain about her rights on account of any such minor errors, all of which were ultimately corrected.

Regarding Respondent's contention she is protected under P.L 211, Chapter 69, the Board asserts said provision only protects public employees who obtain services from an "employee assistance program" ("EAP") which is statutorily defined as a program of assistance provided by a public employer or by a provider under contract with a public employer to provide assistance to the employer's employees. The Union Workforce Initiative from which Respondent testified she received employee assistance does not have a contract with the Board, it argues, and therefore Chapter 69 does not apply. In any case, the Board argues, Chapter 69 by its express terms "shall not be construed as preventing the public employer from taking any action which the employer is otherwise authorized to take for workplace misconduct of the employee or poor work performance, even if the misconduct or poor

performance is related to a problem for which the employee is obtaining services provided by an employee assistance program."

The Board argues that it has met its burden to prove Respondent's inefficiency, incapacity, and conduct unbecoming by a preponderance of the credible evidence. Indeed, it asserts it has demonstrated Respondent's unbecoming conduct from its showing that her recurring absences and persistent AWOL adversely affected the efficiency and morale at the School and constituted a willful and continued disregard for administrative directives and decisions. Citing In re Truitt 2014 WL 10208983; In re Simon, 2013 WL 363175 at 29. Her misconduct is demonstrated from the fact she was put on notice her conduct was forbidden and yet even then it persisted. See In re Molokwu, 2005 WL 3234798 at 1; In re Richardson, 1998 WL 668704.

The Board acknowledges its responsibility to teachers with medical problems, but insists its overarching responsibility is to the children. Citing In re Tenure Hearing of Randi True, School District of the Twp. Of Willingboro, 2011 N.J.Agen Lexis 354 at 53 (citing In re Green, 1991 S.L.D. 1103). Indeed, the Board argues, excessive absenteeism constitutes valid grounds for the dismissal of a tenured teacher, even where the absences have been excused or caused by legitimate medical or health related issues. Citing Matter of True at 53; State Operated School Dist. of Jersey City v. Pellecchio, 92 N.J.A.R.2d (EDU) 267, 269-70,

aff'd, State Bd., 93 N.J.A.R.2d (EDU) 30.

These rulings, the Board argues, are grounded in the recognition that many students who are deprived of their regular classroom teacher frequently experience great difficulty in achieving the maximum benefit of their schooling, and the conclusion therefore, that regular contact of pupils with their assigned, regular teacher is vital to this process. Citing Matter of True at 55. According to the Board, the True decision found that the impact of a teacher's absence is even more severe when special education students are involved. Id.

The Board asks that I follow the analysis of Arbitrator Reilly in Matter of Sch. Dist. of East Orange and Owoh, Agency Docket No. 101-6/21. As here, the Board argues, the elementary school teacher in Matter of Owoh demonstrated a pattern of excessive absenteeism over time and continued to remain absent without authorization. The teacher asserted his absenteeism was on account of a medical condition, but the arbitrator ruled that dismissal nevertheless was justified. He reasoned that "substantiated medical issues . . . do[] not entitle Respondent to an indefinite medical leave." He found that where a teacher's excessive absenteeism included an extended period of unauthorized leave with no projected end date, his misconduct undermined the school district's educational mission and "reached an obvious inflection point." Matter of Owoh at 20.

In reaching his decision to terminate the teacher, the arbitrator used the three-prong test articulated in In re Castro, Docket No. A-4875-10 (App. Div. April 25, 2012), citing In re White, 92 N.J.A.R.2d (EDU) 157 (1991), under which a school district, when seeking the termination of a tenured teacher for incapacity/excessive absenteeism, must show: (1) it considered the number of days and the particular circumstances of the absences; (2) the impact the absences had on the district; and (3) that an appropriate warning was given. Matter of Owoh at 15.

Here, the Board argues, the three-prong test also was met. Regarding prong 1, the Board observes respondent was absent on numerous occasions (not including FMLA leave) during the 2021-2022 school year prior to February 15, 2022, and was warned about them; and then, from February 15, 2022 until the end of the 2021-2022 school year was AWOL, and remained AWOL despite multiple demands she return to work. With respect to Prong 2, the Board argues Jackson credibly testified about the hardship on the school's students from Respondent's prolonged and recurring absences, and the negative impact her absences had on school operations, including staff morale. The Board stresses that this hardship was clearly explained to Respondent when she asked why her February 15, 2022, extension had been denied.

The Board insists, too, the third prong was met by the multiple communications to Respondent from Human Resources, Labor

Relations and Jackson that her absences were excessive, constituted AWOL and would result in discipline, including her termination, if she did not report back to duty. According to the Board, it was clearly stated to Respondent that she was needed back in her classroom.

According to the Board, Respondent has failed to present any defenses or other bases to excuse her excessive AWOL absenteeism. The Board argues that Respondent's objections to her supervision by Jackson, in particular to observations and various instructions which she characterizes as harassment, bullying and intimidation, have nothing to do with these charges, which are not related to her performance as a teacher, or to any classroom incidents which occurred prior to February 15, 2022, the date she was directed to return to work because her leave was exhausted.

The Board observes that Respondent's central defense is her claim she can self-designate herself on extended leave because she has suffered stress and feels harassed by the professional demands placed upon her by Jackson. According to the Board, there is no proper basis to allow Respondent to designate herself on an extended leave of absence without pay, when all of her available leave has been exhausted, because she feels stressed out by her teaching job.

Nor has Respondent raised a recognizable defense by asserting she was in counseling, the Board argues. The Board

asserts it does not seek to discipline Respondent for participating in counseling. Rather, she is charged with not coming to work when she had run out of leave. The Board insists there is nothing in Chapter 69 which prohibits its discipline of Respondent for excessive absenteeism and AWOL.

Further, the Board argues, Respondent effectively concedes she is ineligible for the remedy she seeks in this proceeding. She cannot be returned to her position teaching Elementary School Students with Disabilities, as she relinquished her teaching license as an Elementary School Teacher K-6.[16] In addition, she has obtained long-term disability benefits for at least the next two years, and possibly an indefinite period thereafter, according to the Board, which may be inferred, the Board argues, from Respondent's refusal to provide copies of requested documents which it suspects contain her assertion to Prudential she is permanently incapable of coming to school and performing her job. Indeed, the Board asserts Respondent fairly cannot demand in this proceeding an order returning her to work in a position she has claimed, in order to receive long-term

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[16]According to correspondence between the Union and the Board dated July 19, 2022, Respondent gave up her Elementary School Teacher Endorsement on or about July 15, 2022. Respondent Exh. 16. The Board points out that under N.J.A.C. 6A:9B-11.4, Teacher of Students with Disabilities, the ability of a teacher to teach students with disabilities is contingent upon her possession of a Standard Teaching Certificate. Board Brief at 41.

disability benefits, she is incapable of filling.

In sum, the Board argues, the record in this case requires Respondent's removal. She is culpable of excessive absenteeism and of being AWOL despite her knowledge that she was needed at her school, that she was out of contractual leave, that she had exhausted her FMLA, and that she had been properly denied for an extended leave without pay due to the hardship it would cause her students and the school. She remained absent despite directives to return to work. She gave up her teaching license in a gambit to force the Board to assign her as a Culinary Arts Teacher when she was needed as a Special Education Teacher. There is no prospect of her returning to teach the very students who need her instruction, as she is no longer qualified to provide that instruction. On top of that, the Board argues, even if she was given a chance to return to work, she is not eligible to do so because she is on long term disability and not fit for duty, and thus the hardship on the students and the school will continue.

According to the Board, its evidence substantiates the proffered charges and the appropriate discipline is Respondent's termination.

Respondent, on the other hand, asserts the tenure charges against her must be dismissed and she should be awarded back pay and reinstatement to her tenured teaching position. According to

Respondent, the "[t]enure charges fail to state a cause of action upon which relief may be granted." Respondent's Post-Hearing Brief ("Resp. Br.") at 1. She asserts they "are false in fact, and constitute an exaggeration and distortion of the truth." Id. Specifically, she alleges that "[t]he district failed to comply with its governing policies and procedures with respect to [her] work assignments and leave of absence requests." Id. She contends the Board "has unclean hands because it required [her] to work when [she] was entitled to leave(s) of absence." Id.

Respondent does not deny she was absent on the days referenced in the Charges. Although she makes several arguments in defense of the Charges, her central argument is her contention "my absenteeism was caused by Newark Public Schools, Newark Teachers Union EAP and my illness." Resp. Br. at 4. Thus, she claims, her assignment to teach an 8th grade class in September 2021, which was outside her certification, and her subsequent placement in a 4th grade special education class for which she claims she was unqualified ("I have no formal teaching training or educational training") caused "a medical episode" in or about December 2021. Resp. Br. at 1-2.

Indeed, Respondent asserts that observations and evaluations she received without "support required by statute . . . caused a significant amount of emotional distress and exacerbated my disability." Resp. Br. at 2-3. She contends, "[m]y symptoms

were caused by not having the proper training, support, placement and proper leave." Id. at 3.

Respondent stresses that she was hired by the Board in 2011 as a Skilled Trades Teacher. Resp. Br. at 2.[17] She notes that she "completed the New Jersey Alternate Route Career and Technical Education Teacher Preparation Program," which she asserts represented "200 hours of Career and Technical Education Alternate Route Instruction." Id. She states that on September 9, 2021, she asked Human Resources to transfer her back to being a Culinary Arts teacher. Id. The denial by the Board of that request, according to Respondent, constituted "harassment [which] caused [her] health and anxiety issues." Id. So, too, she suffered "emotional distress" from having to teach without "proper training" and from having to endure "harsh" supervisory oversight of the teaching she was required to perform without "support." Id. at 3.

The harassment she received came in multiple forms, she alleges. She "was forced to teach outside [her] certifications by [Jackson]" at a time she was "suffer[ing] the tragic loss of a close family member whom was also my student that year and blamed myself." Resp. Br. at 2. She contends that Jackson "forced [her] to work during [her] FMLA," and that when she "returned to

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[17] Respondent was hired in September 2011 and was granted a provision license as a Teacher of Culinary Arts, effective September 1, 2011.

work without a medical clearance and was transferred to an elementary school position" it "aggravated my disability." Id.

Respondent claims that when she "spoke up for the students and [her]self" she became "a subject of First Amendment retaliation," which caused her to "suffer another medical episode in January 2022." Id. She asserts she applied for FMLA leave on or about January 31, 2022, for the period January 27, 2022, through May 15, 2022, which was denied for "arbitrary and capricious" reasons. Id.[11] She contends the Board, in denying her an extension of leave without pay for the period she requested, failed to acknowledge its culpability and the culpability of her school's administration in causing the illness which necessitated her absences. Resp. Br. at 2-3.

According to Respondent, the fundamental bad faith of the Board's Tenure Charges against her is demonstrated by the fact the Charges were brought "while I was trapped in The Counseling Center." Resp. Br. at 4. She asserts she entered the Counseling Center program on the advice of Livorsi and Liss, who advised her to "listen to" Livorsi and remain in The Counseling Center until it discharged her. Resp. Br. at 3. Thus, she

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[11] According to February 10, 2022, correspondence summarized in the background portion of this Decision, Respondent applied for FMLA leave for the period January 27, 2022, through March 15, 2022, but was only granted FMLA through February 14, 2022, because she had exhausted her contractual and FMLA benefits. Board Exhs. E and F.

argues, she "tried to return back to work in April of 2022" but could not because she was in the Counseling Center on the recommendation of her representatives. Id. I interpret Respondent's argument as an assertion she was protected from these disciplinary charges because she had a proven medical disability.

With respect to the allegations in the Charges Respondent was AWOL and did not report her absences or otherwise communicate the reasons for her absences, she contends she "used the district's electronic reporting process to report [her] attendance." Resp. Br. at 3. She claims that Jackson thereafter acted dishonestly and in bad faith when she "modified the [Board's electronic attendance] system to show [Respondent's] absence until on or about 4/20/22." Id.[11]

Respondent claims she was told by Maillaro to "work with" Livorsi, because "keeping [her] protections under Chapter 69 would be the most viable option." Resp. Br. at 3. She asserts

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[11]The AESOP record, Respondent Exh. 7, documents Respondent's call-ins to report her absences. In her claim that Jackson "modified" these records, which is not substantiated by hearing evidence, she appears to be referring to an entry of a call-in "sick" for the period February 28, 2022, through April 29, 2022. The Board's time records, Board Exh. M, show Respondent was carried "EST-ExhaustedSick" for the duration of the period. However, after April 29, 2022, there are no entries in the Board's time records, which, according to Jackson, means Respondent had stopped making call-ins. The AESOP record is consistent in showing no call-ins by Respondent from Monday, May 2, 2022, until the close of the 2021-2022 school year at the end of June 2022. Cf. Respondent Exh. 7 and Board Exh. M.

she was told by Livorsi that "[her] job is protected under Chapter 69." Id. She contends the answer filed by her former counsel and union-provided attorney did not provide "correct evidence." Resp. Br. at 4.

Respondent submitted the following summation of her position:

> **I maintain that the district has failed to support its tenure charges. The basis of the charge relating to absenteeism - the district failed to comply with its governing policies and procedures with respect to my work assignments and leave of absence requests. The evidence shows I only used 5 weeks of FMLA in the 2020-2021 school year. In the 2021-2022 school year, I was approved for FMLA leave from January 17, 2022, to February 14, 2022 - at which point is only 9 weeks of FMLA leave. And I have already received the harsh discipline of an increment withholding relating to them and it is unfair to then punish me a second time for the very same conduct. Additionally, in regard to Unbecoming Conduct Absent Without Leave, the evidence establishes that my absenteeism was caused by Newark Public Schools, Newark Teachers Union EAP and my illness. The evidence establishes that I submitted myself to the Newark Teachers Union on 3/2/22. I was admitted to The Counseling Center on 3/30/22 until 9/22.**

Resp. Br. at 4.

Respondent accordingly requests an order dismissing the Tenure Charges in their entirety, and for back pay of all monies lost during the period of her suspension and all other emoluments of employment. Resp. Br. at 5.

Opinion

Excessive absenteeism may constitute incapacity, unbecoming conduct or just cause sufficient to warrant dismissal. Matter of Owoh at 154, citing In re Castro, Docket No. A-4875 (App. Div. April 25, 2012), and Matter of Pellecchio. Moreover, excessive absenteeism may constitute valid grounds for the dismissal of a tenured teacher even where the absences are excused or caused by legitimate medical or health related reasons. Matter of Tenure Hearing of Grace Folger, School District of City of Orange, Commissioner Decision No. 147-00, Agency Docket No. 163-6/99 (2000) at 85-86. See also Matter of Pellecchio at 269-70; Matter of the Tenure Hearing of Jerome Kacprowicz, State Operated School District of the City of Jersey City, 93 N.J.A.R.2d (EDU) 152, aff'd, State Bd., 93 N.J.A.R.2d (EDU) 604, aff'd, App. Div., 95 N.J.A.R.2d (EDU) 105. These principles are well-settled.

Absences may be deemed excessive and a basis for discipline even if, as here, the teacher asserts the illness which caused her incapacity to work was work-related. "It is by now axiomatic that action can be taken against a tenured individual for excessive absenteeism even if such were the result of a work-related illness or injury." In the Matter of the Tenure Hearing of Sonia Velez, School District of Hudson County, County Schools of Technology, Agency Dkt No. 54-2/05 (April 27, 2006), citing In the Matter of the Tenure Hearing of Grace Folger,

School District of the City of Orange, Essex County, decided by the Commissioner May 15, 2000 ("From the student' point of view, it does not matter whether their teacher is absent for an excessive amount of time due to work related injuries, approved leaves of absence, legitimate medical excuses or illegitimate excuses").

Based upon my careful review of the hearing evidence, I find that Respondent was AWOL from February 15, 2022, until the close of the 2021-2022 school year, as alleged in the charges, and that her four and one-half (4½) month continuous absence from performing her teaching duties constituted chronic and excessive absenteeism. She is culpable of the misconduct alleged in Charges One and Two, and she thereby engaged in conduct unbecoming.

In reaching this determination, I make no finding regarding Respondent's medical diagnosis, save for her assertion the symptoms of her illness precluded her from coming to her work location and performing her teaching duties. Respondent claims her supervision by Jackson constituted "harassment, intimidation and bullying." Respondent's Sworn Testimony at ¶¶43, 48, 57, 59. She asserts her classroom assignments were difficult and stressful. Id. at ¶32. She has submitted into the hearing record a portion of a "To Whom It May Concern" letter prepared by LaBelle on February 14, 2022, which states, "[t]he clinical

severity of [Respondent's] diagnoses hinder [her] from: planning, preparing, and delivering lesson plans, interactions, and instructions in ways that facilitate active learning as well as care to students under her management. . . [She is] clinically unable to perform her professional [duties]." Respondent Exh. 21. She presented no information to the Board regarding when her symptoms might abate and thereby enable her return to perform teaching duties.[20]

A school district is not required to endure the hardship of a teacher's excessive AWOL absences, particularly where, as here, the duration of a continuous absence is indefinite, and credible evidence demonstrates hardship on students, negative impact on school operations and damage to the morale of staff who must take on added responsibilities of covering the absent teacher's classes. Indeed, Respondent has not refuted the Board's good faith determination in February 2022 that her absences had been and would continue to be harmful, especially to her special education students.

Notwithstanding LaBelle's assertions regarding impairment of Respondent's "major life activities" and the nature of her

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[20]Record evidence indicates Respondent was awarded Long Term Disability benefits on or about September 27, 2022, Board Exh. N, Respondent Exh. 23, approximately two (2) months after service of these Charges. According to record documents, the effective date of her disability coverage was July 18, 2022, which was several weeks after the time period covered by the Charges.

disability, Respondent Exh. 21, it remains that her status under the ADA is not before me. LaBelle, moreover, did not testify in this proceeding, and none of his written opinions were sworn or subject to cross examination by Board counsel. Indeed, there is no record basis for me to deem him qualified to assess the impact of Respondent's absences on her students, or competent to draw his conclusion that the Board had an obligation to "cooperat[e] with [Respondent's] needs." Id.

What is before me, quite simply, is Respondent's absence from her teaching duties the entire period from February 15, 2022, until the close of the 2021-2022 school year. This four-plus month period of absence was without leave. It was continuous. Initial assessments from LaBelle and from The Counseling Center that her leave would be for a possibly finite period, with an "expected time for remission of symptoms [in] two and a half months," Respondent Exh. 21, proved to be false, and without Respondent calling LaBelle to testify, I will not presume he would agree that the Board's decision to proffer these Charges after Respondent remained absent for four and one-half (4½) without any communication from her indicating an intention to return to work was "uncooperative," to use his term.

In none of Respondent's evidence, either in her testimony or in the hundreds of pages of documents she submitted into this record, is there any information to refute, or even merely to

cast doubt upon, the Board's determination Respondent's extended, continuous absence past February 15, 2022, would "cause harm to the educational program and/or operation of the district." See Board Policy on Leave of Absence, Respondent Exh. 13 and fn. 6, supra. Jackson explained she would not approve the extension "due to the hardship that the teacher's absence will have on our students' instruction/learning," and, as noted, Dr. Harrington concurred.

To the extent Respondent is arguing LaBelle's assessment of her entitlement to a leave outweighs the Board's determination of hardship, I reject that contention. Respondent has presented no authority for her proposition that the school must subordinate the students' needs and the operational hardship of a teacher's persistent and excessive AWOL absences to that teacher's claimed need for medical leave beyond the time off granted under statute (12 weeks over 12 months under the FMLA) and contract (3½ weeks of sick and personal leave per school year). The decision to extend a teacher unpaid leave is for the Board, and I find no record basis to conclude the Board's decision in this case against extending Respondent's leave past February 15, 2022, was not based on proper factors or was not made in good faith.

Moreover, Respondent's characterization of the Board's actions as discriminatory and in violation of law is unsubstantiated. She contends she improperly was granted only

nine and one-half (9½) weeks of FMLA leave during the relevant 12 month period, but my review of the record indicates she received the full 12 weeks to which she was entitled. The correspondence which Respondent contends constituted harassment consisted of letters that fairly and accurately tracked her attendance, and alerted her to the Board's concerns about her mounting absence occurrences and warning her of the consequences she should expect if she did not improve. These are the very communications the Board is required to initiate in order to help a teacher avoid discipline.

Thus, Respondent was cautioned about her occasional absences starting on October 18, 2021, which was relatively early in the school year. Board Exh. C. Nevertheless, by November 29, 2021, she had exhausted her personal leave for the entire school year (5 days), and by December 10, 2021, had exhausted all of her sick leave (12 days). Board Exh. M. When the Board properly and fairly communicated to her its concern about her absenteeism and fairly put her on notice she faced potential discipline, Respondent experienced the Board's appropriate and required efforts to caution her as bullying and harassment. It is not surprising, therefore, that she has deemed every adverse consequence of her poor attendance to be a targeted attack and evidence of bad faith.

Her allegations are unjustified, however. She knew she had

no more FMLA leave after February 14, 2022. She admits that on or about January 27, 2022, she asked for leave until April 30, 2022, but was told her statutory maximum would be reached on February 14th. Board Exh. G. Further, after Respondent was cautioned on February 10, 2022, "**you must report back to work on Tuesday, February 15, 2022**," Board Exh. F (emph. in orig.), she remained out, and did so without ever contacting Jackson or anyone else in the Cleveland School administration who was expecting her return. Jackson credibly testified Respondent's continuing absences caused disruption. Each day she was out placed "strain" on Jackson's ability to run the school, because the Principal had to assign coverage by other staff members who then could not perform their own previously scheduled tasks. As an example, Jackson explained she frequently had to pull teachers from parent conferences in order to ensure coverage of Respondent's classes.

Jackson described truthfully I find, how Respondent's absences directly impacted her special education students. They did not have their regular teacher, which is something children rely on for consistency. Indeed, the regular teacher knows the curriculum and knows the circumstances of each student, and with that knowledge prepares the lesson plans. In contrast, substitute teachers often do not fully understand the curriculum, are not involved in creating the lesson plans and in many cases

are simply not qualified, especially in special education. Jackson's determination, sustained by Dr. Harrington, that there would be hardship on students and the school's operations if Respondent remained out on extended leave past February 14, 2022, was grounded in her experience, sound professional judgment and good faith assessment of the educational needs of the Respondent's students. Neither Respondent, nor her therapist, LaBelle, were empowered to overrule Jackson's assessment.

Respondent, moreover, quick to blame others for her excessive AWOL absenteeism, ignores the multiple opportunities the Board gave her to return to work before bringing disciplinary charges. I discern from the hearing record that the Board did not accelerate discipline as it might have done if that had been the end-goal that Respondent surmises. Rather, the Board was not quick to act and, rather, even extended Respondent's deadline as it implored her to return to work.

Indeed, notwithstanding Carbone's warning to Respondent in his April 1, 2022, Notice, Board Exh. J, that her "[f]ailure to return to work by or before April 11, 2022 . . . will result in disciplinary action being taken against you up to and including termination," determined, when she did not return by that date, to give her still another chance. Board Exh. L. After noting Respondent's continued AWOL status at the April 11th deadline, and her failure to heed his previous warning she must return to

work by that date or face disciplinary action, he told her that "[t]he purpose of this letter is to give you one last opportunity to return to work." Id. And he than even allowed her two (2) additional weeks, until April 25, 2022, to do so. Id. Respondent, however, did not return to work. Rather, she remained AWOL through the end of the school year, two (2) months past the extension of time Carbone had given her.

Respondent, rather than accepting Carbone's April 2022 correspondence as an opportunity to return to work and avoid the consequences of her excessive AWOL absences since February 15, 2022, deemed the Board's letters encouraging her return to work, simply because they contained the required warnings of the negative consequences she would face if she remained AWOL, to be "mental harassment and retaliation." Respondent Exh. 16. She asserted that Carbone's April 1, 2022, Notice, Board Exh. J, and Jackson's April 5, 2022, letter cautioning her about the consequences of her "continued absenteeism," Board Exh. K, had caused her "additional emotional distress, pain and suffering." Respondent Exh. 16.

Respondent's defense against these Charges amounts to a claim the Board's attendance requirements for effective and consistent pedagogy take a back seat to her personal circumstances, even after she exhausted all of the leave to which she was entitled under law and contract. Thus, Livorsi, on

Respondent's behalf, wrote to Leuze on April 6, 2022, that, "Chapter 69, PL 2011 protects Ms. Henderson from any further disciplinary actions." Respondent Exh. 16. Livorsi presumed the right, again on Respondent's behalf, unilaterally to set the terms for her attendance. The Counseling Center, also on April 6, 2022, wrote to Leuze that Respondent will be re-evaluated on April 29, 2022, but offered no estimate of when she might return to work. Id.[21] Respondent has offered no legal authority to support her claim that the symptoms and illness she contends were caused by Jackson's purportedly overzealous supervision exempted her from regular attendance and permitted her indefinite unapproved absences. Without reference to any decisional, statutory or regulatory law, save for her blanket assertion she is covered under P.L. 2011, Chapter 69, she insists she was protected from disciplinary action, notwithstanding uniform rulings that excessive absenteeism may constitute valid grounds for the dismissal of a tenured teacher even where the absences are excused or caused by legitimate medical or health related reasons. Matter of Folger at 85-86; Matter of Pellecchio at 269-70. In Matter of Folger at 85, the Commissioner deemed

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[21]The Counseling Center subsequently re-evaluated Respondent on April 28, May 26, July 13 and August 8, 2022, and each time recommended she remain in its program an additional 30 days, Respondent Exh. 13, until it made a decision to discharge her on September 28, 2022, after she reported she was "not getting any help from the facility and feeling as though nothing was getting resolved." Respondent Exh. 24.

"meritless [the] argument that, by definition, excessive absenteeism must mean absences in excess of what is justified by medical verification." As noted, that principle holds even where the absences are due to work-related injuries. Matter of Velez at 4. It gains traction where, as here, the absences are without leave.

My review of Chapter 69, N.J.A.C. 34:13A-42, persuades me Respondent's reliance on it is misplaced. It reads,

> **No public employer shall take any action against an employee of the employer, including termination, because the employee or a dependent of the employee has obtained counseling, referrals or other services from an employee assistance program or has obtained treatment or other services from any program to which the employee assistance program refers the employee . . . unless the employee was referred by the employer to the employee assistance program due to issues related to job performance and fails to make a good faith effort to comply with the recommendations made by the employee assistance program. The provisions of [Chapter 69] shall not be construed as preventing the public employer from taking any action which the employer is otherwise authorized to take for workplace misconduct of the employee or poor work performance, even if the misconduct or poor performance is related to a problem for which the employee is obtaining services provided by an employee assistance program or other program to which the employee assistance program refers the employee.**

Respondent Exh. 16. Respondent contends the charges against her and the Board's efforts to discipline her for excessive AWOL absences are violations of this law.

I do not concur. The Board's Charges against Respondent are unrelated to counseling, treatment or other services she has

obtained from an employee assistance program, or from any other entity. The basis for the charges and for the discipline the Board seeks to impose is Respondent's continued, unremitting absence from work without leave for more than four (4) months, from February 15, 2022, until the end of June 2022. There is nothing in the language of Chapter 69 which bars a public employer from requiring acceptable attendance and from disciplining employees who are excessively AWOL.

Nor does Chapter 69 evince an intention by its drafters to subordinate a school board's need for a teacher's regular attendance to that teacher's demand for unpaid medical leave after her entitlements are exhausted. Where, as here, a teacher's AWOL absenteeism has been persistent, continuous and unremitting for the final four and one-half (4½) months of the school year, without any clear communication from the teacher of a date on which the teacher will return, and for the final two and one-half (2½) months, without any communication at all, I find that tenure charges seeking that teacher's dismissal is an appropriate consequence, and one that fairly could be expected after multiple warnings.

In fact, the language of Chapter 69 expressly authorizes the Board to impose disciplinary action for workplace misconduct or poor work performance, which plainly includes excessive AWOL absenteeism, even if the absenteeism and the

failure to report to work is related to a problem for which Respondent is obtaining counseling or therapeutic services from an EAP. I further note, as the Board points out, that the service providers from whom Respondent has obtained her counseling and therapy do not fall within the definition of an "employee assistance program" covered by Chapter 69.[22]

Nor do I accept Respondent's claim that her objections to her supervision by Jackson, however unfair or belittling that supervision might have felt, entitled her simply to not come to work for the balance of the school year after her contractual and FMLA leave entitlements were exhausted and her requests for additional leave were denied.[23] Such a ruling, I find,

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[22]Respondent has presented no case law which demonstrates that Chapter 69, C. 34:13A-42, recited above, has been enforced to preclude discipline of a public employee culpable of excessive and persistent AWOL absenteeism. Nor has she presented evidence that this is the proper forum in which to assert a violation of her Chapter 69 rights.

[23]I observe there is no evidence of a grievance filed in connection with Respondent's contention Jackson's supervision was abusive or otherwise improper. So, too, notwithstanding Respondent's statement to Jackson in a December 1, 2021, email that "I plan on filing a complaint" of "harassment, intimidation and bullying," Respondent Exh. 15, and her assertion to Jackson and Maillaro on December 8, 2021, "I have reached out to Newark Board of Education Affirmative Action department concerning Ms. [Jackson]'s harassment, intimidation and bullying this year and last year," Id., and her representation to Patterson on January 6, 2023, Resp. Exh. 13, that a refusal by the Board to give her a leave of absence when her FMLA "run[s] out," will be a violation of the ADA, the record in this proceeding is devoid of evidence any related claims or complaints have been filed, investigated and adjudicated in a forum of appropriate jurisdiction. I fairly conclude therefore that there is no proper basis for me to

potentially might handicap a district's or a school administrator's ability to supervise staff and otherwise run a school.

As noted above, the relevant case law holds that excessive absenteeism may constitute valid grounds for the dismissal of a tenured teacher even where the absences are caused by legitimate medical or health related reasons, Matter of Pellecchio at 269-70, and even if the teacher asserts the illness which caused her incapacity to work was work-related. Matter of Velez at 3, Matter of Folger at 85-86. There is no record basis to doubt the sincerity of Respondent's belief she was harassed and bullied by Jackson, or to discount her claim she suffered stress and trauma from Jackson's supervision or from the Board's notices imploring her to return to work. Where, however, as here, Respondent has no available leave entitlements, and her AWOL absenteeism has been excessive, and the Board has determined in good faith her continued absence from school will impose a hardship on students and the educational program, and she nevertheless remained AWOL despite multiple warnings and a second last chance to return to work, she fairly now faces disciplinary charges alleging conduct

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conclude Jackson and/or the Board unlawfully created conditions under which Respondent was unable to work, which is what Respondent asserts in her post-hearing brief. Resp. Br. at 3, 4 (she contends her disability and illness "were caused by not having the proper training, support, placement and proper leave," and therefore "[her] absenteeism was caused by Newark Public Schools, Newark Teachers Union EAP and [her] illness").

unbecoming, for which I find she is culpable. To rule otherwise would risk eviscerating the Board's ability to regulate attendance by teachers who are resentful of their assignments and of the methods and demands of their supervisor's oversight.

Turning to penalty, I observe that the Commissioner of Education has established a three-part test for determining if dismissal is the appropriate penalty for a tenured teacher charged with excessive absenteeism, and this test continues to be the appropriate guide. As set forth in Matter of the Tenure Hearing of Lena White, 92 N.J.A.R.2d (EDU) 157, 161 (1991), the record must establish that the Board considered (1) the particular circumstances of Respondent's absences and not merely the number of absences; (2) the impact that her absences had on the continuity of instruction during the period of time the absences occurred, not merely after the fact, and (3) that there shall have been some warning given to Respondent that her supervisors were dissatisfied with her absenteeism. See Matter of Owoh at 15.

My review of the hearing record persuades me that the Board did consider: not only the number of Respondent's absences, but also the fact her absences were without leave, that her AWOL was chronic and continuous, on every school day, unabated, for more than four (4) months, and further, that she did not adhere to the Board's letters directing her return to work, that the multiple

representations from her counselor and therapist which advised the Board to expect she would be able to return to work by April 30, 2023, Respondent Exh. 21, and then by early June 2022, Respondent Exh. 16, were not accurate, and that Respondent never explained why she did not return after either date, or offer when she would return.

The hearing record additionally shows that the Board considered the impact that Respondent's absences had on the continuity of instruction during the period of time the absences occurred, not merely after the fact. When Respondent requested an extension of her FMLA leave past February 14, 2022, for a period of time she initially placed as ending April 30, 2022, she was told the extension of leave was denied "due to a hardship it will cause the school." Board Exhs. G, H. Under Board policy, File Code 4150/4250, Respondent Exh. 13, the Board considered Respondent's request, and then, again following said Policy, it asked Respondent's Principal, Ms. Jackson, and the Assistant Superintendent, Dr. Harrington, to determine if the requested extension would cause harm. Jackson determined, as discussed above, that Respondent's continuing absence created "hardship . . on our students' instruction/learning," and Dr. Harrington agreed. Board Exh. H. Respondent has presented no evidence or argument disputing the reasonableness of those determinations or the propriety of the Board's reliance upon them. Nor did she

present hearing evidence refuting Jackson's testimony regarding the specific hardship on the school's ability to cover the instruction of Respondent's special education students during her prolonged and unremitting AWOL absence.

The hearing record is also clear on the fact the Board considered that Respondent was told, and was aware, that her supervisors were dissatisfied with her absenteeism. Prior to being AWOL, she was counseled and warned about the importance to her students and their education of her regular attendance, and the Board's dissatisfaction with her attendance record. Board Exhs. C and D. On February 24, 2022, approximately 10 days after she commenced being AWOL, she was again advised in unmistakable terms the Board's determination her recurring and numerous absences were "a serious matter" which might result in disciplinary action and separation from employment. Board Exh. I. Subsequent letters and notices the Board sent Respondent on April 1, 2022, April 5, 2022 and April 11, 2022, placed her squarely on notice that her "continued absenteeism," which had been recorded as AWOL since February 15, 2022, will result in disciplinary action including termination if she did not return to work. Board Exhs. J, K, L.

Faced with these Charges, and the evidence presented in support of them in this proceeding, Respondent has nevertheless demonstrated no apparent understanding of the hardship caused by

her excessive AWOL absenteeism from February 15, 2022, through the end of June 2022. She insists her absences were justified. She blames her supervisors and administrators, refusing even to acknowledge the importance to her students and the school of her regular attendance. Her answer to the Board's hardship of having a special education teacher fail to appear at school for months and months is for the Board to assign her back to being a Culinary Arts Teacher. Indeed, in an effective attempt to dictate the terms under which her demand for relief should be granted, she relinquished the license which permits her to work as an Elementary School Teacher. Respondent essentially has communicated, "I don't have the skills to be an Elementary School Special Education teacher, and now the Board cannot compel me to perform that work because I have relinquished my Elementary School Teacher's License;" and, "the Principal's efforts to supervise me within my former certification constituted bullying and harassment which gave me a valid reason to not come to school;" and, "I am prepared to provide regular attendance when I am assigned back to being a Culinary Arts Teacher." As I read the record and evaluate Respondent's exhibits, testimony and arguments, her reassignment to a Culinary Arts classroom is an outcome she seeks. The Education Law does not entitle her to take extended unapproved leave until she obtains the assignment she wants.

In sum, I find Respondent is culpable for the misconduct alleged in Charges 1 and 2 of the Charges, and with respect to the allegations in Charge 3, I find her dismissal as a Tenured Teacher for the Newark Board of Education is justified and appropriate.

AWARD

1. Charge One: of Unbecoming Conduct - Absent Without Leave is substantiated the therefore sustained.

2. Charge Two: of Unbecoming Conduct - Chronic and Excessive Absenteeism is substantiated and therefore sustained.

3. Charge Three: of Just Cause for Dismissal is substantiated and therefore sustained.

4. For the substantiated charges, Respondent's dismissal from her position as a Tenured Teacher for the Board of Education of the City of Newark is justified and appropriate.

January 3, 2024.

Earl R. Pfeffer, Arbitrator

STATE OF NEW JERSEY)
) ss.:
COUNTY OF ESSEX)

On this 3rd th day of January 2024, before me personally came and appeared EARL R. PFEFFER, Arbitrator, to me known and known by me to be the individual described herein, and who executed the foregoing instrument and who acknowledged to me that he executed the same.

Sworn to and subscribed
before me this 3rd day
of January 2024.

Notary Public

SHAWN P POLANCO
Notary Public - State of New Jersey
My Commission Expires Mar 28, 2024

3-24
OAL Dkt. No. EDU 08139-23
Agency Dkt. No. 228-8/23

New Jersey Commissioner of Education

Final Decision

K.I., on behalf of minor child, B.I.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 4, 2024
Date of Mailing: January 5, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 08139-23
AGENCY DKT. NO. 228-8/23

K.I. ON BEHALF OF MINOR CHILD B.I.,
Petitioner,
v.
BOARD OF EDUCATION OF THE SOUTH ORANGE-MAPLEWOOD SCHOOL DISTRICT, ESSEX COUNTY,
Respondent.

K.I., petitioner, pro se

Patrick F. Carrigg, Esq., for respondent (Lenox Law Firm, attorneys)

Record Closed: December 1, 2023 Decided: December 5, 2023

BEFORE **SUSANA E. GUERRERO**, ALJ:

Petitioner filed an appeal with the Department of Education (Department) on or about August 25, 2023. The Department transmitted the matter to the Office of Administrative Law, where it was filed on August 25, 2023, and scheduled for oral argument on August 30, 2023. At the oral argument, the petitioner withdrew the emergent application, but the due process remained pending. Following several

telephone conferences, the parties requested a settlement conference. On November 28, 2023, Evelyn Marose, ALJ (Ret., on recall) conducted a settlement conference, during which the parties reached an amicable resolution. On December 1, 2023, counsel for respondent submitted the attached Settlement Agreement, along with correspondence from the Board approving the settlement.

I have reviewed the record and the terms of the consent order and I **FIND**:

1. The parties have voluntarily agreed to the consent order as evidenced by their signatures or their representatives' signatures.

2. The consent order fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and, therefore, **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

December 5, 2023
DATE

SUSANA E. GUERRERO, ALJ

Date Received at Agency: December 7, 2023

Date Mailed to Parties: December 7, 2023

jb

SETTLEMENT AGREEMENT AND GENERAL RELEASE

WHEREAS, B.I., is a kindergarten student assigned to Tuscan Elementary School for the 2023-24 school year; and

WHEREAS, B.I., was among a number of Montrose students not included in the initial kindergarten assignment lottery for placement for the 2023-24 school year; and

WHEREAS, K.I. o/b/o B.I., was the only family to initiate a claim before the Commissioner of Education, under OAL DOCKET NO. EDU 08139-23, regarding placement based upon lack of inclusion in the initial kindergarten assignment lottery for the 2023-24 school year; and

WHEREAS, more than 90 days have passed since the assignment of all students not included in the initial kindergarten assignment lottery such that the time for such claims (excluding OAL DOCKET NO. EDU 08139-23) has statutorily passed; and

NOW THEREFORE, the Parties, each intending to be legally bound, agree as follows:

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (the "Agreement") is made and entered into by and between K.I. o/b/o B.I., for themselves and their heirs, executors, administrators, personal representatives and assigns (collectively referred to as " K.I. o/b/o B.I."); and SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION ("SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION, ET AL"). K.I. o/b/o B.I. and SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION, ET AL are collectively referred to as "the Parties."

1. K.I. o/b/o B.I.'s General Release of All Claims. In consideration of the provisions of this Agreement, K.I. o/b/o B.I. and their heirs, executors, administrators, personal representatives and assigns (collectively referred to as "Releasor") hereby knowingly and voluntarily releases and forever discharges SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION, ET AL, as well as its affiliates, parent or controlling entities, members, agents, insurers, reinsurers, representatives, attorneys, supervisors, employees, successors, and assigns (collectively referred to as "Released Parties") from any and all suits, causes of action, complaints, charges, obligations, demands, or claims of any kind, including those relating to the placement of B.I. with the SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION, ET AL, whether in law or in equity, direct or indirect, known or unknown, as raised, or could have been raised, (hereinafter "Claims"), which Releasor ever had or now has against Released Parties regarding placement of B.I. for the 2023-24 school year, exclusive of a claim for breach of this Agreement. This General Release specifically includes, but is not limited to:

a. Any and all Claims arising from, involving, or relating to the subject matter of the claims brought in Court at OAL DOCKET NO. EDU 08139-23;

b. any and all Claims for attorneys' fees and costs.

2. Consideration. The Parties agree that they will seek signatures of the Settlement on this document within Seven (7) days and the Settlement will be presented to the Board for

approval to occur at the regular meeting after receipt of the signed Release.

The Board agrees to include N.I., Petitioner's second child, in the kindergarten lottery for placement under the Intentional Integration Initiative for the 2024-25 school year, and to provide non-confidential or non-exempt documents or supporting information relating to that placement. Petitioner will have the option to accept N.I.'s placement and if accepted, B.I. shall be placed at that school as well for the 2024-25 school year and all other children in the family will be placed based upon sibling priority protocol using N.I.'s placement. If Petitioner does not accept N.I.'s school placement, N.I. shall be placed Tuscan Elementary School based upon the sibling priority protocol and all other children will also be assigned to Tuscan Elementary School based upon the sibling priority protocol.

If the Board adopts and implements a SES transfer protocol, which it has not as yet, the Board agrees that B.I. will be ranked at the top of the waitlist for transfer to Delia Bolden Elementary School.

3. K.I. o/b/o B.I.'s Acknowledgment. K.I. o/b/o B.I. understands that the General Release of Claims set forth in Paragraph 1 extends to all of the aforementioned claims and potential claims against Released Parties which arose on or before the effective date of this Agreement, whether now known or unknown, suspected or unsuspected, and that this General Release of Claims constitutes an essential term of this Agreement. This General Release of Claims shall not, however, preclude K.I. o/b/o B.I. from bringing any action to enforce this Agreement if the Released Parties fail to provide the consideration set forth in Paragraph 2.

4. Acknowledgment of Consideration. K.I. o/b/o B.I. acknowledges that, in return for executing this Agreement, they are receiving the consideration described in Paragraph 2 for which they are not otherwise entitled. K.I. o/b/o B.I. agrees they are not entitled to any other consideration or payment of any kind from the Released Parties.

5. No Admission of Liability. Neither the execution of this Agreement by the Released Parties, nor the terms hereof, constitute an admission by the Released Parties, or by any principal, director, officer agent, employee or representative of the Released Parties, of liability with respect to any possible claim that was or could have been made by K.I. o/b/o B.I. By entering into this Agreement, the Released Parties do not admit, and expressly deny, that they have violated any contract, rule, law, statute or regulation, including, but not limited to, any federal, state or local law, statute, or regulation relating to employment or employment discrimination or retaliation, or that their actions were unwarranted, unjustified, discriminatory, retaliatory, or otherwise unlawful in any way.

6. Non-Interference and Non-Disparagement. The Parties mutually agree not to disparage or defame the other related to the circumstances of this lawsuit.

7. Agreement to Refrain from Filing Any Further Claims. K.I. o/b/o B.I. represents that they have not filed any lawsuit or initiated on their behalf any proceeding against SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION, ET AL or any of the Releasees that is not being withdrawn as a part of this settlement. K.I. o/b/o B.I. also agrees not to bring any lawsuit

or initiate any proceeding against SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION, ET AL or any of the Releasees in any court or agency for any claim waived in any paragraph of this Agreement, and agrees, further, not to assist anyone else to do so on their behalf, to the maximum extent possible under applicable law.

8. Voluntary Execution. K.I. o/b/o B.I. certifies that they have read and/or had the opportunity to have the terms of this Agreement explained to him by his counsel, above mentioned, and further acknowledges that they have entered into and executed this Agreement freely and voluntarily after complete consideration and understanding of all facts and legal claims and the provisions of this Agreement.

9. Governing Law and Forum Selection. This Agreement shall be governed by and construed under the laws of the State of New Jersey, without regard to conflict of law principles. Any disputes relating to this Agreement shall be resolved exclusively by a state court in the State of New Jersey.

10. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior agreements or understandings with respect to the subject matter hereof. The Parties acknowledge that in signing this Agreement they do not rely upon and have not relied upon any representation or statement made by any of the Parties or their agents with respect to the subject matter, basis or effect of this Agreement, other than those specifically stated in this written Agreement.

11. Legally Binding. The terms of this Agreement contained herein are contractual, and not a mere recital. This Agreement shall be binding upon the Parties hereto and upon their heirs, administrators, representatives, executors and assigns. K.I. o/b/o B.I. expressly warrants that they have not transferred to any person or entity any rights, causes of action or claims released in this Agreement.

12. Severability. If any term or provision of this Agreement shall be held to be invalid or unenforceable for any reason, the validity or enforceability of the remaining terms or provisions shall not be affected, and such term or provision shall be deemed modified to the extent necessary to make it enforceable.

13. Amendments. Neither this Agreement nor any term hereof may be orally changed, waived, discharged, or terminated, and may be amended only by a written agreement between the Parties.

14. Counterparts. This Agreement may be signed in counterparts, each of which when executed and delivered, including by telecopy or email, shall be deemed to be an original and all of which together shall constitute one instrument. Photographic (including Adobe Acrobat formatted or other PDF documents) and/or facsimile copies of such signed counterparts may be used in lieu of the originals for any purpose.

15. Court Approval. This Agreement shall be approved consistent with the Administrative Regulations requiring Court approval of such an agreement involving a minor.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed.

K.I. o/b/o B.I.

By: K.I. o/b/o B.I.

Dated: November 30, 2023

SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION

By:
on behalf of SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION,

Title: President

Dated: _____

END OF DOCUMENT

SCHOOL DISTRICT OF SOUTH ORANGE AND MAPLEWOOD, NJ
PUBLIC BOARD MEETING
NOVEMBER 30, 2023

FOR ACTION

RESOLUTION **4548**

SUBJECT: **APPROVE CONFIDENTIAL SETTLEMENT AGREEMENT – STUDENT ID #9742259066**

BE IT RESOLVED, that the Board of Education approves the settlement agreement for Student ID #9742259066 and authorizes the Board President to execute the settlement agreement.

Policy 2425 requires that the Superintendent submit an approved program of virtual or remote instruction to the Commissioner of Education by no later than July 31st and annually thereafter. Such plans will be made available to the school community and shall be posted on the District website.

MOTION made Board President Wittleder, seconded by Board Member DuVall Wilson to approve Resolution 4548.

ROLL CALL: Motion 4548 Passed. YES: Board Members DuVall Wilson, Eckert, Gifford, Vadlamani, Winkfield, Wittleder, Wright NO: Telesford

I, Eric Burnside, Secretary of the South Orange-Maplewood Board of Education, hereby certify that the attached resolution was adopted at a duly convened meeting of the Board of Education on November 30, 2023 by the roll call vote set forth above and remains in full force and effect.

Eric Burnside, Board Secretary

4-24
OAL Dkt. No. EDU 12575-23
Agency Dkt. No. 264-10/23

New Jersey Commissioner of Education

Final Decision

C.B. and N.A., on behalf of minor children, A.B. and A.B.,

Petitioners,

v.

Board of Education of the Township of Belleville, Essex County,

Respondent.

The record of this matter, which was transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-14.4 and includes an advisement of petitioners' failure to appear at the scheduled OAL hearing on December 6, 2023, has been reviewed. Petitioners did not file an explanation for their failure to appear, notwithstanding the opportunity to do so. Accordingly, this matter is no longer deemed to be a contested case before the Commissioner and is hereby dismissed with prejudice.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 4, 2024
Date of Mailing: January 5, 2024

[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.

5-24
Agency Dkt. No. 293-10/23

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the School Nurse Certificate of Amy Camp, Board of Education of the Township of Greenwich, Gloucester County.

This matter was opened before the Commissioner of Education on October 23, 2023, by way of an Order to Show Cause served by petitioner (Board of Education of the Township of Greenwich) upon respondent (Amy Camp), requiring respondent to show cause why an order should not be entered suspending her school nurse certificate pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law. By notice dated October 26, 2023, the Office of Controversies and Disputes (Office) acknowledged proof that the Order to Show Cause had been served upon respondent and directed respondent to answer within 20 days.

No answer having yet been received, on November 15, 2023, the Office sent respondent a second and final notice – via email – directing that she must file an answer within ten days. The notice advised that, pursuant to *N.J.A.C.* 6A:3-1.5(e), failure to answer would cause each allegation in petitioner's papers to be deemed admitted and might result in summary decision by the Commissioner. Additionally, on November 28, 2023, the Office sent respondent another final notice – via email, certified mail, and regular mail to her last known addresses in New Jersey and Virginia – again directing that she file an answer within ten days and that failure to answer would cause each allegation to be deemed admitted and might result in summary decision by the Commissioner. To date, the Office has not received a response from respondent.

The petition and supporting exhibits submitted by petitioner in this matter indicate that: respondent initially entered into a contract to work as a full-time school nurse for the 2018-2019 school year, and her employment was renewed each subsequent school year; the contract provides that it can be terminated by the employee upon sixty days' written notice; and on September 15, 2023, respondent sent correspondence to petitioner indicating that she was resigning, effective September 22, 2023, thereby providing less than the required sixty days' notice. The respondent has not denied these allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(a) and further deems them sufficient to justify suspension of respondent's school nurse certificate pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner, and respondent's school nurse certificate is suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.d.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 4, 2024
Date of Mailing: January 5, 2024

[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.

6-24
Agency Dkt. No. 313-11/23

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Lauren Newman, Board of Education of the Northern Burlington Regional School District, Burlington County.

This matter was opened before the Commissioner of Education on November 22, 2023, by way of an Order to Show Cause served by petitioner (Northern Burlington County Regional School District Board of Education) upon respondent (Lauren Newman), requiring respondent to show cause why an order should not be entered suspending her teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

In response to the Order to Show Cause, respondent emailed the Office of Controversies and Disputes to provide mitigating factors that she wished the Commissioner to consider in making her decision, including that she gave notice in the summer to avoid affecting students or colleagues during the school year; her efforts in leaving resources for her successor and the district; and the fact that the district still has not hired a replacement 126 days after her resignation, such that providing an extra 24 days' notice likely would not have made a difference. However, petitioner indicated that she did not wish to engage in the administrative dispute resolution process.

The petition and supporting exhibits submitted by petitioner in this matter indicate that: respondent entered into a contract to work as a teacher for the 2023-2024 school year; the contract provides that it can be terminated by the employee upon sixty days' written notice; and

on July 31, 2023, respondent sent correspondence to petitioner indicating that she was resigning, effective August 4, 2023, thereby providing less than the required sixty days' notice. The respondent has not denied these allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(a) and further deems them sufficient to justify suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner, and respondent's teaching certificates are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

Angelina Allen-McMillan, J.d.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 4, 2024
Date of Mailing: January 5, 2024

[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.

7-24
SEC Dkt. No. D01-23
Agency Dkt. No. 324-11/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Karen Haynes Blake,
People's Preparatory Charter School,
Essex County.

The Commissioner has reviewed the record of this matter and the decision of the School Ethics Commission (SEC) finding that respondent violated the School Ethics Act for failure to timely file Personal/Relative and Financial Disclosure Statements ("Disclosure Statements") in accordance with *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of censure. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is censured for violating the School Ethics Act.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 4, 2024
Date of Mailing: January 5, 2024

[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.

8-24

New Jersey Commissioner of Education

Final Decision

In the Matter of Jeanne Stifelman,
Randolph Township Board of Education,
Morris County,

Synopsis

This matter arose from a complaint alleging that the respondent, a member of the Randolph Township Board of Education (Board), violated the School Ethics Act (Act) when she failed to disclose on her 2019 Personal/Relative and Financial Disclosure Statement that she and her husband had received monetary payments through a settlement agreement with the Board. The payments under the settlement agreement constituted tuition reimbursement for their child's special education out of district placement. Following a hearing in the Office of Administrative Law, the Administrative Law Judge (ALJ) found that, based on prior case law, a "reasonable member of the public" would not believe that their trust was violated because a parent kept their child's special education record confidential, and concluded that respondent had not violated the Act. Accordingly, the ALJ dismissed the complaint with prejudice.

Upon review, the School Ethics Commission (SEC) adopted the ALJ's findings of fact but rejected the ALJ's legal conclusions, finding instead that the respondent did violate *N.J.S.A.* 18A:12-25 (c) and *N.J.S.A.* 18A:12-26. However, recognizing the sensitive nature of the information at issue and the respondent's well-intended motive to protect her child, the SEC recommended that no penalty be imposed in this case.

The matter was forwarded to the Commissioner for final determination of the appropriate penalty. Upon review, the Commissioner concurred with the SEC that no penalty should be imposed upon respondent in this case.

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.

8-24
SEC Dkt. No. C37-21
OAL Dkt. No. EEC 01671-22
Agency Dkt. No. 325-11/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Jeanne Stifelman,
Randolph Township Board of Education,
Morris County.

The Commissioner has reviewed the record of this matter and the November 28, 2023 decision of the School Ethics Commission (Commission). The Commission found that respondent Jeanne Stifelman, a member of the Randolph Township Board of Education (Board), violated *N.J.S.A.* 18A:12-25(c) and *N.J.S.A.* 18A:12-26 of the Code of Ethics for School Board Members. The Commission recommended that no penalty be imposed for the violation. The Commission's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). Respondent neither filed exceptions to the recommended penalty nor instituted an appeal, pursuant to *N.J.A.C.* 6A:4-1 *et seq.*, of the Commission's underlying finding of violation.

Upon review, the Commissioner concurs with the Commission that no penalty should be imposed upon respondent.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 4, 2024
Date of Mailing: January 5, 2024

[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.

Before the School Ethics Commission
OAL Docket No.: EEC-01671-22
SEC Docket No.: C37-21
Final Decision

I/M/O Jeanne Stifelman,
Randolph Township Board of Education, Morris County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on August 9, 2021, by Layne Broyles (Complainant Broyles), Maria Ricupero (Complainant Ricupero), Eliza Schleifstein (Complainant Schleifstein), and Gerlando Termini (Complainant Termini) (collectively referred to as Complainants), alleging that Jeanne Stifelman (Respondent), a member of the Randolph Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-25(c) and *N.J.S.A.* 18A:12-26 for failing to include monetary payments she received in a settlement with the Board on her 2019 Personal/Relative and Financial Disclosure Statement (Disclosure Statement).

At its meeting on December 14, 2021, and after reviewing Respondent's Motion to Dismiss in Lieu of an Answer (Motion to Dismiss) and allegation of frivolous filing, and Complainants' response thereto, the School Ethics Commission (Commission) adopted a decision denying the Motion to Dismiss in its entirety and directing Respondent to file an Answer to Complaint (Answer), which she did on January 4, 2022.

Thereafter, at its meeting on February 25, 2022, the Commission voted to find probable cause for the alleged violations of the Act in the Complaint. Based on its finding of probable cause, the Commission voted to transmit the within matter to the Office of Administrative Law (OAL) for a hearing and, pursuant to *N.J.A.C.* 6A:28-10.7(b),[1] the attorney for the Commission (Petitioner) was charged with prosecuting the allegations in the Complaint.

Following cross-motions for Summary Decision at the OAL, the Administrative Law Judge (ALJ), issued an Initial Decision on August 17, 2023. Petitioner filed exceptions to the Initial Decision, in accordance with *N.J.A.C.* 1:1-18.4, and Respondent filed a reply thereto.

At its meeting on October 17, 2023, the Commission considered the full record in this matter. Thereafter, at its meeting on November 28, 2023, the Commission voted to adopt the ALJ's findings of fact but reject the ALJ's legal conclusions. Instead, the Commission found that Respondent violated *N.J.S.A.* 18A:12-25(c) and *N.J.S.A.* 18A:12-26, but recommended that a penalty should not be imposed.

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[1] This citation refers to the regulation that was in effect at the time of the probable cause determination.

II. Initial Decision

Respondent and her husband entered into a settlement agreement (Settlement) with the Board in 2018, which included tuition reimbursement for their child's out of district placement. *Initial Decision* at 2.

After previously serving on the Board from 2009 to 2012, Respondent was appointed to the Board in April 2019 to fill a vacancy. *Ibid.* Respondent filed her 2019 Disclosure Statement on or about June 5, 2019, and answered "Not Applicable," for Section III, question 2, which directs individuals to "[l]ist the name and address of each source of fees/honorariums or gifts/reimbursements or prepaid expenses having an aggregate amount exceeding $250 from any single source, excluding relatives, received by you or an immediate family member." *Ibid.* The question further reminds individuals to "[b]e sure to list any reimbursement you received from the district or charter school for things such as conference attendance, tuition/dues reimbursement, personal appearances, speeches, or writing." *Ibid.* Respondent's 2019 Disclosure Statement did not disclose the payments she was receiving from the Settlement. *Ibid.*

The ALJ explains the 2019 Disclosure Statement reflects the finances from the preceding calendar year, 2018. *Id.* at 7. While Petitioner argues Respondent knew of her 2018 tuition reimbursement payments at the time she filed her 2019 Disclosure Statement, and she should have disclosed them, Respondent contends that this particular Settlement reflects "educational placement and reimbursement of 'out-of-pocket expenses that the school district should have paid all along and would have borne in the first instance had it developed a proper IEP.'" *Ibid.*

The ALJ finds that *In the Matter of Lorraine Dunckley, Denville Bd. of Education*, SEC Dkt. No. C37-01 (July 23, 2002) (*Dunckley*), the Commission excused a board member who was the parent of a child with special needs from disclosing receipt of tuition reimbursements pursuant to a settlement agreement on her Disclosure Statement. *Initial Decision* at 7-8. The ALJ maintains that the "purpose of disclosing sources of income or reimbursements outside of one's regular" employment is to prevent the school official from "receiving unwarranted benefit," not to prevent a child from receiving a "(belatedly) free and appropriate public education under the law." *Id.* at 8. Therefore, based on *Dunckley*, the ALJ in the present matter concludes a "reasonable member of the public" would not believe that their trust is being violated because a parent kept their child's special education record confidential. *Ibid.* The ALJ also concludes Petitioner has failed to demonstrate that Respondent violated the Act, and therefore, orders the Complaint to be dismissed with prejudice. *Id.* at 8-9.

III. Exceptions

Petitioner's Exceptions

In its exceptions, Petitioner argues the ALJ "incorrectly found that tuition reimbursement payments are not required to be disclosed" under *N.J.S.A.* 18A:12-26; therefore, the Initial Decision should be rejected. Petitioner contends it is undisputed that Respondent did not include the tuition reimbursement on her 2019 Disclosure Statement and that in 2018 Respondent

received seven separate check registers from the Board. However, despite these acknowledgments, Respondent did not disclose the payments. Per Petitioner, the statute must be interpreted by looking at the plain language and the statute "must be afforded 'ordinary meaning and significance.'" In this case, Petitioner maintains Respondent was required to disclose the payments, which were reimbursements that had an aggregate value over $250. Moreover, Petitioner notes a finding that "the payments [Respondent] received do not fall within *N.J.S.A.* 18A:12-26(a)(1) or *N.J.S.A.* 18A:12-26(a)(3) would go against the clear legislative intent of preserving the public trust." Petitioner notes the ALJ correctly found, "it is immaterial whether [Respondent] believed that she was not required to disclose the tuition reimbursement." Petitioner further notes if Respondent was uncertain whether she should report the reimbursement, "there were several options available to her for consultation" that Respondent did not use. Therefore, Petitioner maintains Respondent violated *N.J.S.A.* 18A:12-26.

For the same reasons noted above, Petitioner asserts the ALJ erred in determining that a violation of *N.J.S.A.* 18A:12-25(c) was not established. Petitioner further asserts Respondent knew about the payments because she was receiving them, and in turn, was aware of the payments at the time she completed her Disclosure Statement. Petitioner notes the Commission has "definitively rejected the position that any form of intent is needed to prove a violation of any provision of the Act." Moreover, Petitioner argues "omitting material information required under *N.J.S.A.* 18A:12-25 defeats the purpose of the disclosure forms, which is to allow the public access to information to ensure that school officials do not violate the public trust." Petitioner maintains the ALJ's determination that "payments stemming from tuition reimbursement of special education disputes are not required to be disclosed" is flawed. Per Petitioner, "there are no listed exceptions to *N.J.S.A.* 18A:12-26, *N.J.S.A.* 18A:12-25, or elsewhere in the [Act]" and *Dunckley* does not address this issue. Petitioner further maintains the ALJ's determination that the "public's trust is [not] being violated by a parent keeping their child's special education records confidential" is unsupported. Moreover, the Disclosure Statement does not require the disclosure of confidential student records, nor does it require that Respondent divulge the contents of the settlement agreement or the reason why she is receiving the reimbursement. Petitioner maintains Respondent merely had to disclose receipt of a reimbursement.

As to the ALJ's reliance on *Dunckley,* Petitioner notes there is "no such finding" in the case that payments resulting from tuition reimbursement of special education disputes are not required to be disclosed. Additionally, Petitioner contends that the ALJ's suggestion that because *Dunckley* received a reprimand for the actions described in that decision, Respondent should not receive a penalty at all, is off the mark. Petitioner argues, on the contrary, the penalty in *Dunckley,* was a censure.

Petitioner contends Respondent violated *N.J.S.A.* 18A:12-26 and *N.J.S.A.* 18A:12-25, the ALJ's decision should be rejected, and a penalty of censure should be imposed.

Respondent's Exceptions

Respondent initially argues that Petitioner reiterates "the arguments expressed in its original brief which were rejected by the" ALJ instead of directly responding to the ALJ's

findings, and therefore, should not be considered. Respondent contends Petitioner's argument that Respondent could have included the reimbursement on her Disclosure Statement without revealing the confidential matter involving her child, "is belied by the documents upon which he relies." According to Respondent, that claim "is debunked" because the Complaint was based "upon the dogged efforts of a political rival after discovering that [Respondent] and her husband's names were inadvertently (and improperly) not redacted from a check register from the" Board and this led Complainant to believe that this "must have been due to their [child's] out of district placement especially as [Respondent] was not a Board [m]ember when those checks were issued." Respondent notes that requiring school officials to denote a payment for special education services that would be published for the public to see would likely deter individuals who have a child with special needs from running for a seat on the Board.

Respondent maintains the ALJ correctly found that she did not violate the Act by keeping the reimbursement for her child's out of district placement confidential. Respondent further maintains the ALJ's decision should be affirmed, the Commission should uphold the determination that Respondent did not violate the Act, and a penalty should not be imposed.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission adopts the ALJ's findings of fact, rejects the ALJ's legal conclusions, finds that Respondent violated *N.J.S.A.* 18A:12-25(c) and *N.J.S.A.* 18A:12-26, but recommends that a penalty not be imposed.

Pursuant to *N.J.S.A.* 18A:12-26(a)(3), school officials are required to annually file a Disclosure Statement with the Commission, which includes the "source of gifts, reimbursements or prepaid expenses having an aggregate value of $250 from any single source excluding relatives, received by the school official or a member of his immediate family during the preceding calendar year." A school official who files a Disclosure Statement "containing information which the school official knows to be false" shall be subject to a penalty of reprimand, censure, suspension, or removal, in accordance with *N.J.S.A.* 18A:12-25(c).

The 2019 Disclosure Statement specified that filers should "[b]e sure to list any reimbursement received from the district or charter school for things such as conference attendance, *tuition/dues reimbursement*, personal appearances, speeches, or writing." (emphasis added). While it is undisputed that Respondent received reimbursement from the Board in 2018 related to her child's out of district placement, she did not include this on her 2019 Disclosure Statement.

When interpreting a statute, the goal is to discern the legislative intent, which can be gleaned from the plain meaning of the language. *Board of Education of the City of Sea Isle City v. Kennedy*, 196 *N.J.* 1, 12 (2008). *N.J.S.A.* 18A:12-26(a)(3) unambiguously requires the disclosure of the source of reimbursements. The payments that Respondent received from the Board reflected reimbursement for money spent on her child's educational placement, and were therefore required to be disclosed. While the Commission is sensitive to Respondent's argument that special education matters are confidential, the Commission notes that the disclosure form does not require disclosure of the amount of reimbursement or the purpose of payment. By

listing the Board as a response to Section III, question 2 on her 2019 Disclosure Statement, Respondent would only be indicating that the Board was a source of either a gift, a reimbursement or a prepaid expense having an aggregate value of $250 during the preceding calendar year. Such a response would not reveal the reason for the reimbursement, nor that Respondent entered into a settlement with the Board. To the contrary, board members often list boards of education as the source of gifts or reimbursement, given the frequency that boards of education pay for board members to attend conferences or events, or for their membership dues to board member organizations.

The Commission finds the ALJ's reliance on *Dunckley* is misplaced. The respondent in *Dunckley* was censured for not disclosing the source of prepaid expenses for her conference attendance, and for voting on a bill list that included a reimbursement to her and her husband and for voting on a tuition payment to the school where her husband was employed. *Dunckley,* SEC Dkt. No. C37-01, at 7. *Dunckley* does not address whether tuition reimbursements for out of district placements need to be disclosed on Disclosure Statements. While it appears the respondent in *Dunckley* received reimbursement for the cost of her child's tuition, the case addressed her vote to approve the board's payment of those funds, and not whether she disclosed the payments on her Disclosure Statement. *Id.* at 6-7. In *Dunckley,* the respondent's violation involving failure to disclose information on her Disclosure Statement stemmed from her attendance at a conference, and not from reimbursement for her child's tuition. *Id.* at 5-6. As such, *Dunckley* is not applicable to the present matter, and the Commission finds that Respondent violated the Act by failing to disclose reimbursement that she received from the Board.

Despite the Commission's determination that Respondent violated the Act, the Commission recognizes the sensitive nature of the information at issue and Respondent's well-intended motive to protect her child. As such, the Commission recommends that a penalty not be imposed on Respondent.

V. Decision

For the aforementioned reasons, the Commission adopts the ALJ's findings of fact, rejects the legal conclusions, finds that Respondent violated *N.J.S.A.* 18A:12-25(c) and *N.J.S.A.* 18A:12-26, but recommends that a penalty not be imposed.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of

Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* **within thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: November 28, 2023

Resolution Adopting Decision in Connection with C37-21

Whereas, at its meeting on February 25, 2022, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Initial Decision dated August 17, 2023; and

Whereas, the ALJ found that Respondent did not violate *N.J.S.A.* 18A:12-25(c) and/or *N.J.S.A.* 18A:12-26, and ordered the dismissal of the above-referenced matter; and

Whereas, Petitioner filed exceptions to the Initial Decision and Respondent filed a reply; and

Whereas, at its meeting on October 17, 2023, the Commission reviewed the record in this matter and discussed adopting the ALJ's findings of fact, rejecting the ALJ's legal conclusions, finding that Respondent violated *N.J.S.A.* 18A:12-25(c) and *N.J.S.A.* 18A:12-26, but recommending that a penalty not be imposed; and

Whereas, at its meeting on November 28, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on October 17, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on November 28, 2023.

Brigid C. Martens, Director
School Ethics Commission

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

In the Matter of Tenure Charges Against
Timothy Capone

MONTAGUE TOWNSHIP BOARD OF EDUCATION

Petitioner

NJ TEACH #: 235-9/22

Opinion and Award

- and -

TIMOTHY CAPONE, CHIEF SCHOOL AFDMINISTRATOR

Respondent

Before: Deborah M. Gaines, Arbitrator

APPEARANCES:

FOR THE PETITIONER:
GLEN D. SAVITS, ESQ.
LAURA M. LOGIUDICE, ESQ

FOR THE RESPONDENT:
JOSEPH A. GARCIA, ESQ.

Pursuant to NJSA 18A:6-16, as amended by P.L. 2012, c.26 ("TEACHNJ"), the tenure charges brought by the Montague Township Board of Education ("the Board", "the District" or "Petitioner") against Timothy Capone ("Capone" or "Respondent") were referred to me by the Bureau of Controversies and Disputes for a hearing and Decision on September 21, 2022. Hearings were conducted via Zoom on January 20, January 25, February 17, February 22,

February 23, June 13, June 15, August 7, August 14, and August 18, 2023.

At the hearing, the parties had full and fair opportunity to examine and cross-examine witnesses, introduce documentary evidence and make argument in support of their respective positions. The hearings were transcribed. The parties submitted written closing statements which were received on September 15, 2023, whereupon the record was closed. All evidence arguments, whether referenced or not, were fully considered in the issuance of this Opinion and Award.[1]

THE CHARGES

Sworn Tenure Charges were brought against Respondent, Timothy Capone, on August 31, 2022. Because the charging document is approximately 32 pages consisting of 147 paragraphs, I have summarized them. A full and complete copy of the sworn tenure charges are attached to the Opinion and Award.

The following is a summary of the charging document:

Count 1: Unbecoming Conduct and Other Just Cause; Inappropriate and Unprofessional Conduct Towards Staff, which includes allegations of leading through fear, targeting staff, conducting Reductions in Force, verbal and emotional abusive, providing low evaluations to those staff not favored by Respondent.

Count 2: Neglect of Duty; Failure to maintain the school facilities and address known health and safety concerns.

[1] At the close of the District's case, Respondent filed a motion to dismiss. I denied the motion at the time as being premature. The arguments made in the motion have been incorporated into the Respondent's closing arguments.

Count 3: Neglect of Duty and other Just Cause; Interference with Educational Continuity of District Students, which includes allegations of changing teacher assignments frequently;

Count 4: Unbecoming Conduct and other Inappropriate Conduct Toward District Parents;

Count 5: Neglect of Duty and other Just Cause; failure to ensure sufficient staff and misappropriation of staff;

Count 6: Unbecoming conduct and other Just Cause; including abuse of power; and

Count 7: Neglect of Duty, including failing to attend school regularly and failing to assist.

BACKGROUND

Respondent was hired on July 1, 2017, as the Chief School Administrator (CSA) for the Montague Township School District. His employment was governed by a Contract of Employment negotiated between him and the Board. Respondent's first Contract of Employment was executed on July 1, 2017, with a three-year term. The Board renegotiated a five-year contract of employment prior to the end of Respondent's first contract. That agreement was to be in effect for the period July 1, 2020, through June 30, 2025.

The contract of employment sets forth the CSA's job duties and incorporates the job description for the position into the Agreement.

x...x.

The contract of employment sets forth not only the job duties of the CSA but a requirement to evaluate the CSA annually in writing and that the evaluation must represent a majority of the Board. [Id.] The contract requires the Board to "describe in writing, and in reasonable detail the specific requirements for improvement in all instances where the Board deems the CSA's performance to be unsatisfactory." [Id.] The contract provides the CSA the ability to respond in writing to the evaluation, as well.

Article VI of the contract of employment deals with termination of the agreement. Relevant to this proceeding, Section E provides:

> The Superintendent shall not be dismissed or reduced in compensation during the term of this contract, except as authorized by paragraphs B&C supra and N.J.S.A. 18A:17-20.2 provided, however that the board shall have the authority to relieve the Superintendent of the performance of his duties in accordance with NJSA 18A:27-9 so long as it continues to pay his salary and benefits for the duration of the term. The parties understand that any early termination must comply with the provisions of P.L. 2007, c.53, the school district accountability act.

In April 2021, the school board placed Respondent on paid administrative leave pending investigation. The exact reasons for the placing him on administrative leave were not made clear through testimony at the hearing. The Board engaged the law firm of Cleary, Giacobbe, Alfieri, Jacobs, LLC to investigate

various allegations of misconduct. A Confidential Investigation Report (Report) was completed by the firm on April 22, 2022. The report was comprised of 180 pages and included interviews with 20 members or former members of staff in addition to the Respondent.

The investigators found insufficient evidence to establish Respondent unlawfully discriminated against, retaliated, harassed, or subjected the following individuals to a hostile work environment: Chandler Howard, Nancy Wright, Aimee Nittolo, Darrell Stewart, Anna Dawson, Brenten Runne, Denise Bellini, Rachel Van Gorden, Rebecca Lehmkuhl, Jennifer Battikha, Michelle Visco, Leslie Coolong, Juliet Myers, Dawn Marion, Lina Willeford, Danielle Christmann, Lorie Jeskey, or Krista Mikulski.

However, the investigators found the evidence presented was sufficient to establish that Respondent "unlawfully harassed James Andriac and subjected him to a hostile work environment." [Id. at 179] It further determined the evidence presented was insufficient to establish that Respondent unlawfully discriminated against or retaliated against James Andriac.

The investigators found and recommended "the evidence presented was sufficient to establish that Respondent failed to discharge the obligations of his position as the District's

Chief School Administrator, as provided under the Board Policy 2131. [Id. at 180]

As a result, the District issued Sworn Tenure Charges that were issued by the Township alleging unbecoming conduct and neglect of duty.

Positions of the Parties

Position of the Board

The Board argues Respondent engaged in conduct unbecoming a Chief School Administrator and Constituting other just cause for removal such that counts 1, 4 and 6 must be sustained. It contends the concept of conduct unbecoming is an "elastic one" as defined by the courts. It asserts conduct unbecoming is generally defined as conduct "which adversely affects the morale or efficiency of the [department]' or 'has a tendency to destroy public respect for [government] employees and confidence in the operation of [public] services.'" [citing In re Young, 202 NJ 50, 66 (2010)]. The District maintains the credible record evidence shows Respondent engaged in consistent inappropriate and unprofessional conduct towards his subordinate staff members, particularly those who disagreed with his decisions.

The District argues the record evidence establishes Count One, which includes allegations Respondent led through fear, targeted staff, conducted reductions in force, engaged in verbal and emotional abuse, and provided low evaluations to those staff

not favored by him. Specifically, the District cites Respondent's treatment of teacher Dawn Marion, who had over 20 years of service with the District. It notes the record evidence establishes Marion publicly complained during a May 7, 2019, school board meeting about the teacher reductions, leaks in her classroom ceiling, and a toxic school culture. [J-1, 2019 School Board Meeting Notes] It notes, Marion expressed her belief to the Board that Respondent would retaliate against her for remarks.

The District argues the record evidence demonstrates Respondent, indeed, retaliated against Marion after she spoke at the School Board meeting. It contends the record evidence shows only one week later, Respondent advised Marion by letter that her March 2019 sick leave request was being denied for lack of proper documentation. It contends the leave related to her son, who had serious mental health issues and the letter shows Respondent was aware of the reasons for the leave. [D-11] In addition, on May 20, 2019, Respondent suspended Marion and required her to submit to a psychological fitness for duty examination based on a comment she made when he denied her permission for leave. [D-11] Marion acknowledged saying words to the effect that if her leave was not approved she would stick her finger down her throat to make herself sick. The District

notes that Marion advised Respondent she was not serious about the comment and, indeed, was found fit for duty. [Id.]

The District contends Respondent continued his targeting of Marion by then taking disciplinary action against her on September 13, 2019, regarding the same events that he had already suspended her for and had already sent her for and examination for cause. [Id.] The District notes that after this, Marion was the subject of repeated disciplinary actions, which led to her leaving the district. It argues it is highly suspect that Marion, a teacher with over 20 years of experience, suddenly had five disciplinary actions in such a short period of time. It contends Respondent's testimony that his review of her sick leave records was coincidence is simply not credible her record as a teacher had been exemplary prior to this time.

In addition to Marion, the District argues the witness testimony also established Respondent had a list of long serving staff members he did not like and wished to leave the school. The District maintains he achieved his objective through instituting a dual certification requirement for all teachers, which led to Reductions in Force (RIF) for those teachers who did not obtain a dual certification. It contends the dual certification requirement was a mechanism to rid the school of tenured staff and replace them with non-tenured employees who he would be able exercise more control over.

According to the District, Respondent's subterfuge is demonstrated by the fact that none of the witnesses who testified had any awareness of the dual certification requirement or had seen anything in writing regarding the alleged dual certification policy. It notes that of the 18 teachers he targeted, only two remained in the District.

The District further cites the testimony of James Andriac, who at the time was the Director of Student Services, in addition to being a teacher. It notes Mr. Andriac testified Respondent directed him to provide false evaluation ratings for teachers he disliked, such as the Mr. and Mrs. Nittolo. Likewise, he was instructed to give inflated ratings to Respondent's favorite staff members, such as Daniele LaStarza. The District maintains Mr. Andriac's testimony is highly reliable since he testified that he understands the potential risk he is under for acknowledging such conduct.

Likewise, the District asserts, the record evidence showed Respondent used social gatherings to divide staff into favored and non-favored groups. It contends numerous witnesses testified that he invited only some members of staff to happy hours either at a local pub or his home. Moreover, it notes, he pressured certain staff members to attend. It avers Ms. Howard testified that when she was not able to attend one of the

dates, Respondent applied social pressure on her which made her believe attendance was mandatory.

The District further agues Respondent also targeted Mr. Andriac to control and humiliate him. It contends Respondent subjected Andriac to supervisory controls he did not place on other members of staff, such as making Andriac sign in and out of the building daily and maintaining a log to account for his time and activities during the day. It notes that numerous witnesses knew of this treatment and respondent's contention that the log was a means of working with Andriac to improve his productivity is belied by the fact that Respondent never reviewed these records with him.

Moreover, the District argues the record evidence shows Respondent engaged in inappropriate communication with members of staff such as Andriac, teacher Rachel Van Gorden, and social worker Daniel La Starza. It contends the screenshots of various group texts show Respondent referred to Andriac as "Nancy", "Mary" and other derogatory terms. It argues Respondent's encouraged others to disparage Andriac, as demonstrated by various texts making fun of Andriac including one having a bird soil him a man's head (in reference to something that happened to him) and wearing rumpled clothing. It contends Ms. Van Gordon, a relatively new teacher, testified she felt like the texts were meant to "haze" Mr. Andriac.

With respect to Count Four, the District argues the record evidence demonstrates Respondent engaged in unbecoming conduct and unprofessional conduct and inappropriate conduct toward district parents. The District argues a key component of Respondent's job responsibilities was to promote communication and supportive relationships within the community. Yet, it contends, the record evidence shows Respondent had a Facebook page, titled Timothy Capone, CSA where he would publicly post inflammatory comments and engage in argument with District parents. It notes a July 30, 2020, post singling out parents Holstein and Guida as spreading disinformation; an August 11, 2020, post singling out Ms. Guida as misleading; September 26, 2020, post regarding grant writing. It notes Respondent comments were inflammatory and nasty.

In addition, the District maintains the record evidence showed Respondent even directed staff to take negative actions toward the students of parents who expressed disagreement with him. It notes Ms. Van Gorden testified Respondent advised her not to provide a permission form to a student for soccer because he did not want to deal with the student's parent and pressured her not to select student DB for a leadership position in the agricultural program because he did not like the parent.

The District contends MEA President Runne also testified that he was pulled out of his work activities at times to

discuss the PTA elections and that Respondent publicly accused one candidate of stealing from her former PTA in another district.

The District contends it has established Count Six, (Unbecoming conduct and other Just Cause) by his abuse of authority to benefit himself. Specifically, it cites the testimony of Ms. Howard, Ms. Van Gorden, Mr. Runne, and Ms. Lehmkuhl that Respondent made them call into school board meetings to say positive things about Respondent and his activities. All felt pressure to do so and suffered petty slights such as Respondent not speaking to them, or changing their assignment for a period of time, if they did not.

The District argues the record evidence establishes Respondent failed to discharge his duties as alleged in Counts 2, 3, 5, and 7. According to the District, neglect of duty means Respondent failed to perform specific functions of his job. With respect to Count 2, which deals with Respondent's failure to maintain the school's facilities, the District contends the record evidence shows Respondent failed to ensure mundane duties such as sweeping and cleaning were performed to more serious structural issues as failing to take action to attempt to replace the leaking roof. The District cites numerous emails from teachers in the record reporting a failure to have clean classrooms, leaks, and other problems.

The District notes that Darrel Stewart, former facilities manager testified he believed the most pressing issue facing the physical plant was replacing the roof and that money spent elsewhere should have gone to that priority. The District acknowledges Respondent tried to get a referendum passed by the school board to replace the roof. It contends Respondent failed to be more proactive when the referendum was not passed.

The District contends the record evidence shows Respondent attempted to pass his responsibilities for the physical plant to Mr. Andriac who testified his job description did not include such responsibilities.

With respect to Count Three, the District argues the record evidence shows Respondent's neglect of duty by inappropriately reassigning staff thereby interfering with their continuity with students. The District cites the testimony of both Mr. Runne and Ms. Lehmkuhl that their assignments were changed frequently. It notes Runne testified that he had 7-8 changes during a single year. Likewise, Lehmkuhl testified that during she was unaware of her assignment for the 2019-2020 school year until two weeks before school started. She testified she was advised she would be teaching math, but only two days before the school year began, she was reassigned to teach math and science. She testified that within the two years she taught in the district,

she was reassigned 7-10 times. The District notes Danielle La Starza corroborated that teacher assignments changed frequently.

The District asserts these changes were especially pernicious because they were often perceived by the staff as punitive. It notes Ms. Howard testified that soon after she refused to call into a Board meeting, she was reassigned from Kindergarten to Middle School Special Education. It notes Mr. Andriac confirmed the timing of these events.

The lack of staffing, it contends, was underscored by Mr. Andriac's testimony that he was often forced to search for any able body to cover classes.

In addition, the District argues Respondent's misappropriation of staff was demonstrated by his constant pulling interventionists from their assignments to discuss the political issues he was concerned with regarding the school board. The district maintains the record evidence shows Respondent's actions caused the teachers to feel ill-equipped to carry out their duties.

With respect to Count Seven, the District argues the record evidence shows Respondent lack of regular presence in the building and failure to respond to staff concerns constitutes neglect of duty. It contends both Andriac and Runne testified Respondent was frequently out of the building. In fact, Andriac testified on at least one occasion he knew Respondent was

hunting during the school day on his parent's property. Andriac, it notes, also testified that on one occasion he was called in from a sick day because there was no administrator in the building.

The District maintains that Respondent's neglect of duty and conduct unbecoming constitute just cause for termination. It argues the factors to be considered in such judgments include, the nature and gravity of the offense, premeditation and aggravating factors, present attitude, and the impact of the conduct. It cites several decisions under the NJ Teach to support this contention.

Here, the District argues, as Chief School Administrator, Respondent is subject to a higher standard than all other employees in the school and is required to act with the utmost integrity, good judgment, and self-restraint. [citing, Witmer NO. 493-07 (Comm'r Decision Dec. 24, 20070]. It notes the Commissioner's decision was upheld by the appellate division which cited the requirement of a CSA to be act with honesty, integrity, good judgment, and fairness.

The District maintains the record evidence shows Respondent failed to meet these standards by abusing his authority, stifling all dissent, publicly humiliating staff, parents, and school board members with whom he disagreed. It notes he

engaged in targeting employees he disliked or disagreed with to either get them to leave employment or punish them.

Finally, it asserts his neglect of duty, either for personal gain or negligence all constitute reasons to terminate his employment.

The District contends the record evidence shows Respondent's actions were willful and purposeful. While it acknowledges he had no prior discipline or counseling, it avers former Board President Plotsky acknowledged that most of the issues that arose as part of the confidential investigation were not known to the Board at the time. Finally, the Board maintains Respondent's present attitude that his actions were justified or attempting to shift blame to others indicates that corrective action would be fruitless.

Position of Respondent

Respondent argues District has failed to establish just cause to terminate Respondent. It contends Respondent's contract of employment provides he may only be terminated for incapacity, inefficiency, unbecoming conduct and other just cause pursuant to N.J.S.A. 18A:6-10(b). It argues the District has brought "groundless" tenure charges against Respondent because there was no other way it could legally remove him without paying out the full five-years of his employment contract.

Respondent argues the District has taken a "kitchen sink" approach to the charges and has even attempted to add allegations during the hearing. It contends the way the charges are written made it difficult for Respondent to "discern the totality of what the Board is alleging" which violates the Tenure statute which requires that charges "shall be stated with specificity as to the action or behavior underlying the charges. The Union notes the District has not cited any rules, law, or policy other than Respondent's job description which it alleges his conduct violated, nor has it established Respondent did anything inconsistent with the goals and objectives of the Board.

Respondent contends the accusations are, for the most part, merely complaints made by disgruntled employees based on beliefs, not evidence. It notes none of these complaints was ever raised until after Respondent was placed on leave. Respondent contends the District has failed to comply with Respondent's Contract of Employment, as it never provided Respondent with notice never received proper notice. It also notes, the Board has further failed to produce documents that should have been in its possession, such as evaluations and instead attempted to shift the burden to Respondent to provide documentation.

Respondent argues most of the actions cited in the charges deal with policies and actions Respondent made with the support and authorization of the school board and there is no evidence Respondent did anything inconsistent with their goals and objectives. It contends Respondent treated all employees with respect and improved the school district for the better of students and the community.

With respect to the specific allegations, Respondent makes the following arguments:

Schedules, RIFS, Dual Certifications and Substitutes

Respondent asserts the above policies were undertaken when he began in the district to address specific issues the District was facing. Respondent contends, in 2017, teachers have unequal schedules with respect to teaching time and preparation periods. Some teachers had multiple prep periods and taught less than the contractual school day, while others had much more demanding schedules.

In addition, Respondent noted that although the school district is relatively small, it had large influxes of students entering the District and large numbers of families leaving the District at various times of year. Respondent instituted, with the Board's approval, a requirement for teachers to be dual certified to have more flexibility to reassign teachers and to provide coverage for substitutes.

Respondent acknowledges a handful of teachers were subject to a RIF because of non-compliance but maintains this cannot be the basis of discipline. It notes former Board President Glen Plotsky testified that everyone was aware of the dual certification requirement and that no one was non-renewed in the first year if they were not able to obtain the certification. Respondent's inability to produce documentation to show employees were placed on notice should not be held against him, Respondent argues. In its motion to dismiss, Respondent noted the lack of notice regarding his removal from duties, coupled with the length of time in charging him, all make it impossible for Respondent to have in his possession such material.

As to the District's reduction in the use of hired substitutes, Respondent argues it was a budgetary decision to try to meet staffing needs though coverage rather than hiring outside substitute teachers to cover absences. Respondent argues the testimony that some teachers believed he did not use subs to hide what was happening in the District from the community are mere allegations. Respondent notes Plotsky testified the school board was aware of and agreed with Respondent's decision to not only require dual certifications, but also to use available staff for coverage was a cost saving measure approved by the Board.

Building Maintenance and Repairs

Respondent maintains the record evidence shows there were numerous issues with the physical plant when he arrived at the district. These included the need for a new roof, removal of underground oil tanks, a new heating system as well as other repair issues. Respondent contends there is no dispute he attempted to obtain funding to accomplish these important projects. However, there is no dispute the school board did not approve the referendum.

Notwithstanding the rejection of the referendum, Respondent notes the Board headed by Mr. Plotsky increased the school reserved from approximately $69,000 to $2,000,000, which allowed Respondent to fund major repairs on the roof, removal of the oil tanks and installation of a new heating system. Respondent notes he was able to hire Darrell Steward through the maintenance budget to assist in repairing the roof and perform custodial and maintenance duties and received positive ratings for his performance in this area.

Respondent contends he addressed cleanliness issues in the school by hiring an outside service to clean overnight and establishing a job called "bustodians" to be bus drivers and custodians, to allow for needed services within the District's budget.

Respondent contends complaints regarding cleanliness or leaks had been addressed. It notes the only grievance filed about cleanliness was not pursued by the Union.

Respondent argues that allegations regarding IEPS, Grade Skipping and Student KB were never either directly or indirectly included in the Tenure charges and therefore, should not be considered. Likewise, it notes that allegations regarding improper teacher certification and the suggestion that Danielle LaStarza did not have sufficient credits to receive a master's degree plus 15 credits were also not included in the tenure charges and must, according to the statute, be dismissed.

Miscellaneous

Respondent groups numerous allegations into miscellaneous claims. Respondent argues the claim by Ms. Lehmkuhl that he did not allow her to take maternity leave or provide her with a place to pump her breast milk are unfounded, but also never part of the Tenure charges.

Respondent contends Ms. Christmann's allegations regarding his use of the all-call system were also not included in the tenure charges and should not be considered. Moreover, Respondent maintains the record evidence shows that when the Board changed the policy for how the all-call system may be used, Respondent never violated the policy.

Respondent denies rating any staff member untruthfully. As to the allegations made by Mr. Andriac, Respondent notes Andriac acknowledged Mrs. Nitollo was not the best teacher. Likewise, Andriac testified he had never reviewed a social worker prior to reviewing Ms. LaStarza. Respondent advising him to give her 4's across the board because she was great is not an improper use of authority.

Respondent maintains there is no evidence he engaged in misconduct by inviting staff to happy hours or other social occasions. Respondent argues the evidence showed many of the engagements happened organically or by word of mouth and there is no evidence of any misconduct involved.

Retaliation, Intimidation, Discrimination

Respondent contends the allegations he retaliated, intimidated, or discriminated against any staff member have no merit. Respondent acknowledged that during the relevant period, he was friendly outside of work with staff members Andriac, LaStarza, Runne, Van Gorden, and others. Respondent contends the evidence of joking between them is just that, teasing among friends. Respondent argues no one complained about any communication until well after Respondent was placed on leave and interrogated by the Board's attorney.

Respondent argues the testimony from Andriac, Van Gorden and Runne that Andriac was teased relentlessly must be placed in

context. Respondent maintains Andriac's testimony that he was emotionally harmed by Respondent's bullying is not credible.

Respondent contends Andriac sent many sexually explicit text messages to the group chats between these individuals and memes "flipping off" Respondent and others. Respondent contends Andriac's testimony that he sent a message to LaStarza to "eat a bag of dicks" was in response to a message LaStarza had sent to him about an LGBT conference, the suggestion being he is gay. However, when looked at in its full context, it is clear his "bag of dicks" message was in response to LaStarza teasing about his use of font he used in a report.

Likewise, Respondent argues Andriac was also shown to have been the instigator of inappropriate comments dealing with allegations that LaStarza sent a text that she did not want to play with his balls. Respondent notes the entire chain shows it was Andriac who began the text chain by asking LaStarza to read a book titled "Do you want to play with my balls" for the Goodnight Montague Bears program which started during Covid. Likewise, Respondent argues his testimony that he was being made fun of by jokes about bird poop and wrinkled clothes is also not credible since he texted a meme of himself a cross between a bird and a pig and posted with a smiling face for a photo of his soleless shoe.

Respondent argues Ms. Van Gorden's testimony about being uncomfortable with the communications in group texts is belied by the texts she sent on these days.

Respondent argues a review of the text messages submitted into evidence shows it was not credible for any of the participants to claim they were uncomfortable or discriminated against, apart from the recipients of Andriac's messages. It notes Van Gorden, Runne, LaStarza and Respondent all sent good natured messages, whereas Runne regularly responded with sexually explicit and crude text messages. In fact, Respondent notes, neither Andriac nor Van Gorden claimed to be the victim of any discrimination when they were questioned during the investigation.

Respondent argues that the allegations he called Andriac "Nancy", or a "little girl" is evidence Respondent was questioning Andriac's manhood or sexuality has no merit. Respondent cites Mr. Runne's testimony that Andriac was referred to as "Nancy" in reference to Nancy Wright who was perceived as someone who complained a lot.

Respondent contends his text that said Mary Andriac was due to auto correct and not him calling Andriac a girl or sissy. Respondent argues when the messages are reviewed, it makes no sense he would refer to Andriac as "Mary", as alleged. The

preceding text messages related to wrinkled clothes and when he typed "not nice Mr. Andriac" it autocorrected to Mary.

Respondent argues that while some of the text exchanges may not have been appropriate for the workplace, he stresses the "chat" was among a group of friends and not work related. He notes there is no evidence of him engaging in inappropriate texting.

Moreover, Respondent avers, the record evidence shows he addressed inappropriate communication that occurred in the workplace. Respondent testified that he sought the guidance of the Board's attorney to understand his obligations to address conduct amongst friends and family outside the school. He was advised, he testified, that he was only responsible for workplace conduct. He testified following this advice; he largely ignored these messages.

Respondent notes he never formally disciplined Andriac but, instead, coached him regarding his conduct. Respondent contends he began a file separate from Respondent's personnel file only for the purpose of compiling notes for his evaluation. Respondent maintains the school has failed to keep this file, and thus the lack of documentation should not be held against Respondent. Respondent maintains he also moved Mr. Nitollo from the area Ms. LaStarza worked when he learned about sexually

harassing behavior from Nitollo. He noted Nitollo was non-renewed after review with the Board's attorney.

As to the allegations regarding Ms. Marion, Respondent contends he relied on the advice of Board counsel placing Marion on leave and examination for cause. It notes the investigation report itself concluded there was no evidence of retaliation against Marion.

Respondent contends the record evidence demonstrates the changes he made regarding teacher schedules, reductions in force dual certifications and using current teachers for substitution coverage were all policies undertaken in conjunction with the school board to address issues in the school and, thus, cannot constitute unbecoming conduct or neglect of duty.

Respondent notes that when he began in the District, many teachers were not working full schedules, while others were working more hours. Respondent contends Former School Board President Plotsky corroborated his testimony. Respondent contends he evened out prep periods for staff to correct the disparity and to ensure all teachers worked their contractual hours.

Similarly, Respondent proposed to the Board a policy to require teachers to obtain dual certifications to allow the District the flexibility to reassign staff according to the

needs of its student population. Respondent argues the record evidence demonstrates the student population varied substantially during the year as there might be a large influx or students or many students leaving the district.

Respondent notes Former Board President Plotsky testified that the Board approved this plan and the need for a reduction in force for those teachers who did not meet the dual certification requirement. Respondent contends there is no evidence the requirement was not shared with the staff. In fact, it notes, Plotsky testified no one was non-renewed in the first year of the policy.

Likewise, Respondent argues, Respondent's reduced use of substitute teachers is not grounds for discipline. It notes the policy was a means to reduce costs for the district. Respondent contends the allegation that he did so to prevent parents from seeing what was happening in the school is based on nothing more than speculation from a witness. It notes the savings were part of the plan to reduce costs to ensure proper allocation of money for capital repairs and programs.

IEPs, Grade Skipping and Student KB

Respondent argues the testimony by various witness about IEPs, grade skipping, and student KB were not part of the sworn tenure charges and must be dismissed. Moreover, it argues the record evidence is insufficient to establish misconduct.

Decision

After carefully considering the entire record before me, including my assessment of witness credibility and the probative value of evidence, I find the District has established just cause for termination. My reasons follow.

Respondent has been charged with seven counts of misconduct under N.J.S.A. 18A:6-10(b), identified by the District as conduct unbecoming and other just cause and neglect of duty. Respondent is employed pursuant to a contract of employment. While the contract has a provision containing various mechanisms for terminating the Agreement, for purposes of this case, the contract provides that the superintendent shall not be dismissed except as authorized by pursuant to NJSA 18A:17-20.2. NJSA 18A:17-20.2 provides for the termination of a superintendent for inefficiency, incapacity or conduct unbecoming or other just cause.

As a threshold matter, I note Respondent asserts the charges against him are a pre-text for the newly elected school board to terminate Respondent's contract of employment early. Respondent argues only eight months after he signed a new contract, he was suddenly placed on administrative leave and then one year later was subject to tenure charges. Respondent maintains the investigation that took place after he was placed on leave (without proper notice under the law or his employment

contract) was an attempt to dig up reasons to justify the Board's action.

After careful review, I do not find sufficient basis to dismiss the charges solely as a pretext. While I note the District did not specifically provide an explanation for the impetus of placing respondent on leave, my review of the investigation report convinces me that there was information obtained in April 2021 that indicated Respondent may have engaged in inappropriate conduct which would have warranted placing him on administrative leave to investigate. (J-5) I note the investigation did not result in any findings regarding the incident. However, as can happen during an investigation, information was obtained that led the Board to consider other charges, which are the subject of this proceeding. Certainly, the investigation took a substantial amount of time. However, the Respondent has received his salary and benefits in accordance with his contract of employment during this time.

Turning to the charges, I concur with Respondent that the charges have been drafted in a manner that makes them difficult to address specifically because many of the paragraphs of the charging document contain assertions or statements that are not in fact "specifications." For example, paragraph 27, which states "There was a clear line drawn between staff members that Mr. Capone did not like and those that he did, as evidenced by

the obvious distinction in the treatment each group of staff members received." In addressing these charges, I have attempted to assure that I address the specific allegations at issue and will refer to the paragraph numbers where appropriate.

I further note that I allowed the District great latitude in presenting its case, which included testimony which that was not initially clear whether it related to the sworn tenure charges. Given how many specifications were contained in the charges and how broadly they were written I allowed the testimony with the ruling that I would determine if it were relevant to the charges as written. However, after careful review, I find that many of the issues witnesses testified about, such as Ms. Marion, Ms. Lehmkuhl, and others testified about matters that were not included in the sworn tenure charges. Because the statute requires the charges to state with specificity the allegations, my findings do not address allegations that are not found the sworn tenure charges. As I noted in the hearing, to the extent that any such testimony relates to credibility, or other facts at issue, I have considered it and refer to where relevant.

While I do not find the charges were a pretext, I note that many of the charges relate to policies or issues that were either approved by the school board, known to it at the time they occurred, or should have been known to it at the time

because the board has oversight responsibilities. Under the terms of Respondent's Contract of Employment, the school board must evaluate the Superintendent annually, in writing and the evaluation must represent a majority of the Board. The criteria for evaluation are those agreed by the Board and Superintendent prior to the evaluation. Determinations by the Board that the Superintendent's performance is unsatisfactory in any manner must be described in writing with reasonable detail with specific recommendations for improvement. The Superintendent in turn is provided the right to respond in writing to the evaluation. (Respondent Exhibit 18). Thus, where issues were known, approved, or should have been known and were not addressed by the Board, I cannot find they constitute unbecoming conduct or neglect of duty. In essence, many of the allegations relate to inefficiency, for which evidence of counseling or corrective actions be provided.

In this regard, I find insufficient record support to sustain **Count Two** of the charges. Count Two (Neglect of Duty) alleges Respondent failed to maintain school facilities or address known health and safety concerns. Specifically, allegations 47, 48, and 49 involve allegations that Respondent failed to replace the school's roof and HVAC system. While the District cites testimony from teachers that there were leaks in their classroom and that Director of Maintenance told him a new

roof was needed, I do not find these opinions substantiate the specifications.

Replacing the roof and HVAC system are major capital projects which require extensive funding and must be approved by the school board. It is undisputed that Respondent attempted to obtain approval through a referendum to fund these projects. The school board rejected the referendum.

Notwithstanding the lack of direct funding, former Board President Plotsky testified the reserve funds in the budget were increased to two million dollars which enabled tackling some of the major issues regarding the building. According to Plotsky, the District's priority was removal of underground oil tanks, because they threatened the District's ability to be insured. Funds were also used to install a new HVAC system and repair the roof using a plastic sealant to repair most leaks. According to Plotsky, Respondent received an excellent rating for these actions.

The testimony from other staff members that they believed the construction of new administrative office suite is evidence that Respondent allowed continued disrepair and evidently did not address the problem is not substantiated. Certainly, staff members may have opinions on how the school dollars are spent. However, the remodeling was not done covertly. There is no evidence Respondent exceeded his authority by making these

changes or that they somehow impacted the overall maintenance of the school.

As to the issues of cleanliness and maintenance, I do not find evidence of Neglect of Duty constituting just cause for termination. The record evidence shows that complaints about specific classrooms being dirty were addressed, for the most part, by the custodial department. The charges allege that teachers believed there was mold in the building. In fact, the record evidence shows teacher Dawn Marion filed a complaint with the NJ Department of Occupational Health and Safety. The Complaint closed by the Department with a finding that any issues that existed had been addressed. There was no record evidence presented that mold was actually present in any part of the school.

While there were pictures submitted into the record of dirty filters and some issues regarding leaks, these photos are undated, and they do not provide sufficient evidence of neglect of duty.

Finally, as to the complaint alleging that Respondent had gotten rid of the custodial staff, the record evidence shows these reductions were made with the approval by the school board. (See, J-9; School Board Minutes May 7, 2019) The record evidence establishes Respondent in fact hired Darrel Stewart to direct maintenance, contracted with an outside cleaning service

for overnight cleaning and instituted a new position called "bustodians" who served as custodians and bus drivers to meet the budgetary needs of the District. While the District provided no evidence of annual evaluations, former board President testified he retained the draft ratings he prepared for Respondent and this realignment of the custodial staffing was considered one of Respondent's accomplishments for the 2019-2020 school year.

Likewise, I find insufficient record support to sustain **Count Three**. Count Three alleges Neglect of Duty and Other Just Cause: Interference with Educational Continuity and District Students. Specifically, the District focused on frequent reassignment of staff members in between and during the school year. I note at the outset that it is not clear this allegation states a claim for misconduct. While the record evidence establishes a number of teachers had their assignments changed, this is not unheard of in a school setting. The record evidence showed there were various changes in enrollment in the District, in addition to COVID having an impact on the school. There was no evidence that continuity of instruction or a negative impact on the students occurred. More importantly, this is a managerial issue the school board should have been aware of in its oversight role. There is no evidence this was a surprise to the school board. To the extent the Board believed it constituted

poor management, it was obligated to evaluate Respondent or at least put him on notice that this was an issue and let him know their expectations.

While there was testimony regarding some teachers' belief that they were transferred for punitive reasons, the record evidence is insufficient record evidence to substantiate those beliefs.

Count Five alleges Respondent engaged in Neglect of Duty and Other Just Cause by failing to ensure sufficient staff and misappropriation of staff. Specifically, it alleges that staff expressed their concerns during the investigation that Respondent failed to adequately hire and fill all necessary positions, including the hiring of substitute teachers. (J-1). After carefully considering the record evidence, I do not find these allegations constitute either neglect of duty or other just cause.

Plotsky testified the school board knew and approved Respondent's idea to require teachers to be dually certified to meet the challenges of changing enrollment and lessen the need to hire substitute teachers. Specifically, the idea was to use available staff as substitutes. Thus, clearly this was an issue of supervision by the Board. There is no evidence from the District that Respondent was in any way provided different

guidance or that he received any feedback to the way he managed these needs.

To the extent that teachers believed their licensure was somehow in jeopardy or their contractual school day being violated, there is no evidence of any grievances being brought. On its own, I do not find these allegations can form the basis of misconduct charges, given the decision to use available teachers was approved by the then school board.

Finally, I find **Count Seven** must also be dismissed as the record evidence fails to establish misconduct. Count Seven alleges Lack of Regular Attendance in the School Building a Failure to Respondent to requests for assistance. The District has not established a specific requirement regarding Respondent's attendance. Nor, given the allegations made during the investigation, did they attempt to do any further investigation regarding Mr. Andriac's claims that Respondent was hunting on his parent's property on certain occasions. I note to some extent the idea that Respondent was never present, as paragraphs 137 and 137 allege, seems to conflict with testimony regarding Respondent's interactions with staff members Andriac and Runne.

While I credit Mr. Andriac regarding an occasion when he was called from home because Respondent was not present, this

one instance is not sufficient to establish Respondent was not present in violation of any standard of conduct.

Likewise, Paragraph 140 of the charges Respondent regularly left the school with the District's former social worker to conduct residency checks during the day for multiple hours. The record evidence establishes Respondent instituted a policy of requiring residence checks to be conducted by two staff members and he acknowledged he performed these duties with Mr. LaStarza. Whether this was an efficient use of time is not within my authority. By itself, I do not find the allegation constitutes misconduct because the District has not provided evidence that he was not allowed to do so or that the time it took impaired his ability to complete his duties. As this is an issue of performance, without evidence of any standard being in place, counseling, or observation, I do not find, under these circumstances, it forms the basis for termination.

Turning to **Count One**, which alleges Unbecoming Conduct and other just cause by Respondent engaging in inappropriate and unprofessional conduct towards staff, I find record evidence to support specifications 29(iii) and (iv), and 30. The remaining allegations are dismissed for similar reasons to the previous counts.

The District maintains Respondent led the District though fear, divisiveness, retaliation, and favoritism. To that end, Specification 29.iii alleges Respondent treated staff negatively by refusing to speak or interact with specific staff members who did not support him. I credit Mr. Stewart's testimony that when he and Respondent disagreed about issues relating to maintenance of the school, Respondent would stop speaking to him for a day or two.

This form of negative treatment was not limited to Mr. Stewart. Ms. Batthika, Ms. Howard and Mr. Andriac all testified that Respondent would stop speaking to them when they had certain types of disagreements. I found the testimony of these witnesses credible, as they detailed the issues involved, and their fears of reprisal.

Respondent's behavior was unprofessional. As the leader of the school, Respondent must be able to communicate with staff and by making it clear to staff that disagreements lead to him stopping communication thwarts the communication necessary to run a school. This issue is distinct from the charges that were dismissed because the school board would not be expected to be aware of this conduct. Respondent is not supervised on a daily basis and staff members would be unlikely to raise this issue outside the school.

Likewise, I find sufficient record evidence to establish Respondent engaged in verbally and emotionally demeaning conduct towards specific staff members as alleged in Specification 29. iv. The credible record evidence establishes Respondent referred to Mr. Andriac as "Nancy" and "little girl". These references were made in front of other members of staff and in text message exchange involving other staff members. Teacher Rachel Van Gorden testified that she interpreted Respondent's remarks and actions toward Mr. Andriac as hazing.

Respondent's contention that calling Mr. Andriac "Nancy" was a reference to another teacher known for complaining rather than an attack on Andriac's manhood is of no moment. I credit Mr. Runne's testimony that Mr. Andriac was often the butt of jokes and that he was called Nancy because he complained a lot. Regardless of whether the terms were meant to mock his manhood or a way to call him a complainer, I find it constitutes verbally and emotionally demeaning action, especially as it was done in public. In fact, Mr. Andriac testified he felt belittled by these actions.

I do not find sufficient record support to find Respondent targeted staff by changing work assignments or giving them harder classes as alleged in 29.i. While the record evidence demonstrates certain staff members had their schedules changed,

there is insufficient record evidence to establish these changes were not for educational or valid managerial reasons.[2]

The allegations in 29.ii regarding reductions in force are also dismissed for similar reasons. The school board approved the reductions in force and had an opportunity to review the requirements for positions.

As to 29.v, while I credit Mr. Andriac's belief that he was instructed to provide certain staff members lower evaluation scores, I do not find his testimony sufficient to determine he was advised to falsify the rating as claimed. Mr. Capone acknowledged being consulted on Mr. Nittolo's rating and, in fact, Mr. Runne also testified Mr. Nittolo was "not the best teacher."

I also dismiss Specification 31, which alleges Respondent imposed additional requirements regarding Andriac's work such as making him log his daily activities. While the record evidence establishes Respondent imposed this requirement on Mr. Andriac, Respondent testified he did this for a month because Mr. Andriac was not using his time efficiently and was not completing tasks. Mr. Andriac acknowledged Respondent told him the requirement was

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[2] The District presented testimony from former teacher Dawn Marion regarding disciplinary actions taken against her after she complained about Respondent's leadership before a school board meeting. While I note the timing of her complaints to the school board and the personnel actions against her raise questions regarding Respondent's motivations, Count One does not contain any specifications relating to these allegations.

to make him more efficient. Given that Mr. Andriac had administrative duties, I cannot find this requirement was treating him differently as other teachers did not have similar duties.

Turning to **Count Four**, the District alleges Respondent engaged in inappropriate conduct towards parents in the district constituting unbecoming conduct and other just cause. I credit Ms. Van Gorden's testimony that after receiving a request from a parent to resend a permission slip for her son to participate in soccer, she was advised by Respondent to wait until after the deadline causing the child to miss approximately one month of the program. She testified Respondent told her in effect the parent was a pain in the ass.

I also credit Ms. Van Gorden that Respondent advised her not to appoint a student as an officer to the Future Farmers of America Organization because the student's parent did support the program. I find no reason for her to have fabricated this testimony or misunderstood.

The record evidence establishes Respondent made the comments in his Facebook page toward parents as alleged, and accused one parent seeking a leadership position on the PTA of stealing from her former PTA. However, these were all actions taken well before Respondent was placed on administrative leave and even before he entered a new contract of employment. The

school board was aware of these comments and had an obligation to counsel, discipline or at least set forth a standard of conduct regarding these issues. It did not and, therefore, I do not find they constitute actionable behavior under the specific facts of this case.

Finally, as to **Count Six**, I find the credible record evidence establishes Respondent engaged in unbecoming conduct by abusing his position and authority. Specifications 121, 123, 124, 125 126 all relate to Respondent requesting teachers to call into school board meetings to say positive things about Respondent and the programs within the school. I credit Ms. Van Gorden, Mr. Andriac, Ms. Lehmkuhl and Ms. Howard that they felt pressure from Respondent to do so. Mr. Andriac testified "the script" was always the same; about how great it is to work for Capone. Likewise, Ms. Van Gorden testified Respondent requested her to call into to meeting with suggestions that her program or position could be cut if she did not do so.

Mr. Andriac testified when he did not do as requested, he found his name removed from the District's website. He also testified that he had witnessed what happened to teachers like Dawn Marion after they complained. He testified he feared being shunned or having continual disciplinary actions against him.

Former School Board President Plotsky acknowledged that it would not be appropriate for a school administrator to request

staff to speak positively on his behalf. I do not credit Respondent that he only wanted staff to be able to develop and express their positive feelings. The witnesses testified credibly they felt pushed and believed Respondent would be displeased with them if they did not comply.

In addition, I find credible record evidence to support specifications 127 and 128 alleging Respondent asked staff members to create a Facebook page for the purposes of posting information regarding school board candidates Holstein and Bogle. Ms. Van Gorden, Mr. Runne, and Mr. Andriac testified Respondent spoke to them during the school day about doing this. Mr. Runne testified that although he did not agree to do so, he saw that a Facebook page was created that provided the messaging requested by Respondent.

In addition, I credit Mr. Andriac that Respondent tasked him during the school day to assist him in canvassing the community to find potential candidates to run against Ms. Holstein and Ms. Bogle. Mr. Andriac testified Respondent provided him with a list of voters and asked him to call them regarding the upcoming Board election.

Respondent's contention that he made the request to Andriac as a friend to find candidates to run is misconduct misses the point. Respondent was Mr. Andriac's boss. It is not unreasonable for Mr. Andriac to assume the request was an order

that would have some form of repercussion if he did not do as requested.

Having found Respondent guilty of Count One, specifications 29. iii, and iv, specification 30, Count Four, specifications 85, 86, and 87, and Count Six, specifications 120, 123, 124, 126, 127, 128, 129, 130 and 131, I turn to the issue of penalty.

The credible record evidence shows Respondent's misconduct constitutes just cause for discharge. Respondent's actions were not isolated moments instances poor judgement. Rather, they were willful actions that destroyed the trust and respect necessary for continued employment. Respondent did not merely make a stray comment about a parent to a teacher. Rather, he directed an inexperienced teacher to thwart student engagement in enrichment activities, based on his personal dislike of the parents. Not only did this negatively impact the student but demonstrated highly inappropriate behavior to the teacher and communicated to her that treatment of students should be linked to how the superintendent feels about their parents.

Likewise, Respondent's engagement with teachers in school board elections was not an inadvertent lapse of judgement. He attempted to have the teachers create a Facebook page under a false name for his political purposes in relation to the school board. His belittlement or petty punishments also created an atmosphere of fear of retaliation.

Certainly, the school board failed in many ways to exercise oversight over Respondent. Where it has charged Respondent with misconduct in areas it had a duty to provide counseling or guidance, I have dismissed those allegations. However, my decision relates only to the specific instances of proven misconduct, which Respondent should have understood the consequences of his actions. These instances are sufficiently serious to warrant termination, even without prior discipline or documented poor performance. Respondent, as the Superintendent is not subject to daily oversight. He must be entrusted to lead with the trust and respect of the school community. Given his actions, and his failure to demonstrate any reflection or remorse, I find that corrective action would be futile and inappropriate in this case.

As a result, I make the following

AWARD

1. The District has proven Count One, specification 29.iii, and iv, specification 30, Count Four, specifications 85, 86, and 87, and Count Six, specifications 120, 123, 124, 126, 127, 128, 129, 130 and 131.
2. The remainder of the Counts and specifications are dismissed.
3. The District has demonstrated just cause for discharge.

Deborah Gaines

Dated: January 7, 2024, _____

Deborah Gaines, Arbitrator

Affirmation
State of New York }
County of New York } ss:

I, DEBORAH GAINES, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: January 7, 2024

Deborah Gaines

_____

10-24
OAL Dkt. No. EDU 04830-21, 10023-21 (on remand)
Agency Dkt. No. 43-3/21
Appellate Division Dkt. No. A-2764-21

New Jersey Commissioner of Education

Final Decision

Board of Education of the Borough of Kinnelon, Morris County,

Petitioner,

v.

Karen D'Amico,

Respondent.

In this matter, the Kinnelon Board of Education (Board) contended that respondent Karen D'Amico had a direct or indirect interest in a substantial financial claim against the Board in violation of *N.J.S.A.* 18A:12-2 and was therefore disqualified from serving as a Board member. The Commissioner previously found that respondent had a claim for monetary relief against the Board that precluded her continued service as a board member. *Bd. of Educ. of the Borough of Kinnelon, Morris Co. v. Karen D'Amico*, Commissioner Decision No. 58-22 (April 1, 2022). Respondent appealed, and the Appellate Division of the Superior Court found that because respondent had not filed a due process request for tuition reimbursement, the line that would require disqualification from the Board had not been crossed. Accordingly, the Appellate Division reversed and remanded the matter to the Commissioner.

Following the remand, respondent notified the Commissioner that her term on the Board was expiring in December 2023 and that this matter was therefore moot.

Upon review, the Commissioner concludes that this matter is moot due to the expiration of respondent's term on the Board. Accordingly, no further proceedings are necessary, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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

SUMMARY DECISION

OAL DKT. NO. EDU 10023-21

AGENCY DKT. NO. 43-3/21

ON REMAND

OAL DKT. NO. EDU 04830-21

BOARD OF EDUCATION OF THE BOROUGH OF KINNELON, MORRIS COUNTY,

Petitioner,

v.

KAREN D'AMICO,

Respondent.

Jarrid H. Kantor, Esq., for petitioner (Antonelli Kantor, attorneys)

Hillary D. Freeman, Esq., for respondent (Freeman Law Offices, attorneys)

Record Closed: February 8, 2022 Decided: February 18, 2022

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

Petitioner, Kinnelon Board of Education (Board or KBOE) requests, inter alia, that the Commissioner of Education construe the provisions of N.J.S.A. 18A:12-2 and determine and declare that Board Member Karen D'Amico has "a direct or indirect interest in a substantial financial claim" against the Board and is disqualified from serving as a member of the Board as a result of said financial claims, pursuant to N.J.S.A. 18A:12-2.

PROCEDURAL HISTORY

On or about April 13, 2021, the Board filed with the New Jersey Department of Education an amended Verified Petition for a Declaratory Ruling Pursuant to N.J.A.C. 6A:3-2.1 (Verified Petition).[1] On or about May 4, 2021, respondent filed an answer to the Verified Petition, which includes an affirmative defense that the Verified Petition "fails to state a claim upon which relief may be granted against Respondent."

By letter dated June 1, 2021, the Acting Commissioner of Education notified the parties as follows:

> I have reviewed the petition for declaratory ruling in the above-captioned matter, together with the respondent's answer. Upon such review I have determined to exercise my discretion to decline the request pursuant to *N.J.S.A.* 52:14B-8 and *N.J.A.C.* 6A:3-2.1(a)1, and instead direct that the matter shall proceed as a petition of appeal pursuant to *N.J.A.C.* 6A:3-1.1 *et seq.*
>
> Accordingly, petitioner's request for a declaratory ruling is declined and this matter shall be transmitted to the Office of Administrative Law.

The Department of Education (Department) transmitted the case to the Office of Administrative Law (OAL) where it was filed on June 11, 2021. The transmittal noted that

[1] Per Mr. Kantor's April 12, 2021, letter to the Department of Education, it was amended to incorporate additional redactions and to remove the Board's request for attorneys' fees.

"Petitioner filed motion for summary decision following filing of answer (hard copy to follow due to size)," but the hard copy of the motion was not transmitted. On June 30, 2021, petitioner submitted a copy of the motion directly to the OAL, consisting of a statement of material facts and brief. On July 29, 2021, respondent filed a response/cross-motion for summary decision, consisting of a brief. Petitioner filed a reply letter brief on August 20, 2021. On August 25, 2021, petitioner supplemented its filing with a letter and attachment. On August 26, 2021, respondent replied thereto by way of an email.

An Initial Decision–Summary Decision denying petitioner's cross-motion for summary decision, granting respondent's cross-motion for summary decision, and dismissing the petition was issued on October 19, 2021. The Commissioner's Final Decision, dated December 2, 2021, remanded the matter to the OAL "for further fact-finding regarding the current state of the dispute between the parties identified in the August 13, 2021 10-day letter sent by respondent to the Board."

On February 8, 2022, the parties submitted a joint stipulation of facts, dated February 7, 2022, and waived submission of briefs.

JOINT STIPULATION OF FACTS

The parties' joint stipulation of facts states as follows:

> That, in connection with Respondent's "10-Day" Letter to the Kinnelon Board of Education dated August 13, 2021, as referenced the Commissioner's Final Decision dated December 2, 2021, that respondent Karen D'Amico has unilaterally placed S.D. in a private school.
>
> The Parties further stipulate and agree to forego of any further briefs and/or submissions with the Office of Administrative Law on remand of this matter.
>
> [J-1.]

LEGAL ANALYSIS AND CONCLUSION

This matter was transmitted to the OAL by the Department of Education Office of Controversies and Disputes, not the School Ethics Commission, and the statute at issue is N.J.S.A. 18A:12-2, which states:

> No member of any board of education shall be interested directly or indirectly in any contract with or claim against the board, nor, in the case of local and regional school districts, shall he hold office as mayor or as a member of the governing body of a municipality, nor, in the case of county special services school districts and county vocational school districts, shall he hold office as a member of the governing body of a county.

Thus, the pivotal issue is whether D'Amico, indisputably a Board member, was in violation of N.J.S.A. 18A:12-2 by being interested directly or indirectly in any claim against the Board[2].

The Commissioner's Final Decision, dated December 2, 2021, remanded the matter to the OAL "for further fact-finding regarding the current state of the dispute between the parties identified in the August 13, 2021 10-day letter[3] sent by respondent to the Board." In this regard, the Final Decision stated, in pertinent part:

> The Commissioner is unable to conclude, based on the current record, whether there is currently a substantial conflict between the parties. The 10-day letter indicates that respondent will unilaterally place her child in a private school if the matter is not resolved, but there is no further information regarding whether a resolution occurred. If a resolution did occur, then the dispute may not be substantial enough to warrant respondent's removal from the board. If a resolution did not occur, and respondent followed through with the unilateral placement, respondent has a claim for monetary relief against the Board that precludes her continued service as a board member.

[2] Per Respondent's attorney, D'Amico has been removed from the Board.
[3] The Verified Petition was filed in April 2021, months before the 10-day letter was sent.

However, even though D'Amico unilaterally placed her child in a private school and despite the fact that the Final Decision states that the "Commissioner has previously held that a Notice of Tort Claim filed against a board of education constitutes a claim," for the reasons that follow, my decision on the merits remains unchanged.

It is the public policy of the State of New Jersey that public entities are only liable for their negligence within the limitations of N.J.S.A. 59:1-1 et seq., the "New Jersey Tort Claims Act." Regarding the time for presentation of a claim against a public entity, N.J.S.A. 59:8-8 (emphasis added) states, in pertinent part:

> A *claim* relating to a cause of action for death or for injury or damage to person or to property shall be presented as provided in this chapter not later than the 90th day after accrual of the cause of action. After the expiration of six months from the date *notice of claim* is received, the claimant may file suit in an appropriate court of law. The claimant shall be forever barred from recovering against a public entity or public employee if:
> a. The claimant failed to file the *claim* with the public entity within 90 days of accrual of the *claim* except as otherwise provided in N.J.S.A. 59:8-9; or
> b. Two years have elapsed since the accrual of the *claim*; or
> c. The claimant or the claimant's authorized representative entered into a settlement agreement with respect to the *claim*.

A claim against a public entity must be presented by the claimant or by a person acting on his behalf and must include: (a) the name and post office address of the claimant; (b) the post-office address to which the person presenting the claim desires notices to be sent; (c) the date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted; (d) a general description of the injury, damage or loss incurred so far as it may be known at the time of presentation of the claim; (e) the name or names of the public entity, employee or employees causing the injury, damage or loss, if known; and (f) the amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar

as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. N.J.S.A. 59:8-4.

Thus, a notice of tort claim against a public entity is not the equivalent of a 10-day letter. Pursuant to 20 U.S.C. § 1412(a)(10)(C)(i), and subject to 20 U.S.C. § 1412(a)(10)(A), a board of education is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school if the board of education made free, appropriate public education (FAPE) available to the child and the parents elected to place the child in such private school. See also N.J.A.C. 6A:14-2.10(a). However, if the parents enrolled the child in a private school without the consent of or referral by the board of education, an administrative law judge may require the agency to reimburse the parents for the cost of that enrollment if the administrative law judge finds that the board of education has not made FAPE available to the child in a timely manner prior to that enrollment. 20 U.S.C. § 1412(a)(10)(C)(ii); see also N.J.A.C. 6A:14-2.10(b). The parents must provide notice to the board of education of their concerns and intent to enroll their child in a nonpublic school at public expense. N.J.A.C. 6A:2.10(c). Reimbursement may be reduced or denied for the reasons set forth at N.J.A.C. 6A:2.10(d), which include "If, at least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the district board of education of their concerns or intent to enroll their child in a nonpublic school." N.J.A.C. 6A:2.10(d).

Unlike a 10-day letter, which is a notice of concerns or intent to enroll in a private school to avoid reduction or denial of reimbursement for the private school in the event a due process petition alleging a denial of a FAPE is ever filed, a notice of tort claim is a "claim" against a public entity, the entirety of which–including the specifics of the transaction which gave rise to the claim, a general description of the injury, damage or loss incurred and a computation of the amount claimed–must be filed within ninety days, or the claimant is barred from filing suit in an appropriate court of law.

All children with disabilities have the right to a FAPE and parents of a child with disabilities may file a claim against the board of education if the child was denied a FAPE. Further, if the child was denied a FAPE there are various other bases for financial claims for which no 10-day letter is required. Thus, to disqualify a parent of a student with disabilities from the board of education based upon N.J.S.A. 18A:12-2 only[4], in the absence of a pending due process petition alleging a denial of FAPE and claim for reimbursement, would essentially disqualify any parent of a child with disabilities from being a board of education member, as the parent always has the right to file a due process petition.

For the reasons set forth hereinabove and in the Initial Decision, dated October 19, 2021, incorporated herein by reference, I **CONCLUDE** that the 10-day letter is not a violation of N.J.S.A. 18A:12-2, and further **CONCLUDE** that petitioner's motion should be denied, respondent's cross-motion should be granted, and the Verified Petition should be dismissed.

ORDER

It is hereby **ORDERED** that the petitioner's motion for summary decision is **DENIED**, the respondent's cross-motion for summary decision is **GRANTED**, and the Verified 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 Commissioner of the Department of

[4] Although petitioner argued "a disqualifying conflict of interest under the School Ethics Act ("SEA"), N.J.S.A. 18A:12-2," this statute does not fall under the School Ethics Act, N.J.S.A. 18A:12-21 to -34, and the matter was transmitted to the OAL by the Department of Education Office of Controversies and Disputes, not the School Ethics Commission. Accordingly, this decision is limited to violation of N.J.S.A. 18A:12-2 and no determination is made as to conflict of interest or ethics.

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.

Kelly J Kirk

February 18, 2022

DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

Exhibits in Evidence

J-1 Joint Stipulation of Facts

11-24
SEC Dkt No. C28-20
OAL Dkt. No. EEC 01138-21
Agency Dkt. No. 1-1/22A
Appellate Division Dkt. No. A-2858-21

New Jersey Commissioner of Education

Final Decision

In the Matter of Marilyn Roman and Sudhan Thomas, Jersey City Board of Education, Hudson County.

This matter involves an appeal of the School Ethics Commission's (Commission) January 25, 2022 decision that appellants Marilyn Roman and Sudhan Thomas, members of the Jersey City Board of Education (Board), violated *N.J.S.A.* 18A:12-24(c) of the School Ethics Act (Act) by approving a settlement agreement that resolved litigation filed against them individually. The Commissioner previously affirmed the Commission's decision and the penalty of a reprimand. *In the Matter of Marilyn Roman and Sudhan Thomas, Jersey City Bd. of Educ., Hudson Co.*, Commissioner Decision No. 105-22SEC (May 19, 2022). Appellants appealed to the Appellate Division of the Superior Court, which affirmed the Commissioner's finding that appellants had violated the Act, reversed the imposition of the penalty of a reprimand, and remanded the matter to the Commissioner with a direction to vacate the penalty.

Accordingly, the penalty of reprimand previously imposed on appellants is hereby vacated.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

Before the School Ethics Commission
OAL Docket No.: EEC-01138-21
SEC Docket No.: C28-20
Final Decision

Matthew Schapiro,
Complainant

v.

Marilyn Roman and Sudhan Thomas,
Jersey City Board of Education, Hudson County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on June 15, 2020, by Matthew Schapiro (Complainant), alleging that Marilyn Roman and Sudhan Thomas (Respondents), members of the Jersey City Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq*. More specifically, the Complaint alleges that Respondents violated *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code).

At its meeting on September 29, 2020, and after reviewing Respondents' Motion to Dismiss in Lieu of Answer (Motion to Dismiss), along with Complainant's response thereto, the School Ethics Commission (Commission) voted to deny Respondents' Motion to Dismiss in its entirety and directed Respondents to file an Answer to Complaint (Answer). On October 17, 2020, Respondents filed an Answer as directed.

At its meeting on December 22, 2020, the Commission found probable cause to credit the allegations that Respondents violated *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24.1(e). Based on its findings of probable cause, the Commission transmitted the matter to the Office of Administrative Law (OAL) for a plenary hearing on January 24, 2021, and, pursuant to *N.J.A.C.* 6A:28-10.7(b), the attorney for the Commission (Petitioner) was charged with prosecuting the allegations in the Complaint which the Commission found probable cause to credit.

At the OAL, the matter was assigned to the Honorable Nanci G. Stokes, Administrative Law Judge (ALJ Stokes). On February 18, 2021, ALJ Stokes conducted telephone conferences in which the parties "agreed that the material facts were largely undisputed, and a motion for summary decision could be appropriate." *Initial Decision* at 2. On August 3, 2021, Respondents Roman and Thomas filed their motion for summary decision, and on August 10, 2021, the Commission filed its opposition and a cross-motion for summary decision. *Id.* at 3. On August 26, 2021, Respondents Roman and Thomas filed a response to the cross-motion. *Id.* On September 6, 2021, Respondents Roman and Thomas filed their reply, and on September 16,

2021, the Commission submitted its reply. *Id.* On October 18, 2021, at the ALJ's request, Respondents filed a revised stipulation of facts and then ALJ Stokes closed the record. *Id.*

On October 22, 2021, ALJ Stokes issued an *Initial Decision* detailing her findings of fact and legal conclusions. The Commission acknowledged receipt of ALJ Stokes' *Initial Decision* on the date it was issued (October 22, 2021); therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was December 6, 2021. Prior to December 6, 2021, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties' Exceptions (if any). Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted an extension until January 20, 2022. Prior to January 20, 2022, the Commission requested and, for good cause shown, was granted a second extension to January 30, 2022, to allow the Commission to adopt its decision at its regularly scheduled meeting on January 25, 2022.

On October 26, 2021, Respondents filed Exceptions to ALJ Stokes' *Initial Decision.* On November 18, 2021, Petitioner filed Exceptions, and filed a response to Respondents' Exceptions.

At its meeting on December 14, 2021, the Commission considered the full record in this matter, including the filed Exceptions and the filed reply. Thereafter, and at its meeting on January 25, 2022, the Commission voted to adopt the findings of fact from ALJ Stokes' *Initial Decision*; to adopt the legal conclusion that, based on the admissible evidence, there is sufficient credible evidence to establish a violation of *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24.1(e) of the Code; and to adopt the recommended penalty of reprimand.

II. Initial Decision

In the *Initial Decision*, ALJ Stokes offered the following ***findings of fact*** as stipulated by the parties:

- As of January 2019, Respondents were members of the Board.
- On January 30, 2020, Jersey City Superintendent of Schools Marcia Lyles (Superintendent Lyles) commenced an action in the U.S. District Court for NJ, accusing the Board and its members of colluding with the Jersey City Education Association (JCEA) to place her unlawfully on administrative leave. Also joined as defendants were the JCEA, and Respondents 'both individually and as a member of" the Board.
- Superintendent Lyles also commenced separate administrative action before the Commissioner of Education on April 18, 2019. This petition alleged that the Board and Respondent Thomas colluded with the JCEA to have Superintendent Lyles placed on leave. Respondent Roman was not joined as a party to that proceeding.
- Respondents were afforded indemnification and legal counsel at the Board's expense. Respondent Thomas was also afforded indemnification and legal counsel at the Board's expense in the administrative case. In all proceedings the Board, and Respondents were represented by Genova Burns LLC.

- On August 20, 2019, all claims against Respondent Thomas in the administrative proceeding before the Commissioner of Education were dismissed for lack of jurisdiction by order of Thomas Betancourt, Administrative Law Judge (ALJ Betancourt).
- On November 7, 2019, the Board voted to approve a written agreement settling both the federal court and administrative proceedings. Respondents were both present and voted in favor of approving the settlement.
- Respondents consulted with Board Counsel, Michael Gross, Esq. before voting on the settlement, and he "explicitly advised" Respondents that there was no ethical impediment to their voting on the matter or signing the settlement agreement.

Initial Decision at 3-4.

After outlining the stipulation of facts, ALJ Stokes presents her conclusions of law. Regarding the motions for Summary Decision, ALJ Stokes asserts that a genuine issue as to the material facts does not exist and the only issues presented are whether Respondents' votes for approval and execution of the settlement agreement violated *N.J.S.A.* 18A:12-24(c) and/or *N.J.S.A.* 18A:12-24.1(e) and if so, any appropriate sanction. ALJ Stokes further asserts a genuine issue does not exist that Respondents served as Board members, they both voted to approve a settlement of federal litigation against the Board and themselves on November 7, 2019, that they signed the settlement agreement, and that the settlement agreement resolved an administrative claim against the Board and Respondent Thomas. However, an order dismissed the claims against Respondent Thomas, concluding that Superintendent Lyles did not present her case to the agency with jurisdiction. Board counsel advised Respondents that there was no ethical impediment that would preclude their involvement in the settlement. Therefore, ALJ Stokes ***concluded*** that this case was ripe for summary decision.

As to the School Ethics Act, ALJ Stokes asserts the Commission found probable cause to credit the allegations that Respondents violated *N.J.S.A.* 18A:12-24(c), which "prohibits a school official's actions where such involvement might reasonably be expected to impair their judgement or if benefit is conferred upon the school official or their family members." ALJ Stokes notes Respondents argued that Superintendent Lyles "named them individually in name only and that the only relief sought was against the Board." ALJ Stokes cites, *In re Petition for Review of Opinion 552 of Advisory Committee on Professional Ethics*, 102 *N.J.* 194 (1986) (Opinion) and notes that "opinion explains the difference between an action based on 'official-capacity' or action involving 'personal-capacity' and the real party in interest." *Initial Decision* at 9. With that in mind, ALJ Stokes maintains the lawsuit against the Board and Respondents individually and the administrative action against the Board and Respondent Thomas are "official capacity" actions. *Id.*

ALJ Stokes further explains, "the Court's decision does not address whether the official's action regarding the litigation or its resolution can create an ethical conflict for the official." *Id.* at 10. ALJ Stokes notes that Superintendent Lyles' complaint "alleged specific actions improperly taken by [Respondents] for which the Board was vicariously responsible" and the administrative case "asserted [Respondent] Thomas colluded with the JCEA to place [Superintendent] Lyles on administrative leave." *Id.* Citing *In Re Kilmurray*, ALJ Stokes

maintains, "Regardless, whether the claims against [Respondents] are in their official capacity, which the government entity will be held ultimately responsible financially, the review of a government official's actions regarding such legal matters is from the perspective of a reasonable person." *Id. (*citing *In re Kilmurray, Lacey Township Board of Education, Ocean County*, C12-94 Comm'n Decision (April 15, 1998), https://www.state.nj.us/education/legal/ethics/index.html).

According to ALJ Stokes, the Commission "argues that the facts here are nearly identical to those in [*In re Gonzalez*] and warrant the same conclusion," which is that Respondents "voted to approve the settlement agreement and signed it" and, therefore, violated the Act. *Id.* (citing *In re Gonazalez*, EEC19282-1, Initial Decision, (Sept. 11, 2018), http://njlaw.rutgers.edu/collections/oal/search.html, *aff'd*, C08-15, Comm'n Decision (Nov. 27, 2018), https://www.state.nj.us/education/legal/ethics/index.html). *Id.* at 11. However, Respondents argue, "their circumstances are distinct from those" noted in Gonzalez because the petitioners in Gonzalez gained a personal benefit when they dismissed the ethics charges against them where the Board was not the real party in interest." *Id.* ALJ Stokes maintains "a review of [Superintendent] Lyles' complaint and administrative petitions demonstrates she alleged improper official actions taken by [Respondent] Thomas in both cases and [Respondent] Roman in the lawsuit" and, therefore, their "interest in resolving these claims is one not fully shared with the public." *Id.* at 11-12.

ALJ Stokes also finds it noteworthy that Respondents "acted upon the advice of counsel and rely upon counsel's determination that no ethical impediment precluded their voting upon or executing the settlement agreement." *Id.* at 12. ALJ Stokes asserts, "reliance on advice of counsel only serves as a defense to a penalty." *Id.* (citations omitted). ALJ Stokes further maintains that Board counsel advised Respondents "before the vote, and counsel was well aware of the allegations against [Respondents] in both actions"; Respondents "voiced their concerns that they were named individually in" the matters; Board counsel was experienced and was responsible for "ethically guiding" Board members; Board counsel's recommendation was to "vote upon and execute the settlement agreement" without restrictions; Board counsel certified that the Board "indemnified" Respondents in the Superintendent Lyles' cases "as the matter sought redress from the Board"; and Board counsel believed that Respondents did not secure a personal benefit in resolving those matters and that an ethical problem did not exist. *Id.* at 13. Therefore, ALJ Stokes ***concludes*** Respondents evidenced sensitivity to the issue of potential conflict in seeking counsel's advice and that it was reasonable to rely upon such advice.

ALJ Stokes further notes that because of Superintendent Lyles' alleged unethical conduct of Respondents in the lawsuit and the administrative action that was resolved by the agreement, ALJ Stokes concludes that a public member could justifiably believe that their objectivity was impaired when voting upon and executing the settlement. ALJ Stokes asserts the terms of the settlement agreement "was a bargained-for-exchange where the interests of all parties, including those of" Respondents, was served. *Id.* at 14. Therefore, ALJ Stokes further ***concludes*** that Respondents acted in their official capacity in a matter where they had personal involvement and received a benefit in violation of *N.J.S.A.* 18A:12-24(c).

Regarding the Code violation, *N.J.S.A.* 18A:12-24.1(e), ALJ Stokes maintains the Commission's "probable cause determination asserts that because [Respondents] had personal involvement in the litigation that this suggests 'action' beyond the scope of their duties as board members." *Id.* at 15. However, the Commission "routinely agrees that those 'board members, who are acting in their capacity as board members, and not as private citizens, do not violate *N.J.S.A.* 18A:12-24.1(e).'" *Id.* ALJ Stokes cites several previous cases and asserts "there is no evidence that [Respondent] Thomas or [Respondent] Roman acted outside their official capacities in voting upon or executing the settlement agreement or that the Board did not authorize [Respondent] Thomas or [Respondent] Roman to act concerning the agreement." *Id.* at 16. According to ALJ Stokes, the vote occurred at a public meeting and "no conduct asserted suggests [Respondent] Thomas or [Respondent] Roman made promises to anyone concerning these acts." *Id.* Therefore, ALJ Stokes ***concludes*** that neither Respondent violated *N.J.S.A.* 18A:12-24.1(e) in their official actions as Board members voting to approve and executing a settlement resolving the litigation.

As to the penalty, ALJ Stokes maintains that Respondents "seek to rely upon the defense that they acted under the advice of counsel to avoid any penalty, even if [the ALJ] conclude[s] violations occurred." *Id.* at 17. ALJ Stokes notes Respondent Thomas is no longer a Board member and, therefore, the maximum penalty that he could receive would be a censure. ALJ Stokes reiterates Respondents' "reasonable reliance on the advice of counsel mitigates the penalty here." *Id.* at 17-19 (citations omitted). Therefore, ALJ Stokes ***concludes*** the appropriate ***penalty*** for Respondents is ***reprimand***.

In summary, ALJ Stokes orders, based on the stipulation of facts and conclusions of law, that Complainant's motion for summary decision is partially granted as to Respondents violation of *N.J.S.A.* 18A:12-24(c), and that Respondents' motion for summary decision is partially granted as to Respondents' lack of a violation of *N.J.S.A.* 18A:12-24.1(e). ALJ Stokes further orders that Respondents receive a reprimand for their respective violations of *N.J.S.A.* 18A:12-24(c).

III. Exceptions

Respondents' Exceptions

In their Exceptions, which were filed on October 26, 2021, Respondents argue they were "never at risk of any financial exposure due to the [D]istrict's legal obligation to indemnify them," and unlike the Respondents in *Gonzalez*, Respondents Thomas and Roman did not secure a personal benefit unique to them. Respondents disagree with ALJ Stokes' finding that because Respondents "received a release of any claims and a promise of confidentiality, a reasonable person would conclude there was enough of a personal benefit to implicate *N.J.S.A.* 18A:12-24(c)." Respondents argue the "release was as to claims that [R]espondents were fully indemnified for, and the promise of confidentiality was no more valuable to Respondents than any of the other Board members who voted to approve the settlement and had an interest as Board members in bringing this litigation to an end." Respondents further argue "a reasonable person" knowing that Respondents did not have a personal stake "in the outcome of the

proceedings would not assume they were unethically feathering their own nest by voting to approve this settlement."

Next, Respondents "agree that school board members should not be able to hide behind legal advice that they know, or reasonably should know, is questionable." However, Respondents assert that did not happen here. Respondents reassert they "relied in good faith on the advice of an experienced school board attorney regarding a technical legal question, where the Commission had not issued any precedent squarely on point." Respondents note that if the Commission still finds, notwithstanding Respondents' good faith reliance on legal advice, that Respondents should not have voted on the settlement, a penalty should still not be imposed. Respondents maintain that the Commission should "take the opportunity to educate the school community on what it views as the proper interpretation of the rule at issue, provide clear guidance prospectively, and refrain from imposing discipline."

Petitioner's Exceptions and Reply to Respondents' Exceptions

In Respondents' Exceptions, which were filed on November 18, 2021, Petitioner (Commission) initially notes that they agree with ALJ Stokes' decision that Respondents violated *N.J.S.A.* 18A:12-24(c), but "takes exception to the conclusion that Respondents did not violate *N.J.S.A.* 18A:12-24.1(e) and, therefore, recommends that the Initial Decision be modified. More specifically, Petitioner asserts ALJ Stokes "correctly determined" Respondents' approval and execution of the settlement agreement violated *N.J.S.A.* 18A:12-24(c), because Superintendent Lyles agreed not to sue Respondents "in exchange for her resignation and monetary consideration." Furthermore, Superintendent Lyles agreed to "dismiss the administrative action and federal lawsuit and to never disclose any of the circumstances leading to the agreement." Petitioner contends ALJ Stokes concluded, based on the settlement agreement that a "public member could justifiably believe that [R]espondents' objectivity was impaired when voting to approve that settlement agreement – which served the interests of all parties involved – and therefore, [R]espondents violated *N.J.S.A.* 18A:12-24(c)." However, according to Petitioner, ALJ Stokes "incorrectly determined" that Complainant did not demonstrate that Respondents "made promises to anyone concerning these acts." Petitioner notes that ALJ Stokes "failed to consider that [R]espondents' actions to execute the settlement agreement had the potential to compromise the Board" and, therefore, Petitioner argues that the ALJ's determination that Respondents did not violate *N.J.S.A.* 18A:12-24.1(e), is "incorrect[]."

Petitioner argues that ALJ Stokes' conclusion that Respondents did not violate *N.J.S.A.* 18A:12-24.1(e), "must be rejected, and her decision modified to reflect a violation of the Code" because Respondents did not deny "the undisputed facts of this matter" and they "entered into a settlement agreement that released claims made against them as individuals." Petitioner further argues when Respondents voted to approve the settlement agreement at a public Board meeting, "and did so without Board approval," Respondents "acted beyond the scope of their duties that compromised the [B]oard." Petitioner cites I/M/O Lorenzo Richardson, Jersey City Bd. of Educ., Hudson Cty., 2021 N.J. AGEN LEXIS 30 (Jan. 26, 2021), and notes that similarly, Respondents "acted beyond the scope of their duties, and compromised the Board, by resolving a legal action, by entering into a settlement agreement, by signing the agreement with their individual names, and by voting to approve that settlement agreement at a Board meeting – all of which was done

despite a clear conflict of interest." Therefore, Petitioner asserts Respondents violated the Code and the *Initial Decision* should be modified to reflect this violation.

As to a violation of *N.J.S.A.* 18A:12-24(c) and Respondents' exceptions, Petitioner asserts ALJ Stokes' "reasoning ... is in line with the law, and the ALJ's conclusion is not erroneous." Petitioner reaffirms the settlement was "a bargained-for-exchange agreement that served the interest of [R]espondents." Petitioner argues, "Regardless of whether [R]espondents faced direct financial liability from the administrative or federal actions, [R]espondents engaged in conduct that served their interests not shared in common with other members of the public" and, therefore, ALJ Stokes did not "err in her conclusion" that Respondents "acted in a manner where they had personal involvement and received a benefit in violation of the Act." Furthermore, according to Petitioner, Respondents' argument that their "good faith reliance on legal advice was a valid defense and justifies no disciplinary action against them" is also incorrect. Petitioner notes ALJ Stokes' conclusion that Respondents' reliance on legal advice "does not insulate an official from a finding that a violation occurred, but it acts as a defense to a penalty for that violation" is correct and as for the penalty, Petitioner further notes ALJ Stokes "correctly assessed the penalty of reprimand ... ." Therefore, Petitioner reasserts the *Initial Decision* should be "adopted in part as to a violation of *N.J.S.A.* 18A:12-24(c), and rejected in part and modified to reflect a violation of *N.J.S.A.* 18A:12-24.1(e)."

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission **adopts** ALJ Stokes' findings of fact, and **adopts** the legal conclusion that Respondents violated *N.J.S.A.* 18A:12-24(c), but did not violate *N.J.S.A.* 18A:12-24.1(e). In finding a violation of *N.J.S.A.* 18A:12-24(c) when Respondents voted to approve a written agreement settling proceedings in which Respondents were parties, ALJ Stokes properly concluded that Respondents acted in their official capacity in a matter where they had a personal involvement and received a benefit. The Commission holds that ALJ Stokes correctly determined that Respondents' approval and execution of the settlement agreement violated *N.J.S.A.* 18A:12-24(c). The Commission further concurs that Respondents did not violate *N.J.S.A.* 18A:12-24.1(e). Respondents neither acted outside their official capacities nor made promises to anyone in connection with voting upon or executing the settlement agreement at issue.

V. Decision

The Commission adopts ALJ Stokes' Initial Decision finding that Respondents violated *N.J.S.A.* 18A:12-24(c), but did not violate *N.J.S.A.* 12-24.1(e).

VI. Penalty

In recommending the penalty, ALJ Stokes notes that Respondent Thomas is no longer a Board member and, therefore, the maximum penalty that he could receive would be a censure. ALJ Stokes further highlights Respondents' reasonable reliance on the advice of counsel. Based on the above, the Commission **adopts** the recommended penalty of **reprimand.**

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner for review of the Commission's recommended sanctions. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's findings of violations of the Act; or 3) file both exceptions to the recommended sanction and an appeal of the Commission's findings of violations of the Act.

Parties taking exception to the recommended sanctions of the Commission but *not disputing* the Commission's findings of violations may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended sanctions to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the Commission and all other parties.

Parties seeking to appeal the Commission's findings of violations *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4, *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the mailing date to the parties, as indicated below. In such cases, the Commissioner's review of the Commission's recommended sanctions will be deferred and incorporated into the Commissioner's review of the findings of violations on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's brief on appeal.

Robert W. Bender, Chairperson

Mailing Date: January 25, 2022

Resolution Adopting Decision in Connection with C28-20

Whereas, by correspondence dated January 24, 2021, the School Ethics Commission (Commission) transmitted the above-referenced matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, at the OAL, both Respondents and Petitioner filed Motions for Summary Decision; and

Whereas, the Honorable Nanci G. Stokes, Administrative Law Judge (ALJ Stokes) issued an Initial Decision dated October 22, 2021; and

Whereas, in her Initial Decision, ALJ Stokes partially granted Petitioner's motion for summary decision as to Respondents' violation of *N.J.S.A.* 18A:12-24(c) and partially granted Respondents motion for summary decision as to Respondents lack of a violation of *N.J.S.A.* 18A:12-24.1(e).

Whereas, on October 26, 2021, Respondents filed Exceptions to the Initial Decision; and

Whereas, on November 18, 2021, Petitioner filed exceptions and a reply to Respondents' Exceptions; and

Whereas, at its meeting on December 14, 2021, the Commission reviewed and discussed the record, including ALJ Stokes' Initial Decision and the filed Exceptions; and

Whereas, at its meeting on December 14, 2021, the Commission discussed adopting the findings of fact from the Initial Decision, adopting the legal conclusion that Respondents violated *N.J.S.A.* 18A:12-24(c), but did not violate *N.J.S.A.* 18A:12-24.1(e); and adopting the recommended penalty of reprimand; and

Whereas, at its meeting on January 25, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 14, 2021; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on January 25, 2022.

Salma T. Chand

Salma T. Chand, Executive Director
School Ethics Commission

12-24
OAL Dkt. No. EDU 03573-23
Agency Dkt. No. 53-3/23

New Jersey Commissioner of Education

Final Decision

Clifton Education Association,

Petitioner,

v.

Board of Education of the City of Clifton,
Passaic County,

Respondent.

The record of this matter, the proposed Stipulation of Settlement (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. EDU 03573-23

AGENCY REF. NO. 53-3/23

CLIFTON EDUCATION ASSOCIATION,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY OF CLIFTON, PASSAIC COUNTY,

Respondents.

Sanford R. Oxfeld, Esq., for petitioners (Oxfeld Cohen, P.C., attorneys)

Adam S. Herman, Esq., for respondents (Adams, Gutierrez & Lattiboudere, LLC, attorneys)

Record Closed: December 18, 2023 Decided: December 18, 2023

BEFORE **JOHN P. SCOLLO,** ALJ:

NATURE OF PROCEEDINGS

Petitioner disputes a board of education school procedure/policy.

The Department of Education transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative Law (OAL), where it was filed on April 25, 2023.

The parties have voluntarily agreed to resolve all disputed matters and have entered into a settlement as set forth in the attached Stipulation and Settlement Agreement.

I have reviewed the terms of the settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures and/or the signature of their respective representatives on the attached settlement agreement; and,
2. The settlement fully disposes of all issues in controversy between the parties.

ORDER

It is hereby **ORDERED** that the parties comply with the terms of the settlement agreement; and

It is further **ORDERED** that Petitioner's petition is withdrawn with prejudice.

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.

John P. Scollo

December 18, 2023
DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency: December 19, 2023

Date Mailed to Parties: December 19, 2023
db

Batista, Diana [OAL]

From: Adam Herman <aherman@asgllaw.com>
Sent: Monday, December 18, 2023 9:29 AM
To: Batista, Diana [OAL]
Cc: Sanford Oxfeld; Ester Jones
Subject: [EXTERNAL] RE: EDU 03573-23 Clifton Education Association v. BOE, City of Clifton, Passaic County
Attachments: Clifton EA Bomb Settlement Signed (1).pdf

Ms. Batista:

Good morning.

Attached please find the fully executed settlement agreement for the above-referenced matter. Please advise if Judge Scollo needs anything else from the Parties to formally close out the matter. Thank you.

Respectfully,

Adam S. Herman, Esq.
Adams Gutierrez & Lattiboudere, LLC

Woodbridge Towers
555 Route 1 South
Suite 240
Iselin, New Jersey 08830
Phone 973-735-2742
Ext. 105

Marlton Office:
10000 Lincoln Drive East
Suite 201
Marlton, New Jersey 08053
Phone 856-988-5488

e-mail: aherman@asgllaw.com
website: www.asgllaw.com

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From: Adam Herman
Sent: Tuesday, December 12, 2023 5:26 PM
To: Batista, Diana [OAL] <Diana.Batista@oal.nj.gov>
Cc: Sanford Oxfeld <sro@oxfeldcohen.com>; Ester Jones <EJones@oxfeldcohen.com>
Subject: FW: EDU 03573-23 Clifton Education Association v. BOE, City of Clifton, Passaic County

Ms. Batista: Good evening. Kindly be advised that the Parties are in the process of actually executing the settlement agreement. I received the agreement today from Mr. Oxfeld, which has been signed by the Petitioner. In turn, I have

STIPULATION OF SETTLEMENT

Clifton EA Grievance # 2023-01

and

Clifton EA and Clifton BOE, PERC Docket No. CO-2023-151

and

Clifton EA and Clifton BOE, Agency Ref. No. 53-3/23, OAL Dkt. No. EDU 03573-23

The Clifton Board of Education (the "District") and the Clifton Education Association ("Association") have voluntarily resolved all three (3) disputed matters regarding the Bomb Threat Procedures and enter into the following Stipulation of Settlement, which fully disposes of all issues in controversy between them in full and the complete settlement of all outstanding issues as detailed below.

WHEREAS, on or about February 27, 2023, the Association filed a grievance against the District regarding the December 22, 2022 Bomb Threat Procedures, which was filed as CEA Grievance 2023-01; and

WHEREAS, on or about March 8, 2023, the Association filed an Unfair Practice Charge ("UPC") against the District regarding the December 22, 2022 Bomb Threat Procedures, which was docketed with the Public Employment Relations Commission ("PERC") as CO-2023-151; and

WHEREAS, on or about March 8, 2023, the Association filed a Petition of Appeal against the District regarding the December 22, 2022 Bomb Threat Procedures with the New Jersey Commissioner of Education, which was transmitted to the Office of Administrative Law, and docketed as Agency Ref. No. 53-3/23 and OAL Dkt. No. EDU 03573-23; and

WHEREAS, the Parties intend to adopt, by way of compromise and accord, an amicable global resolution of CEA Grievance 2023-01, CO-2023-151, and Agency Ref. No. 53-3/23/OAL Dkt. No. EDU 03573-23; and

NOW THEREFORE, in consideration of the foregoing and of the mutual agreements contained herein, and intending to be legally bound, the Parties mutually agree as follows:

(a) The District agrees to immediately revise the Bomb Threat Procedures communicated on December 22, 2022, by deleting the portion of the procedure that referred to "Mobilize Internal Search/Response Teams." In making said revision, the District agrees that Association members will not be deployed to conduct bomb searches either inside or outside the building.

(b) The Association agrees that while in an active bomb threat is deemed to be a "shelter in place," the District may properly direct Association members assigned to classrooms, offices, auditoriums, gymnasiums, and/or bathrooms to visually scan the area the staff member is located in at the time.

(c) The revised Bomb Threat Procedures is attached hereto as Exhibit "A."

(d) Except as set forth in (a) above, nothing herein shall be deemed to preclude the District from exercising its managerial prerogative to adopt any future modification(s) to Bomb Threat Procedures, provided any impact on terms and conditions of employment will be negotiated prior to the implementation of any such modification. Unless otherwise mandated by law, the Parties agree that any future modification will be consistent with (a) and (b) above.

(e) The Association agrees to immediately dismiss and/or withdraw with prejudice the three pending matters— CEA Grievance 2023-01, CO-2023-151, and Agency Ref. No. 53-3/23/OAL Dkt. No. EDU 03573-23.

(f) This Agreement is a result of a voluntary compromise. It is expressly understood and agreed that nothing contained in this Agreement is intended to be, nor shall be

construed as, nor shall be represented by any party, their attorneys or their agents to be, as an admission or determination of liability by the District, or its agents, employees or members, as to the validity of any claims asserted in the three actions.

(g) This Agreement sets forth the complete understanding and entire agreement between the Parties and supersedes any and all prior agreements or understandings between the Parties.

(h) This Agreement may not be modified, altered, changed, discharged, terminated or waived except upon express written consent of the parties wherein specific reference is made to this Agreement. It is agreed that there are no other understandings or agreements (either written or oral) which would have any impact upon the present Action.

(i) This agreement shall not constitute a precedent in any matters involving other District employees.

(j) The Parties certify that they have had the opportunity to discuss this Agreement with counsel. They are fully satisfied with the services of their counsel with respect to both this Agreement and they enter into this Agreement knowingly, willingly and without any coercion or improper inducements.

(k) Each signatory represents that she or he is a Party or has been duly authorized by a Party to sign on that Party's behalf and that, in the case of the District, all procedural formalities attendant to the execution of this Agreement have been satisfied. The signatory for the District further covenants that he or she is duly empowered by the District to sign this Agreement and that there is no legal reason

which prevents or will prevent the District from completely performing its obligations under this agreement.

(l) This Agreement shall be governed by the laws of the State of New Jersey.

(m) The Parties agree that this agreement may be signed in counterparts and that facsimiles of signatures will have the same force and effect as original signatures.

(n) This Stipulation of Settlement is subject to the formal approval of the Board of Education of the Clifton Public Schools.

Melanie Lemme
CLIFTON EDUCATION ASSOCIATION

Print name: Melanie Lemme

Date: 12/12/23

Danny A. Robertozzi
CLIFTON BOARD OF EDUCATION

Print name: Danny A. Robertozzi, Ed.D.

Date: 12-18-2023

13-24
Agency Dkt. No. 269-10/23

New Jersey Commissioner of Education

Final Decision

Mastery Schools of Camden, Inc.,

Petitioner,

v.

New Jersey Department of the Treasury, Division of Pensions and Benefits, Public Employees Retirement System Board of Trustees,

Respondent.

The record of this matter and the Consent Decision signed by both parties have been reviewed pursuant to *N.J.A.C.* 6A:3-1.13(b)(2). The Commissioner approves the terms of the Consent Decision. The case is hereby dismissed, subject to compliance with the terms of the Consent Decision.

IT IS SO ORDERED.

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

14-24
OAL Dkt. No. EDU 00225-23
Agency Dkt. No. 292-10/22

New Jersey Commissioner of Education

Final Decision

J.S., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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
DISMISSAL
OAL DKT. NO. EDU 00237-23
AGENCY DKT. NO. 349-11/22

J.S., ON BEHALF OF MINOR CHILD,
Petitioner,
v.
BOARD OF EDUCATION OF THE SOUTH ORANGE-MAPLEWOOD SCHOOL DISTRICT, ESSEX COUNTY,
Respondent

J.S., on behalf of minor child, petitioner, pro se

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

Record Closed: September 22, 2023 Decided: December 18, 2023

BEFORE **WILLIAM COURTNEY**, ALJ:

This matter was transmitted to the Office of Administrative Law ("OAL") on January 10, 2023, for emergent relief pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F1 to -13. On January 21, 2023, the parties entered into an interim Settlement Agreement whereby respondent South Orange-Maplewood Board of Education ("Board") agreed to

provide bussing services to petitioner's child and petitioner agreed to place the Petition of Appeal on the OAL's inactive list. The parties further agreed that the Interim Agreement would remain in effect until June 30, 2023 (the end of the 2022/2023 school year). The settlement resulted in an Order of Inactivity dated February 22, 2023.

On September 22, 2023, the Board advised this tribunal that it had revised the Board's transportation policies and also designated additional hazardous routes. The Board also passed a resolution approving funding to provide transportation for pre-school students and elementary school students if they lived 1.25 miles or more from their assigned schools.

Given the approval of these policy changes and approval of the transportation funding along with the Board's transportation of students that live 1.25 miles or more from their assigned schools, I **FIND** that the issues raised in this appeal have been rendered moot.

I, therefore, **CONCLUDE** that this matter is no longer a contested case before the OAL.

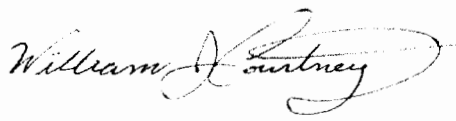
ORDER

Accordingly, it is **ORDERED** that this matter be and is hereby **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 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.



December 18, 2023
DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency: December 18, 2023

Date Mailed to Parties: December 18, 2023

sej

15-24
OAL Dkt. No. EDU 10350-22
Agency Dkt. No. 304-11/22

New Jersey Commissioner of Education

Final Decision

J.A., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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
DISMISSAL
OAL DKT. NO. EDU 10350-22
AGENCY DKT. NO. 304-11/22

J.A., ON BEHALF OF MINOR CHILD,
Petitioner,
v.
BOARD OF EDUCATION OF THE SOUTH ORANGE-MAPLEWOOD SCHOOL DISTRICT, ESSEX COUNTY,
Respondent

J.A. on behalf of minor child, petitioner, pro se

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

Record Closed: September 22, 2023 Decided: December 18, 2023

BEFORE **WILLIAM COURTNEY**, ALJ:

This matter was transmitted to the Office of Administrative Law ("OAL") on November 17, 2022, for emergent relief pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F1 to -13. Oral Argument was originally scheduled for November 22, 2022 and a telephone conference was then scheduled for December 14, 2022. At the request of the

undersigned, an in-person conference was held on December 22, 2022 wherein the parties engaged in settlement discussions. On January 21, 2023, the parties entered into an interim Settlement Agreement whereby respondent South Orange-Maplewood Board of Education ("Board") agreed to provide bussing services to petitioner's child and petitioner agreed to place the Petition of Appeal on the OAL's inactive list. The parties further agreed that the Interim Agreement would remain in effect until June 30, 2023 (the end of the 2022/2023 school year). The settlement resulted in an Order of Inactivity dated February 22, 2023.

On September 22, 2023, the Board advised this tribunal that it had revised the Board's transportation policies and also designated additional hazardous routes. The Board also passed a resolution approving funding to provide transportation for pre-school students and elementary school students if they lived 1.25 miles or more from their assigned schools.

Given the approval of these policy changes and approval of the transportation funding along with the Board's transportation of students that live 1.25 miles or more from their assigned schools, I **FIND** that the issues raised in this appeal have been rendered moot.

I, therefore, **CONCLUDE** that this matter is no longer a contested case before the OAL.

ORDER

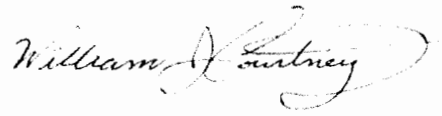
Accordingly, it is **ORDERED** that this matter be and is hereby **DISMISSED**.

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 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.



December 18, 2023
DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency: December 18, 2023

Date Mailed to Parties: December 18, 2023

am

16-24

OAL Dkt. No. EDU 10555-22
Agency Dkt. No. 312-11/22

New Jersey Commissioner of Education

Final Decision

L.H., on behalf of minor children, J.T. and M.T.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

17-24

OAL Dkt. No. EDU 00262-23
Agency Dkt. No. 313-11/22

New Jersey Commissioner of Education

Final Decision

B.S., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D., S.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

18-24
OAL Dkt. No. EDU 11370-22
Agency Dkt. No. 314-11/22

New Jersey Commissioner of Education

Final Decision

D.P., on behalf of minor child, A.F.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

19-24
OAL Dkt. No. EDU 00236-23
Agency Dkt. No. 320-11/22

New Jersey Commissioner of Education

Final Decision

M.S., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

20-24
OAL Dkt. No. EDU 10587-22
Agency Dkt. No. 327-11/22

New Jersey Commissioner of Education

Final Decision

J.B., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

21-24
OAL Dkt. No. EDU 00235-23
Agency Dkt. No. 328-11/22

New Jersey Commissioner of Education

Final Decision

J.W., on behalf of minor children, M.S. and E.S.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

22-24
OAL Dkt. No. EDU 10589-22
Agency Dkt. No. 329-11/22

New Jersey Commissioner of Education

Final Decision

A.S., on behalf of minor child, J.M.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

23-24
OAL Dkt. No. EDU 10590-22
Agency Dkt. No. 330-11/22

New Jersey Commissioner of Education

Final Decision

K.S., on behalf of minor children,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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. .

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

24-24
OAL Dkt. No. EDU 10588-22
Agency Dkt. No. 331-11/22

New Jersey Commissioner of Education

Final Decision

M.S., J.B., and K.B., on behalf of minor child,

Petitioners,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.d.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

25-24
OAL Dkt. No. EDU 10591-22
Agency Dkt. No. 332-11/22

New Jersey Commissioner of Education

Final Decision

P.Z., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

26-24
OAL Dkt. No. EDU 10592-22
Agency Dkt. No. 333-11/22

New Jersey Commissioner of Education

Final Decision

A.F., on behalf of minor child, P.F.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

27-24
OAL Dkt. No. EDU 10594-22
Agency Dkt. No. 334-11/22

New Jersey Commissioner of Education

Final Decision

C.S., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

28-24
OAL Dkt. No. EDU 10667-22
Agency Dkt. No. 335-11/22

New Jersey Commissioner of Education

Final Decision

K.C., on behalf of minor child, A.M.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

29-24
OAL Dkt. No. EDU 10593-22
Agency Dkt. No. 336-11/22

New Jersey Commissioner of Education

Final Decision

K.R., on behalf of minor child, W.S.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

30-24
OAL Dkt. No. EDU 10668-22
Agency Dkt. No. 337-11/22

New Jersey Commissioner of Education

Final Decision

M.B., on behalf of minor child, J.S.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

31-24
OAL Dkt. No. EDU 00541-23
Agency Dkt. No. 338-11/22

New Jersey Commissioner of Education

Final Decision

H.I., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

32-24

OAL Dkt. No. EDU 10595-22
Agency Dkt. No. 339-11/22

New Jersey Commissioner of Education

Final Decision

L.W., on behalf of minor children, L.W. and S.W.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

33-24
OAL Dkt. No. EDU 10596-22
Agency Dkt. No. 340-11/22

New Jersey Commissioner of Education

Final Decision

A.B., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.d.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

34-24
OAL Dkt. No. EDU 10597-22
Agency Dkt. No. 341-11/22

New Jersey Commissioner of Education

Final Decision

K.M., on behalf of minor child, S.M.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

35-24
OAL Dkt. No. EDU 10598-22
Agency Dkt. No. 342-11/22

New Jersey Commissioner of Education

Final Decision

R.P., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

36-24
OAL Dkt. No. EDU 10671-22
Agency Dkt. No. 343-11/22

New Jersey Commissioner of Education

Final Decision

S.W., on behalf of minor child, F.M.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

37-24
OAL Dkt. No. EDU 10888-22
Agency Dkt. No. 344-11/22

New Jersey Commissioner of Education

Final Decision

L.L.H., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

38-24
OAL Dkt. No. EDU 10672-22
Agency Dkt. No. 345-11/22

New Jersey Commissioner of Education

Final Decision

A.C., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

39-24
OAL Dkt. No. EDU 11396-22
Agency Dkt. No. 346-11/22

New Jersey Commissioner of Education

Final Decision

T.B., on behalf of minor children, T.B., J.B., and R.B.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

40-24
OAL Dkt. No. EDU 10673-22
Agency Dkt. No. 347-11/22

New Jersey Commissioner of Education

Final Decision

M.K., on behalf of minor child, S.K.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

41-24
OAL Dkt. No. EDU 00259-23
Agency Dkt. No. 348-11/22

New Jersey Commissioner of Education

Final Decision

E.H., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

42-24
OAL Dkt. No. EDU 00237-23
Agency Dkt. No. 349-11/22

New Jersey Commissioner of Education

Final Decision

J.S., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

43-24
OAL Dkt. No. EDU 10674-22
Agency Dkt. No. 350-11/22

New Jersey Commissioner of Education

Final Decision

C.C., on behalf of minor children,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

44-24

OAL Dkt. No. EDU 10675-22
Agency Dkt. No. 351-11/22

New Jersey Commissioner of Education

Final Decision

E.S.O., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

45-23
OAL Dkt. No. EDU 00238-23
Agency Dkt. No. 352-11/22

New Jersey Commissioner of Education

Final Decision

T.B., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

46-24

OAL Dkt. No. EDU 00349-23
Agency Dkt. No. 353-11/22

New Jersey Commissioner of Education

Final Decision

E.F., on behalf of minor children, A.K., N.K., and J.K.,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

47-24
OAL Dkt. No. EDU 10860-22
Agency Dkt. No. 356-12/22

New Jersey Commissioner of Education

Final Decision

S.C., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

48-24
OAL Dkt. No. EDU 00352-23
Agency Dkt. No. 357-12/22

New Jersey Commissioner of Education

Final Decision

K.A., on behalf of minor child,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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.

The petition in this matter is one of several that were filed in late 2022, challenging the South Orange-Maplewood Board of Education's (Board) decision to deny bus transportation to certain students. Among other things, the petitioners alleged that their children would be required to walk on hazardous routes to and from school and/or that they lived more than two miles from school and therefore met the requirements to receive transportation under the Board's remote bussing policy. In September 2023, the Board revised their transportation policies, designated additional hazardous routes, and passed a resolution approving funding to provide transportation for preschool and elementary school students if they lived 1.25 or more miles from their assigned schools. In light of these changes, the Administrative Law Judge (ALJ) found that the issues raised in the appeals had been rendered moot.

Upon review, the Commissioner concurs with the ALJ that this matter is now moot.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2024
Date of Mailing: January 10, 2024

[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.

New Jersey Commissioner of Education

Final Decision

Board of Education of the City of Salem,
Salem County,

Petitioner,

v.

Board of Education of the Bordentown Regional
School District, Burlington County,

Respondent.

Synopsis

Petitioner, the Board of Education of the City of Salem (Salem), challenged the homelessness determination regarding the "M" family for the 2020-2021 school year issued by the Burlington County Interim Executive County Superintendent (IECS) in March 2021, arguing that the "M" children should not have been deemed homeless for that period of time. Further, Salem argued that, should the homelessness determination be upheld, its tuition responsibility should be credited by respondent, the Bordentown Regional School District (Bordentown), for the amount of Application for State School Aid (ASSA) funds Salem should have received, (but did not apply for) from the State for educating the homeless "M" students. Bordentown contended that the homelessness determination should be upheld and that it should receive payment from Salem for the cost of the "M" children's tuition, transportation, and educational costs consistent with the homelessness determination. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue and the matter is ripe for summary decision; the "M" family lived in Salem until July 2018, when they became homeless; they resided at a motel in Salem until July 2019, when the mother and children moved to her parent's home in the Bordentown school district, where the children were registered for the 2019-2020 school year; in February 2020, the family moved to transitional housing in Mount Holly, where they remained for the 2020-2021 school year; at issue here is financial responsibility for the "M" children's education during for 2020-2021; the determination by the IECS that the family continued to be homeless for the 2020-2021 school year was appropriate, and Salem was the district of residence for that school year; thus, pursuant to *N.J.S.A.* 18A:7B-12.1, Salem is fiscally responsible for the four "M" children's tuition and transportation costs for 2020-2021 from the first day of the school year until February 26, 2021, when fiscal responsibility shifted to the State. Accordingly, the ALJ granted summary decision to Bordentown; Salem is responsible to pay Bordentown for educating the "M" students for 2020-2021, through the date fiscal responsibility shifted to the State; if in fact respondent sought and received any ASSA funds for the "M" children for the 2020-2021 school year, then the amount of ASSA funding respondent actually received for the "M" children should be credited toward the tuition costs petitioner owes respondent.

Upon review, the Commissioner adopted the Initial Decision as the final decision in this matter, dismissed the petition, and ordered Salem to pay respondent the tuition and costs for the "M" children for 2020-2021, from the first day of school until February 26, 2021, pursuant to *N.J.S.A.* 18A:7B-12.1 and *N.J.S.A.* 18A:38-19.

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.

57-24
OAL Dkt. No. EDU 10173-21
Agency Dkt. No. 211-11/21

New Jersey Commissioner of Education

Final Decision

Board of Education of the City of Salem,
Salem County,

Petitioner,

v.

Board of Education of the Bordentown Regional School District, Burlington County,

Respondent.

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 careful examination, the Commissioner adopts the comprehensive Initial Decision as the final decision in this matter for the reasons stated therein. In summary, the Commissioner concurs with the Administrative Law Judge (ALJ) that the homelessness determination rendered March 10, 2021, by the Interim Executive County Superintendent (IECS) regarding the "M" family for the 2020-2021 school year was appropriate. The Commissioner also agrees that petitioner's school district is the school district of residence for the "M" family for the 2020-2021 school year. Consequently, pursuant to *N.J.S.A.* 18A:7B-12.1, petitioner is fiscally responsible for each of the four "M" children's tuition and transportation

costs for the 2020-2021 school year from the first day of the school year until February 26, 2021, at which time the State of New Jersey assumed fiscal responsibility.

Additionally, the Commissioner concurs with the ALJ that respondent shall not be required to credit petitioner for Application for State School Aid (ASSA) funding for the 2020-2021 school year that petitioner could have received for the "M" children had it applied for same. That said, while the record fails to establish that respondent sought or received ASSA funding for the "M" children for the 2020-2021 school year, the Commissioner concurs with the ALJ that if in fact respondent sought and received any such funds for the "M" children for the 2020-2021 school year, then the amount of ASSA funding respondent actually received for the "M" children shall be credited toward the tuition costs petitioner owes respondent.

Accordingly, the petition of appeal is hereby dismissed. Per *N.J.S.A.* 18A:7B-12.1 and *N.J.S.A.* 18A:38-19, petitioner shall pay respondent the tuition and transportation costs for the four "M" children that accrued for the 2020-2021 school year from the first day of the school year until February 26, 2021.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 22, 2024
Date of Mailing: January 24, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 10173-21
AGENCY REF NO. 211-11/21

CITY OF SALEM BOARD OF EDUCATION,
Petitioner,
v.
BORDENTOWN REGIONAL
SCHOOL DISTRICT,
Respondent.

Corey E. Ahart, Esq., for petitioner (Corey E. Ahart, Esquire, Attorney at Law)

Seth N. Broder, Esq., for respondent (Broder Law Group, P.C., attorneys)

Record Closed: November 27, 2023 Decided: December 15, 2023

BEFORE ELAINE B. FRICK, ALJ:

STATEMENT OF THE CASE

The parties have each submitted summary decision motions, asserting there are no material facts in dispute, and that the matter can be determined as a matter of law. Petitioner, City of Salem Board of Education (Salem) challenges the homelessness

determination by the Interim Executive County Superintendent (IECS) of Burlington County, issued on March 10, 2021, regarding a family with four students, for the 2020-2021 school year. Salem alternatively contends that if the homeless determination is upheld, that its tuition responsibility for the portion of the 2020-2021 school year should be credited by respondent, Bordentown Regional School District (Bordentown) for the amount of Application for State School Aid (ASSA) funds Salem should have received from the State for the students. Bordentown asserts it is entitled to summary decision as a matter of law, upholding the IECS homeless determination and it should be paid by Salem for the cost of tuition, transportation, and educational costs, consistent with the IECS's determination for a portion of the 2020-2021 school year, until the date the State assumes fiscal responsibility for the students. Bordentown opposes Salem's contention that it must be responsible to provide a credit to Salem for the ASSA funds Salem could have received for the students for the 2020-2021 school year.

PROCEDURAL HISTORY

On March 10, 2021, correspondence was issued by Raymond Marini, Interim Executive County Superintendent (IECS), Burlington County, which rendered a determination of homelessness for the "M"[1] family for the 2020-2021 school year. It was also determined that Salem continued to be the school district of residence, with continuing fiscal responsibility for tuition, through February 26, 2021, at which time the State of New Jersey would become responsible for tuition. Salem submitted a petition of appeal to the Department of Education (DOE). The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on December 14, 2021, to be heard as a contested matter. N.J.S.A. 52:14B-1 to 14B-15 and 14F-1 to 14F-13.

Multiple telephonic conferences were conducted with the parties. The parties made continuing efforts to resolve the matter. Ultimately, each sought to file a summary decision motion, asserting that the facts are not in dispute and the matter is solely a legal issue determination. Extensions for submissions were granted and additional submissions were sought and received. Oral argument was heard via Zoom on July 13,

[1] The initial of the last name of the parent is used for privacy purposes.

2023. The record closed upon final review of submissions and argument on November 27, 2023.

FACTUAL DISCUSSION AND FINDINGS

The parties agreed upon the following undisputed statement of material facts, and I thus **FIND** as **FACTS** the following:

1. Bordentown Regional School District Board of Education ("Bordentown") has a principal place of business located at 318 Ward Avenue, Bordentown, New Jersey 08505.

2. Salem City Board of Education ("Salem") has a principal place of business located at 205 Walnut Street, Suite 408, Salem, New Jersey 08079.

3. Bordentown seeks partial payment/tuition for the 2020-2021 school year from Salem for four (4) students that attend and have attended school in Bordentown since September of 2019.

4. The mother and four (4) children lived in Salem City up through July of 2019, when they were evicted and then moved to the Motor Lodge in Salem City. The mother and four (4) children then moved to a relatives' home located at 16 Hogback Road, Trenton, New Jersey 08620, which was/is within the Bordentown Regional School District.

5. The four (4) children registered for school in Bordentown for the 2019-2020 school year while living at the 16 Hogback Road address as of July 2019.

6. The family then moved from 16 Hogback Road into transitional housing in Mount Holly, New Jersey located at 126 Cherry Street, #3, on or around February 25, 2020.

7. The family was placed there by the Board of Social Services and have lived there since February of 2020.

8. The mother and four (4) students in question did not reside in Salem for any portion of the 2019-2020 school year while attending school in Bordentown.

9. By letter, dated May 11, 2020, Bordentown requested of the Interim Executive County Superintendent of the Burlington County Office, New Jersey Department of Education, an initial determination of homelessness pursuant to N.J.A.C. 6A:17-2.7, regarding the four (4) students whom were attending Bordentown's school district despite being homeless and living in transitional housing in Mount Holly, New Jersey.

10. By letter, dated July 1, 2020, Daryl Minus-Vincent, the Interim Executive County Superintendent of Burlington County, determined the four (4) students, and their mother, were in fact homeless pursuant to N.J.A.C. 6A:17-2.2 and that pursuant to N.J.A.C. 6A:17-2.8(a), Salem was the school district of residence and financially responsible for the four (4) students.

11. It was determined that the four (4) children have never been domiciled in another jurisdiction and Salem City must reimburse Bordentown the cost of tuition and transportation for the 2019-2020 school year.

12. The Defendant, Salem, had ninety (90) days to appeal the determination for the 2019-2020 school year. No appeal was filed by Salem.

13. Bordentown then on December 7, 2020, filed a lawsuit, pursuant to R. 4:67-6, seeking reimbursement for the cost of tuition and transportation from Salem. The matter was assigned to Judge Harrington in the Superior Court of New Jersey, Burlington County.

14. It was during that litigation that Judge Harrington required Salem to submit a request for homelessness to the Executive County Superintendent for the 2020-2021 school year.

15. That determination request was filed on or about February 12, 2021.

16. A Consent Order dated November 29, 2021, was entered into between the parties whereby it was settled and agreed that Salem would pay Bordentown tuition for the 2019-2020 school year, with credits given to Salem for money received by Bordentown from the State for the four (4) children's Application for State School Aid ("ASSA").

17. Salem paid Bordentown the 2019-2020 tuition less the payments received from the credits for the "ASSA.". The 2019-2020 school year tuition issue was settled.

18. The four (4) children again registered to attend Bordentown schools for the 2020-2021 school year.

19. At the time of the registration in Bordentown for the 2020-2021 school year, the family was still living at the Mount Holly address.

20. A request for Determination of Domicile and Homelessness, or Non-Homelessness, was filed with the Interim Executive County Superintendent on February 9, 2021, as per the direction of Judge Harrington.

21. The Executive Superintendent, in a ruling dated March 10, 2021, found that Salem is responsible for tuition per N.J.S.A. 6A:17-2.8(a) for the four (4) children, but only through February 26, 2021, at which time the State of New Jersey takes over responsibility.

22. There was nothing in the determination regarding any credits due Salem per the "ASSA" or any other credits.

23. Salem filed a timely appeal to this determination and is now pending in the Office of Administrative Law related to the 2020-2021 school year.

(Stipulated Statement of Material Facts.)

The following additional facts were gleaned from the written submissions of the parties or otherwise affirmed during oral argument, which I **FIND** as **FURTHER FACTS**:

The "M" family, which included the four students, was evicted from their residence in Salem in or about June or July 2018. The family moved into a local motor lodge/motel after the eviction, which was also located in Salem. They resided there for approximately one year, until July 2019, when the mother and four children moved into the mother's parents' home, located on Hogback Road, within the Bordentown school district. The mother later explained that they moved from the motor lodge due to a domestic violence situation and were "doubled up" at her parents' home.

The children were registered in the Bordentown school for the 2019-2020 school year. The children's grandparents' address on Hogback Road was used as their residential address. The grandmother authored a handwritten note on August 15, 2019, indicating that her daughter and her four children were living with them at the Hogback Road address "until further notice." (Exhibit C, attachment "A" of Bordentown's Brief in support of Summary Decision Motion.) Bordentown did not know at the time of registration of the children for the 2019-2020 school year, that their living situation was considered temporary due to the homeless status of the family.

Bordentown learned on February 27, 2020, by a letter from People First Emergency Shelter Housing Program, that "M" family, with the four children, had been placed in a transitional housing facility in Mt. Holly on February 25, 2020. The placement was through a social services agency. (Exhibit H, Bordentown's supplemental brief.)

When Bordentown learned about the placement of the children at the transitional housing location in Mt. Holly, the school's homeless liaison, Tina Zack, took immediate

action the next day and spoke to the mother and completed a McKinney Vento identification form. The mother confirmed the family's last permanent address was in Salem, where they had resided for nine years until they were evicted in approximately June or July 2018, and the family went to live in the local motor lodge/motel in Salem. They lived there for approximately one year, until July 2019, when the mother and children moved due to domestic violence and moved in with the mother's parents at Hogback Road.

The children were registered in the Bordentown school district because the Hogback Road home was within the Bordentown district. The mother and four children lived at the Hogback Road home for six- and one-half months, until February 2020, when the mother's parents kicked her out of the house, and she was forced to leave with the children due to verbal abuse from her father. (Supplemental Residency Information form, Exhibit C, attachment D, Brief by Bordentown.) The mother explained that they were thus forced out of that temporary housing situation and placed at the Mt. Holly transitional housing location. The "M" family continued to reside at the transitional housing location for more than a year, beyond February 2021.

Bordentown's liaison, Kent, communicated with the homeless liaison for the Salem City School District, John Bacon, and informed him of the family's situation. The two liaisons engaged in further communications, with Bordentown asserting that Salem should be the responsible district of residence. Salem asserted that the Hogback Road residence should be deemed the address of record, given that Bordentown accepted the students and registered them in that school for the 2019-2020 school year. The two districts continued to communicate and assert their positions on the matter, regarding which district should be responsible for the tuition for the children.

Bordentown filed for Application for State School Aid (ASSA) for the four students, regarding the 2019-2020 school year. Bordentown received ASSA funds for the 2019-2020 school year from the state.

As of May 11, 2020, Bordentown requested an initial homelessness determination from the Interim Executive County Superintendent, Daryl Minus-Vincent (IECS Minus-

Vincent.). (Exhibit "A" Bordentown's Brief.) On July 1, 2020, IECS Minus-Vincent issued his determination that the "M" family met the criteria for homelessness outlined in N.J.A.C. 6A:17-2.2, and since the family never resided anywhere besides Salem for more than one year and was never domiciled in another jurisdiction, Salem was the school district of residence and financially responsible for the four students for the 2019-2020 school year. (Exhibit B, Bordentown's brief.) Salem did not appeal the determination. Salem asserted in its supplemental brief that the appeal was not filed due to a technical malware attack.

Communications between Bordentown and Salem about the status of the students continued, regarding the 2020-2021 school year. As of October 23, 2020, Salem's homelessness liaison sent an email to the Bordentown liaison regarding the students' status and whether Bordentown was claiming the students on its ASSA application for the 2020-2021 school year. (Exhibit M, Bordentown's supplemental brief.) On October 26, 2020, Bordentown's liaison responded, providing information that the district where the children last resided before becoming homeless is the children's district of residence, which would be Salem, and Salem would report the students as being sent to Bordentown. (Exhibit M, Bordentown's supplemental brief.) The Bordentown liaison followed up with an email to the ASSA email address, and received a reply that she was correct in identifying Salem to be the district of residence for the students, for ASSA purposes, and Salem having a sending/receiving relationship with Bordentown, where the children were attending school. This confirming email information was forwarded to the Salem liaison. (Exhibit M, Bordentown's supplemental brief.)

Bordentown sought reimbursement for the cost of the tuition for the students from Salem, for the 2019-2020 school year, by filing a lawsuit in Superior Court. During that litigation, the Superior Court Judge required Salem to submit a request for homelessness to the IECS for the 2020-2021 school year. That request was filed by Salem on or about February 9, 2021. (Exhibit D Bordentown's brief.) On March 10, 2021, IECS Raymond Marini, issued his determination that the family continued to meet the criteria of homelessness for the 2020-2021 school year, which would render Salem as the district with the continuing financial responsibility. However, pursuant to 6A:17-2.8(c), after one year, the financial responsibility would shift from Salem to the State, as of February 26,

2021. (Exhibit F Bordentown's brief.) Salem's appeal of that homelessness determination is at issue here.

Invoices issued from Bordentown to Salem in August of 2021, seeking payment of tuition for the 2020-2021 school year for the "M" family students. (Exhibit K and L, Bordentown's supplement brief.)

The parties entered into a Consent Order in the Superior Court litigation, confirming that Salem would pay the 2019-2020 tuition for the students to Bordentown, with credit given to Salem for the ASSA funds Bordentown had received from the state. (Exhibit E Bordentown's brief.) The Consent Order was entered by a Superior Court Judge on November 29, 2021.

Salem's appeal in the instant matter of the homelessness determination made by IECS Marini on March 10, 2021, was transmitted from the DOE to the OAL, and filed at the OAL on December 14, 2021.

Arguments of the parties

Salem argues that there are two simple issues: first, the students should not have been deemed homeless for the 2020-2021 school year, but if they are so deemed homeless, and Salem is required to pay the partial tuition for the 2020-2021 school year according to IECS's decision, Salem must be credited by Bordentown for the ASSA funds, per student, per the law, as stated in N.J.A.C. 6A:17-2.8(a) and (b). Salem claims it could not list the four students on its ASSA application because the students were registered in Bordentown for the 2019-2020 school year, and thus Bordentown reimbursed Salem for that year. Since the students again registered in Bordentown for the 2020-2021 school year, Bordentown should have offered reimbursement again to Salem.

It was asserted in Salem's response to Bordentown's supplemental submission that the "M" family "was not really homeless when the 2019-2020 school year began" since the family had moved in with relatives who resided in Bordentown district. They were not really homeless until they were placed in transitional housing in February 2020.

Since the homelessness was "backdated" to September of 2019, Salem contends that the transitional housing must be backdated in this instance. Salem does recognize that the 2019-2020 homelessness determination is not at issue here, yet has made arguments essentially contesting that determination, in its efforts to argue against the homeless determination made for the 2020-2021 school year, which is the determination at issue.

Salem asserts that Bordentown cannot argue that since they did not submit for the ASSA funds, they do not have to credit Salem for any tuition. Rather, Bordentown was aware of the homelessness determination yet allowed the students to register in its district for the 2020-2021 school year. It had an affirmative duty to have declined such registration and to direct the students to register in Salem. That would have enabled Salem to apply for the ASSA funding.

Salem thus seeks the entry of summary decision finding Bordentown responsible to pay the 2020-2021 school year tuition for the four students since they accepted the students into their school, which Salem contends would deem the students' placement as permanent. However, if the IECS's decision of March 10, 2021, is upheld, Salem shall be entitled to receive reimbursement from Bordentown, for the ASSA funds for the four students for the 2020-2021 school year, whether Bordentown received the funds or not.

Bordentown contends that the homelessness determination made by the IECS was correct and should be affirmed. Salem's obligation to pay tuition for the four students through the 2020-2021 school year continued, pursuant to the regulations. The family continued to reside in the transitional housing facility in Mt. Holly. Salem thus continued to be financially responsible as the district of residence, as had been confirmed previously for the 2019-2020 school year by the prior IECS, which determination was not appealed by Salem. Bordentown cannot be held accountable to reimburse Salem for ASSA funds, since Salem knew of the family's status and should have applied within the required time frame, for the ASSA funding. Bordentown thus asserts that summary decision should be granted, with affirmation of the IECS homeless determination of March 10, 2021, and Salem shall pay Bordentown for the partial tuition and transportation costs of the students.

LEGAL ANALYSIS AND CONCLUSIONS

In an administrative law matter, a "party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). The motion "shall be served with briefs and with or without supporting affidavits" and the decision "may 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." N.J.A.C. 1:1-12.5(b). The non-moving party will prevail if they "set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Id.

This standard is also set forth in New Jersey Court Rule 4:46-2, regarding a motion for summary judgment, which is substantially equivalent to an administrative law summary decision motion. In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995), the New Jersey Supreme Court stated that a motion judge determining whether a genuine issue of material fact exists is 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."

"The 'judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Brill at 540, citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). "An evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts." In re Farmers' Mutual Fire Assurance Association of New Jersey, 256 N.J. Super. 607, 618 (App. Div. 1992).

A federal law, known as the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11341, et seq., requires states to provide homeless children with access to free public education, as available to all other students. The McKinney-Vento requirements are addressed in the New Jersey Administrative Code, including the financial responsibilities of school districts and the State, for the cost of educating homeless students.

A "homeless child" is a "child or youth who lacks a fixed, regular, and adequate residence." N.J.A.C. 6A:17-1.2. The regulations state that a child is homeless when they reside in any "publicly or privately operated shelter designed to provide temporary living accommodations" and specifies such places to be hotels or motels, congregate shelters, or transitional housing. N.J.A.C. 6A:17-2.2(a)1. The regulations provide that a child is homeless if they reside in "the residence of relatives or friends" when done "out of necessity because his or her family lacks a regular or permanent residence of its own." N.J.A.C. 6A:17-2.2(a)3. There is no time limit on homelessness. A child will continue to be homeless until they have a fixed, regular, and adequate primary nighttime residence. M.O'K. and S.O'K. o/b/o K.O'K., A.O'K. and C.O'K. v. Board of Education of the Borough of Cresskill, Bergen County and Board of Education of the Borough of Little Ferry, Bergen County, EDU 14830-13, Comm'r Final Agency Decision (August 12, 2014).

The regulations define the "school district of residence" for a homeless child as "the school district in which the parent or guardian of a homeless child resided prior to becoming homeless." N.J.A.C. 6A:17-1.2. This term is synonymous with "school district of origin" referenced in the McKinney-Vento Homeless Education Assistance Act. Id. The school district of residence for a homeless child shall be responsible for, among other things, paying the cost of tuition when the child attends school in another school district, and providing transportation for the child to get to school. N.J.A.C. 6A:17-2.3(a)2-3.

Here, Salem is asserting that the family should not have been considered homeless since they resided for six months with other family members in the Bordentown district and then moved to transitional housing placement in Mt. Holly. This is contrary to the first homeless determination made in the matter for the 2019-2020, which was unchallenged by Salem. The IECS here determined, consistent with the regulations, that the "M" family continued to be homeless after they were evicted from their Salem residence, then resided to a motel in Salem, then moved in with family members as a temporary resolution due to domestic violence, then were placed in transitional housing in Mt. Holly by a service agency. N.J.A.C. 6A:17-2.2(a). The housing circumstances are undisputed. The family continued to lack fixed, regular, and primary housing, from the time of their eviction from their Salem home and were placed by the social service agency

into transitional housing. I thus **CONCLUDE** that the IECS determination that this was a homeless family and homeless students for the 2020-2021 school year was appropriate.

Regarding the cost of tuition for homeless students, the regulations provide:

> When the homeless child or youth is enrolled in a school district other than the school district of residence, the school district of residence shall pay to the school district of enrollment the tuition costs pursuant to N.J.S.A. 18A:38-19, until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1d. At that time, the school district of residence or the school district in which the parent has been deemed domiciled shall pay tuition to the school district of enrollment.
>
> N.J.A.C. 6A:17-2.8(a).

In this matter, Salem was deemed to be the district of residence for the students. This was determined in the first homelessness determination for the 2019-2020 school year, by IECS Minus-Vincent. Salem did not appeal that determination. Although it asserts it was prevented from filing due to a malware attack, there is nothing else in the record to support that is reason why they did not appeal, nor has it been demonstrated there was any effort made to appeal out of time.

The IECS determination in the matter at hand was rendered for the 2020-2021 school year. The family was in the same position as it was when the 2019-2020 school year determination was made. The family was evicted from their Salem residence in 2018, then moved into a motel in Salem, where they resided for approximately one year, then moved in with family in the Bordentown district, due to domestic violence. That was a temporary move for the family, as they were doubled up and eventually had to be placed in transitional housing in Mt. Holly due to verbal domestic abuse. These facts are unchallenged. The family continued to reside in Mt. Holly through the time they again enrolled in Bordentown for the 2020-2021 school year. They were still residing in the transitional housing at the time of the March 10, 2021, homelessness determination. Hence, the IECS determined that Salem was the continuing school district of residence for the 2020-2021 school year. I **CONCLUDE** that the determination of Salem being the

school district of residence was appropriate; it was consistent with the regulations; and it was consistent with the prior unchallenged determination by the IECS for the 2019-2020 school year, when the circumstances remained unchanged as to the family's homelessness circumstances.

There is state funding available for the school district of residence for a homeless family's students, through the ASSA program.

> The school district of residence shall list the child on its annual Application for State School Aid (ASSA) pursuant to N.J.S.A. 18A:7F-33 until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d. At that time, the school district of residence or the school district in which the parent has been deemed domiciled shall list the student on its ASSA.
>
> N.J.A.C. 6A:17.28(b).

The State is required to assume fiscal responsibility for homeless students' tuition under circumstances identified in N.J.A.C. 6A:17-2.8(c). Such responsibility shifts to the State when students have resided in a transitional housing facility, in a school district other than the school district of residence, for more than a year. N.J.A.C. 6A:17-2.8(c)3.

Here, the IECS determined that as of February 26, 2021, fiscal responsible for the students shifted from Salem to the State pursuant to N.J.A.C. 6A:17-2.8(c)3, since the family resided in the transitional housing, in another school district, for more than a year. Neither party disputes that determination. I thus **CONCLUDE** that the IECS determination that the State must assume financial responsibility for the students as of February 26, 2021, in the midst of the 2020-2021 school year was appropriate.

Salem has been found to be the district of residence for the students and deemed responsible for the cost of the students for a portion of the 2020-2021 school year. Since Salem was the school district of residence, it should have listed the children on its annual ASSA, since the parent had not established a permanent residence. Salem did not do so. Salem contends that Bordentown acted inappropriately by enrolling the students again for the 2020-2021 school year and should have directed them to enroll in Salem.

Moreover, Salem argues it was not given a definitive answer from Bordentown as to whether it should be filing for ASSA funds until sometime in November 2020. Since Bordentown did not file for ASSA funds, and failed to advise Salem to do so, Salem further asserts that Bordentown should be held accountable and reimburse Salem for the ASSA funds for the four students, or otherwise credit Salem for such funds.

Salem recognizes that if the IECS decision is upheld regarding homelessness, it will be is responsible to pay to Bordentown for having educated the students, through the date of February 26, 2021, when the State is required to assume responsibility due to the family having resided in transitional housing for one year as of then. N.J.A.C. 6A:17-2.8(c)3. Bordentown argues that Salem was on notice about the circumstances of the family; knew that Bordentown had re-registered the students; and Salem knew or should have known that it could apply for the ASSA funds for the students for the 2020-2021 school year. Bordentown disclaims any responsibility for Salem having failed to apply for ASSA funds for this family.

I have concluded that the IECS determination was correct in identifying Salem as the district of residence. Salem had the ability to submit the family under its ASSA application for the 2020-2021. There is no reason, or support under the regulations, that Bordentown must be required to reimburse or credit Salem for the ASSA funds Salem could have received. The districts resolved the issue for the 2019-2020 school year in that manner because Bordentown had received ASSA funds for the family. That agreement did not bind the districts to do so for the 2020-2021 school year. I **CONCLUDE** that Bordentown shall not be required to credit Salem for the amount of ASSA funding Salem could have, or should have received, had it applied for same for this family. However, if Bordentown did list the family on its ASSA application for the 2020-2021 school year **and** received any such funds, the amount Bordentown actually received for the family shall be credited towards the tuition Salem must pay for the portion of the 2020-2021 school year. Bordentown would not be entitled to retain ASSA funding it actually received for the students in question, if it did receive such funds for the 2020-2021 school year, and then get tuition payment from Salem, which would be a double dip.

As a matter of law, there are no material facts in dispute as asserted by the parties, and this summary decision may be rendered. I **CONCLUDE** that the determination by the IECS that the family continued to be deemed homeless for the 2020-2021 school year was appropriate. I **CONCLUDE** that the determination by the IECS that Salem was the district of residence for the 2020-2021 school year, and thus fiscally responsible for the cost of educating the students was appropriate. I **CONCLUDE** that the determination by the IECS that the fiscal responsibility for the education of the students as of February 26, 2021, shifted to the State was appropriate. I **CONCLUDE** that Salem is responsible to pay to Bordentown the cost of Bordentown having educated the students for the partial school year of 2020-2021, through the date fiscal responsibility shifts to the State. I **CONCLUDE** Salem is not entitled to relief of holding Bordentown accountable for Salem having failed to apply for ASSA funding and that Bordentown must credit Salem's tuition responsibility for what it should have received in ASSA funding. I **CONCLUDE** the only circumstance where Bordentown would be required to credit Salem for ASSA funding for the 2020-2021 school year is if Bordentown did list the family on its ASSA application for that year **and** did actually receive such funding.

I **CONCLUDE** that summary decision in **GRANTED** in favor of Bordentown, and the IECS determination of March 10, 2021, was appropriate. I **CONCLUDE** the relief sought through summary decision by Salem is **DENIED**. I **CONCLUDE** Salem is thus fiscally responsible for the portion of the 2020-2021 school year for the education of the four students in question by Bordentown. I **CONCLUDE** that Bordentown is not required to credit Salem for ASSA funds Salem could have applied for and received for the students for the 2020-2021 school year. I **CONCLUDE** the only situation where Bordentown would be required to credit Salem towards the cost of tuition is if Bordentown did apply for ASSA funds for the students for the 2020-2021 school year AND actually received and retained such funds for the students for the 2020-2021 school year.

ORDER

It is **ORDERED** that summary decision in favor of Bordentown is **GRANTED**, consistent with the conclusions above. It is **ORDERED** that the relief sought by Salem through summary decision is **DENIED**, consistent with the conclusions above.

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.

December 15, 2023
DATE

ELAINE B. FRICK, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

EBF/gd

APPENDIX

- Notice of Motion for Summary Decision by City of Salem, Certification of Counsel, Stipulated Statement of Facts, Brief in Support of Motion for Summary Decision, dated August 5, 2022
- Notice of Motion for Summary Decision by Bordentown, Brief in Support of respondent's motion, Certification of Counsel, dated August 5, 2022
- Opposition response letter brief by City of Salem, dated August 26, 2022
- Opposition response letter brief by Bordentown, dated August 26, 2022
- Proposed Stipulation of Material Facts with letter request from Bordentown to further supplement its submissions, dated December 9, 2022
- Letter brief supplemental response by Bordentown, with Exhibits H through L, dated December 22, 2022
- Letter brief supplemental response by Salem, dated April 3, 2023

58-24
State Board of Examiners Dkt. No. 1819-180
Agency Dkt. No. 6-6/23A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of
Daniel L. DeJesus, State Board of Examiners,
New Jersey Department of Education.

Order of Revocation by the State Board of Examiners, May 14, 2020

For the Respondent-Appellant, Antonio J. Toto, Esq.

For the Petitioner-Respondent State Board of Examiners, David Kalisky, Deputy Attorney General (Matthew J. Platkin, Attorney General of New Jersey)

The Commissioner has reviewed the record and papers filed in connection with Daniel DeJesus's appeal of the Order of the State Board of Examiners (Board), dated May 14, 2020, revoking his Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, Teacher of Health and Physical Education, and Supervisor certificates.

On June 28, 2019, the Board issued an Order to Show Cause regarding the revocation of appellant's certificates upon learning that, in July 2018, he was indicted on charges of third-degree burglary, theft by unlawful taking, and fencing. The charges arose from an incident during which he entered the victim's residence without permission, stole a gold necklace valued at $3,000, and sold it to a third party. In January 2019, appellant entered the pretrial intervention (PTI) program for a period of twenty-four months. As a condition of entry to PTI program, he pled guilty to third-degree burglary and the court entered an Order of Postponement.

Thereafter, the Department of Education's Criminal History Review Unit (CHRU), now known as the Office of Student Protection (OSP), notified the Board that, due to appellant's third-degree burglary "conviction," he was disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1.[1]

The Board twice mailed the Order to Show Cause to appellant, via certified and regular mail, on July 2, 2019, and again on September 17, 2019, directing him to file an answer admitting or denying the facts set forth in it within 30 days. Having received no response, the Board, via letter dated November 18, 2019, advised him that the allegations set forth in the Order to Show Cause were deemed admitted. The Board invited him to file a written submission within 30 days, to appear in person to give testimony, and advised that if no written response was received, it would consider the matter on the record currently before it. He failed to respond to the letter. Via letter dated February 10, 2020, the Board advised appellant that the matter was scheduled for consideration on February 28, 2020, and provided him with the meeting time and location. At its meeting on that date, the Board voted to revoke appellant's certificates.

On May 14, 2020, the Board voted to adopt its formal written decision and ordered the revocation of appellant's certificates. In its decision, the Board concluded that no material facts were in dispute since appellant never denied that he engaged in the conduct alleged in the Order to Show Cause, nor did he deny that he pled guilty to third-degree burglary. Accordingly, the Board summarily found, based upon the record before it, that respondent had engaged in unbecoming conduct. Next, the Board considered whether his "conviction" and employment

[1] As will be discussed in more detail herein, the record on appeal does not contain a judgment of conviction. The Department's decision to permanently disqualify appellant from public school employment pursuant to *N.J.S.A.* 18A:6-7.1, issued January 28, 2019, is not presently before the Commissioner for review.

disqualification constituted just cause to act against his certificates. The Board found that his "conviction" demonstrated behavior that fell far short of a role model for students. Furthermore, the Board reasoned that since he was statutorily barred from employment in public schools, he should not be permitted to retain his certificates or hold himself out as a teacher. In the end, the Board concluded that the only appropriate sanction was revocation of his certificates.

On June 9, 2023, more than three years after the Board issued its written decision and Order of Revocation, appellant's counsel filed an appeal with the Commissioner claiming that appellant never received any decision or order from the Board revoking his certificates. In his letter brief, which did not comport with the filing requirements set forth at *N.J.A.C.* 6A:4-2.8, he contends that his certificates should be reinstated because: (1) he successfully completed his PTI program without incident; (2) the "condition of P.T.I. did not state that he was banned from teaching or that he had to revoke [sic] his teaching license"; and (3) the underlying conduct did not involve children, occur on school property, or during school hours.

In its opposition brief, the Board contends that appellant's appeal is untimely and should be dismissed on that basis. Additionally, the Board contends that its determination to revoke appellant's certificates should be affirmed by the Commissioner because it was reasonable and sufficiently supported by the record. In particular, the Board emphasizes that appellant's successful completion of the PTI program does not preclude it from revoking his certificates, nor does the fact that the underlying unbecoming conduct did not involve children, school property, or occur during school hours.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute her judgment for that of the Board so long as the appellant received due

process and the Board's decision is supported by sufficient credible evidence in the record. The Commissioner's role in reviewing appeals is constrained by *N.J.A.C.* 6A:4-4.1(a), which specifies that "the Commissioner shall ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated that the State Board of Examiners . . . acted in a manner that was arbitrary, capricious, or contrary to law."

Initially, the Commissioner finds that the appeal was untimely and can be dismissed on that basis. Pursuant to *N.J.A.C.* 6A:4-2.2(a), "Appeals of final State Board of Examiners decisions shall be filed within 30 days of the filing date of the decision being appealed." The instant appeal was filed more than 3 years after the Board issued its decision and Order of Revocation. Appellant has not offered any explanation, by way of certification, as to why he waited until June 2023 to appeal a decision that was issued in May 2020. Although the Commissioner may, in her discretion, relax certain rules if adherence to same would result in an injustice, appellant has not provided any basis for concluding that the filing deadline should be relaxed in this case.

Even assuming the appeal was timely filed, the Commissioner finds that the Board's decision to revoke appellant's certificates is supported by sufficient credible evidence in the record and is consistent with precedent given the nature and extent of the underlying conduct, which is undisputed and clearly constitutes conduct unbecoming an educator. "[T]eachers . . . are professional employees to whom the people have entrusted the care and custody of . . . school children . . . . This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *In the Matter of the Tenure Hearing of Sammons*, 1972 *S.L.D.* 302, 321. Teachers "hold positions demanding public trust, and in such positions,

they teach, inform, and mold habits and attitudes, and influence the opinion of their pupils." *In the Matter of the Tenure Hearing of Tordo*, 1974 *S.L.D.* 97, 98-99.

The Board may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher, or other just cause. *N.J.A.C.* 6A:9B-4.4. "Conduct unbecoming" is an "elastic" concept that includes "conduct which adversely affects the morale or efficiency" of the public entity or "which has a tendency to destroy public respect for [public] employees and confidence in the operation of [public] services." *In re Emmons*, 63 *N.J. Super.* 136, 140 (App. Div. 1960). *Accord Bound Brook Bd. of Educ. v. Ciripompa*, 228 *N.J.* 4, 13 (2017). A finding of unbecoming conduct "may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." *Bound Brook Bd. of Educ.*, 228 *N.J.* at 14 (quoting *Karins v. City of Atlantic City*, 152 *N.J.* 532, 555 (1998)). Additionally, unfitness to hold a position in a school system may be demonstrated through just one incident, "if sufficiently flagrant." *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944).

Here, appellant's unbecoming conduct is undisputed and demonstrates both a lack of integrity and a serious lapse in judgment. The record shows that, once confronted by police, he admitted that he stole a gold necklace from a private residence he entered without permission and sold the necklace to an unknown person he encountered on the streets of Perth Amboy. His actions demonstrate that he is ill-suited to be a role model for students. Moreover, the Board has previously revoked certificates in matters where certificate holders admitted having committed single incidents of theft or fraud, regardless of their successful completion of PTI or

the existence of criminal charges or convictions. *See, e.g., In the Matter of the Certificates of Diana H. Park*, State Board of Examiners Dkt. No. 1415-260 (March 3, 2016) (revocation of certificates following admission that certificate holder stole funds from a school association, notwithstanding her successful completion of PTI, payment of restitution, and demonstrated remorse); *In the Matter of the Certificate of David Toler*, State Board of Examiners Dkt. No. 669-02/02, OAL Dkt. No. EDE 5946-02, Initial Decision (August 13, 2004), Final Decision (October 28, 2004) (revocation of certificates following admission that certificate holder participated in a scheme to defraud the State Health Benefits Program, notwithstanding his successful completion of PTI and payment of restitution); *In the Matter of the Certificates of William McMeekan*, Commissioner Decision No. 109-16A (March 22, 2016) (affirming revocation of certificates following certificate holder's admission that he removed a computer from school property without permission that was later retrieved from his home by police).

Appellant's contentions to the contrary are unavailing. As discussed above, successful completion of a PTI program does not prevent the Board from acting against the appellant's certificates on the basis of proven unbecoming conduct. *In the Matter of the Certificates of Mary Purcell, State Board of Examiners*, Commissioner Decision No. 73-17A (March 9, 2017), at 4. Nor does the fact that appellant's conditions of PTI did not disqualify him from teaching or require him to surrender his teaching certificates. The PTI proceedings are separate and apart from those initiated by the Board pursuant to its statutory authority to revoke teaching certificates for just cause. *See N.J.S.A.* 18A:6-38 (authorizing Board to revoke certificates "under rules and regulations prescribed by the State board"); *N.J.A.C.* 6A:9B-4.4 (explaining that the Board may revoke or suspend certificates on the basis of conduct unbecoming a teacher, among other

reasons). Furthermore, it is well-established that "[w]hether or not the incident was connected to appellant's teaching profession is of no moment; disciplinary action may still be taken for conduct that occurs entirely outside of school or involves people entirely unrelated to school operations." *In the Matter of the Certificates of Mary Purcell, State Board of Examiners*, at 4.

However, the Commissioner wishes to clarify that the Board should not have based any aspect of its decision on a criminal "conviction" for third-degree burglary since the record lacks evidence of the court's entry of a judgment of conviction. A guilty plea taken in connection with admission to the PTI program does not automatically result in the entry of a judgment of conviction. "Pursuant to *N.J.S.A.* 2C:43-13(b), a guilty plea entered as a condition of admission to PTI 'shall be held in an inactive status pending termination of the supervisory treatment,' under subsection (d) (successful completion of the program, resulting in dismissal of the charges) or (e) (dismissal from the program, thereby reactivating the charges)." *State v. Lavrik*, 472 *N.J. Super.* 192, 215-16 (App. Div. 2022). "Therefore, the guilty plea has no force or effect, unless PTI is violated. It is neither a judgment of conviction nor an adjudication. If a defendant successfully completes the program, the charges are dismissed." *Id.* at 216 (quoting Attorney General, *Uniform Guidelines on the Pretrial Intervention Program* at 7 (March 1, 2016) (Directive 2016-2)); *see also R.* 3:28-7(b) (addressing the available dispositions following conclusion of PTI term). Despite the Board's error in this regard, the Commissioner finds that the sufficient, credible, evidence of appellant's unbecoming conduct in the record provides ample support for the Board's decision to revoke appellant's certificates—even in the absence of a criminal conviction.

In closing, because the Board's decision is supported by sufficient, credible evidence, and appellant has failed to establish that it was arbitrary, capricious, or contrary to law, the

Commissioner has no grounds to disturb it. *N.J.A.C.* 6A:4-4.1(a). Accordingly, the decision of the State Board of Examiners revoking appellant's certificates is affirmed.[2]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 22, 2024
Date of Mailing: January 24, 2024

[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.

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF	:	STATE BOARD OF EXAMINERS
DANIEL L. DEJESUS	:	ORDER OF REVOCATION
_____	:	DOCKET NO: 1819-180

At its meeting of May 17, 2019, the State Board of Examiners (Board) reviewed information regarding Daniel L. DeJesus. In July 2018, DeJesus was indicted on charges of Burglary (3rd degree), Theft by Unlawful Taking (3rd degree) and Fencing (3rd degree). DeJesus had entered the victim's residence without permission and stole a necklace valued at $3000, which he later fenced. On January 25, 2019, DeJesus received an Order of Postponement and entered a Pre-Trial Intervention (PTI) program for a period of 24 months after he pled guilty to Burglary (3rd degree). The Office of Student Protection (OSP), formerly the Criminal History Review Unit, notified the Board that, as a result of his conviction, DeJesus is disqualified from public employment pursuant to *N.J.S.A.* 18A:6-7.1 *et seq.* DeJesus holds a Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, Teacher of Health and Physical Education, and Supervisor certificates.

DeJesus did not challenge the accuracy of his criminal history record before the Commissioner of Education. Upon review of the above information, the Board voted at its meeting June 28, 2019 to issue DeJesus an Order to Show Cause as to why his certificates should not be revoked.

After obtaining a correct address for DeJesus, the Board sent him the Order to Show Cause by regular and certified mail on September 17, 2019. The Order provided that DeJesus had 30 days to respond. The certified mail card was returned unclaimed and the regular mail was not returned. DeJesus did not respond.

Thereafter, on October 31, 2019, the Board sent DeJesus another notice by certified and regular mail providing him an additional 15 days to respond to the Order to Show Cause. The certified mail copy was returned as "Unclaimed" and the regular mail copy was not returned. DeJesus did not file a response.

Accordingly, pursuant to *N.J.A.C.* 6A:9B-4.6(e), on November 18, 2019, the Board sent DeJesus a hearing notice by regular and certified mail. The notice explained that the allegations in the Order to Show Cause were deemed to be admitted as a result of his failure to file an Answer. Thus, DeJesus was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder, as well as arguments with regard to the appropriate sanction in the event that the Board found just cause to take action against his certificates. It also explained that, upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if his offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. DeJesus was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. The certified mail card was returned "unclaimed" and the regular mail copy was not returned. Once again, DeJesus did not file a response.

The threshold issue before the Board in this matter is whether DeJesus' conviction and subsequent disqualification constitute conduct unbecoming a certificate holder or other just cause. Since DeJesus failed to respond to the Order to Show Cause, the allegations therein are deemed admitted. *N.J.A.C.* 6A:9B-4.6(c). Consequently, at its meeting of February 28, 2020, the Board considered only the allegations in the Order to Show Cause and the information received and considered by the Board. The Board concluded that no material facts related to DeJesus' offense

were in dispute since he never denied that he engaged in the conduct alleged and had been convicted and therefore determined that summary decision was appropriate in this matter. *N.J.A.C.* 6A:9B-4.6(h). After reviewing the allegations, the Board found that DeJesus engaged in unbecoming conduct.

The Board must now determine whether DeJesus' conviction and resulting disqualification, as set forth in the Order to Show Cause, represent just cause to act against his credential pursuant to *N.J.A.C.* 6A:9B-4.4. The Board finds that they do.

In enacting the Criminal History Review statute, *N.J.S.A.* 18A:6-7.1 *et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed were not proper examples for them. Individuals convicted of crimes such as Burglary fall squarely within this category. The strong legislative policy statement is also in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. "Teachers... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). In this instance, DeJesus's conviction for Burglary (3rd degree) demonstrates behavior that falls far short of a role model.

The strong policy statement on the part of the Legislature set forth in *N.J.S.A.* 18A:6-7.1(b) also offers guidance to the Board as to the appropriate sanction in this matter. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified

from teaching in a public school be permitted to continue to hold himself out as a teacher. Thus, because the Legislature and the Commissioner consider DeJesus' offense so significant, the Board believes that the only appropriate sanction in this case is the revocation of his certificate.

Accordingly, on February 28, 2020, the Board voted to revoke Daniel L. DeJesus's Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, Teacher of Health and Physical Education, and Supervisor certificates. On this 14th day of May 2020, the Board voted to adopt its formal written decision and it is therefore ORDERED that the revocation of DeJesus's certificate be effective immediately. It is further ORDERED that DeJesus return his certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

_____

Rani Singh, Secretary
State Board of Examiners

Date of Mailing:
By Certified and Regular Mail

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.

59-24

State of New Jersey
DEPARTMENT OF EDUCATION
PO BOX 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

ANGELICA ALLEN-MCMILLAN, Ed.D.
Acting Commissioner

January 22, 2024

VIA EMAIL ONLY

Ms. Simone Patterson
Greenwich Township Board of Education
415 Swedesboro Road
Gibbstown, NJ 08027

David Kalisky, DAG
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, New Jersey 08625

Re: *In the Matter of Simone Patterson, Greenwich Township Board of Education, Warren County*, SEC Dkt. No. D08-23, Agency Dkt. No. 284-10/23, Commissioner Decision No. 347-23SEC

Dear Parties:

I have reviewed the materials filed in connection with respondent Simone Patterson's motion for reconsideration of the Commissioner's November 20, 2023 decision, removing respondent as a member of the Greenwich Township Board of Education ("Board) for failure to timely file the Personal/Relative and Financial Disclosure Statements ("Disclosure Statements") required under the School Ethics Act.

Pursuant to *N.J.A.C.* 6A:3-1.15(b)(2), a motion for reconsideration shall be determined based upon the following:

i. claim(s) of mistake, provided, however, that disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute "mistake" for purposes of this section;
ii. newly discovered evidence likely to alter the outcome of a matter, where such evidence could not have been previously discovered by due diligence;
iii. newly ascertained misrepresentation or other misconduct of an adverse party, where such
iv. misrepresentation could not have been previously known; or
v. reversal of a prior judgment on which the present matter is based.

Upon review of the parties' submissions, I find that appellant has failed to meet this standard. Respondent indicates that her Disclosure Statements were initially rejected but were resubmitted on October 18, 2023, the day after the School Ethics Commission (SEC) issued its decision. However, the Commissioner notes that the Disclosure Statements are unsigned and remain incomplete. Pursuant to *N.J.A.C.* 6A:28-3.3(e), a board member who fails to complete and file the Disclosure Statements as of the date the Commissioner has issued a final decision shall be removed. Accordingly, respondent's removal is appropriate.

Respondent's request for reconsideration of the Commissioner's November 20, 2023 decision is hereby DENIED. Respondent is removed from the Board for violating the School Ethics Act.

Sincerely,

Angelica Allen-McMillan, Ed.D.
Acting Commissioner

AAM/JS
c: Brigid Martens, Director, School Ethics Commission

59-24L

60-24
OAL Dkt. No. EDU 13843-23
Agency Dkt. No. 335-12/23

New Jersey Commissioner of Education

Final Decision

J.S., on behalf of minor child, J.S.,

Petitioner,

v.

Board of Education of the Township of Cherry Hill, Burlington County,

Respondent.

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

Upon such review, the Commissioner concurs with the ALJ that petitioner failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Additionally, the Commissioner notes the ALJ's finding that, based upon representations made by counsel for both parties during prehearing conferences, there are no other issues to be decided and the petition should be dismissed.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons stated therein. Having received no objections, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 22, 2024
Date of Mailing: January 24, 2024

[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 DENYING EMERGENT RELIEF
OAL DKT. NO. EDU 13843-23
AGENCY DKT. NO. 335-12/23

J.S. ON BEHALF OF J.S., A MINOR CHILD,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWNSHIP OF CHERRY HILL, CAMDEN COUNTY,

Respondent.

Lloyd D. Henderson, Esq., appearing for petitioner (Law Office of Lloyd D. Henderson and Associates, attorneys)

Patrick F. Carrigg, Esq., appearing for respondent (Lenox, Socey, Formidoni, Giordano, Carrigg, Lang & Casey, LLC, attorneys)

Record Closed: December 21, 2023 Decided: December 22, 2023

BEFORE **KIMBERLEY M. WILSON**, ALJ:

STATEMENT OF THE CASE

Petitioner, J.S. (J.S. parent) on behalf of J.S., a minor child (J.S. child or J.S. student), moves for emergent relief, seeking permission to return to Carusi Middle School (CMS), a school within respondent Board of Education of the Township of Cherry Hill, Camden County (the Board or the District) with safety protections in place to allow her to continue her education. The Board denies that it has prevented J.S. child from attending school and that CMS is not safe for J.S. child to attend school.

PROCEDURAL HISTORY

On or around December 11, 2023, J.S. parent filed a verified petition and request for emergent relief with the Commissioner of the Department of Education, Office of Controversies and Disputes (DOE). On December 13, 2023, DOE transmitted this matter to the Office of Administrative Law (OAL) as a contested case seeking emergent relief. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. On December 19, 2023, the Board provided the Administrative Law Judge (ALJ) a brief and certification in response to J.S. parent's request for emergent relief. The ALJ attempted to resolve the matter with the parties during status conferences on December 19, 2023, and December 20, 2023. The hearing was held on December 21, 2023, and the record closed that day.

The request for emergent relief is now ripe for adjudication.

FACTUAL DISCUSSION AND FINDINGS

The following **FACTS** are not in dispute, and so I **FIND**:

1. J.S. student is a student at CMS. (Pet. ¶ 1.)

2. J.S. student has an Individualized Education Program (IEP), which provides speech therapy only. (IEP at 1.)

3. On or around September 27, 2023, J.S. student's parents emailed J.S. student's teachers, indicating that J.S. student has an autism spectrum disorder. (Certification of Neil Burti, Principal (Burti Cert.) ¶ 3.) J.S. student is not classified for autism spectrum disorder. (Ibid.)

4. On or around October 23, 2023, J.S. student's parents emailed Steve Delaney (Delaney), CMS guidance counselor, that another CMS student (Student X[1]) told J.S. student multiple times that Student X likes J.S. student romantically, but J.S. student rejected Student X. J.S. parent advised J.S. student not to speak to Student X anymore. (Id. ¶ 4.) According to J.S. student's parents, Student X has said "she would starve herself just to be with [J.S. student]." (Ibid.) Student X "is harassing our daughter and it may seem like a simple crush for anyone on the outside looking in, however, we have to consider that [J.S. student] is autistic. "We realized that pulling [Student X] to the office and notifying her parents may be all you can do & at this point in time we feel it is a must. . . . It is disruptive to [J.S. student's] time there at [CMS]." (Ibid.)

5. On or around October 23, 2023, Delaney interviewed J.S. student based on her parents' email. (Id. ¶ 5.) With Constance Spencer (Spencer)[2], Delaney interviewed Student X, who was told not to approach J.S. student. (Ibid.)

6. On or around October 23, 2023, Delaney emailed J.S. student's parents, indicating that the situation had been addressed. (Id. ¶ 6.)

7. On or around October 26, 2023, J.S. parent emailed Delaney expressing concerns about J.S. student's safety at CMS and Student X's potential for retaliating against J.S. student. (Id. ¶ 7.) J.S. parent requested that the District change Student X's schedule, as J.S. and Student X had four core classes together. (Ibid.) J.S. parent reiterated that they advised J.S. student to distance herself from Student X. (Ibid.)

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[1] The other student is referred to as Student X to maintain her confidentiality, as she is not a party to this matter.

[2] Spencer is CMS's anti-bullying specialist.

8. Delaney emailed J.S. student's parents to arrange a telephone call. (Ibid.)

9. On or around October 30, 2023, Delaney called J.S. student's parents. (Id. ¶ 8.) During that telephone call, J.S. student's parents again requested that the District change Student X's schedule. (Ibid.) Delaney offered to change J.S. student's schedule instead. (Ibid.) J.S. student's parents refused this offer, indicating that in their mind, J.S. student was a victim. (Ibid.)

10. On or around November 28, 2023, J.S. student reported to Delaney that Student X kissed her twice at CMS on November 20, 2023, and November 27, 2023. (Id. ¶ 9.)

11. Student X denied kissing J.S. student. (Id. ¶ 10.) Both students provided written statements, and the District notified parents for both students. (Ibid.)

12. On or around November 29, 2023, J.S. student's parents met with the CMS campus police officer to complete a police report. (Id. ¶ 11.) J.S. student's parents also scheduled a meeting with Delaney and Dr. Julia Benavides (Benavides) for November 30, 2023. (Ibid.)

13. On or around November 30, 2023, J.S. student's parents sent an email to the District, cancelling the meeting with Delaney and Benavides. (Id. ¶ 12.)

14. On or around November 30, 2023, J.S. student's parents completed a HIB[3] 338 form and delivered it to CMS. (Id. ¶ 13.) Burti emailed the District's anti-bullying specialist[4] to advise of the HIB form. (Ibid.) The HIB investigation is pending because of the police complaint and investigation. (Ibid.)

15. On or around December 8, 2023, the District changed Student X's schedule based on a request from Student X. (Id. ¶ 17.)

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[3] "HIB," is an acronym for harassment, intimidation and bullying under the Anti-Bullying Bill of Rights Act. See N.J.S.A. 18A:37-14.

[4] It is not clear from the record whether Spencer is also the District's anti-bullying specialist.

16. On or around December 11, 2023, Benavides left a voicemail message for J.S. student's parent to inquire about J.S. student's well-being and when she would be returning to school. (Id. ¶ 18.) Benavides also attempted to reschedule the November 30, 2023 meeting. (Ibid.)

17. J.S. student has not attended school since November 29, 2023, when J.S. parent removed J.S. child from CMS for her safety and protection. (Pet. ¶ 2.)

18. In the petition, J.S. parent seeks the following relief: (i) J.S. student is permitted to return to CMS with safety protections in place to continue her free and appropriate public education; (ii) legal fees awarded to J.S. parent's counsel; and (iii) any other relief deemed equitable and just. (Pet. 2.)

Testimony

The following is not a summary of all testimony but an encapsulation of the testimony relevant to whether emergent relief is appropriate here.

For petitioner

J.S. parent is J.S. student's father. J.S. student is twelve years old and in the sixth grade. J.S. student last attended an elementary school in the District, where she had one teacher and one class. In middle school, J.S. student has to change classes. J.S. parent said that J.S. student is adjusting fairly well to middle school, even though she has missed her school bus home because she was in the wrong area of the school and sat in the wrong class once.

Around October 2023, J.S. parent learned that Student X was sending J.S. student love letters, wanting to have a relationship with J.S. student. According to J.S. parent, Student X told J.S. student and J.S. student's friends that Student X dreamed that she and J.S. student were having sex. According to J.S. parent, J.S. student rejected Student

X fourteen times. Student X also told J.S. student that she wanted to die or kill anyone so that J.S. student would be with her. J.S. parent found these statements concerning, because J.S. student should not have had to tell Student X fourteen times that J.S. student did not want a relationship with her.

J.S. parent noted that J.S. student's autism is such that J.S. student has difficulty expressing her emotions. J.S. student is always happy and almost child-like. J.S. parent indicated that he did not know Student X or Student X's parents, but he was concerned that Student X would not leave J.S. student alone.

On or around November 28, 2023, J.S. student's mother received a call from Constance Spencer, the anti-bullying specialist at CMS, who relayed that Student X pulled J.S. student into the bathroom and kissed her. J.S. student did not tell her parents about this conduct; J.S. student's friends advised her to report the conduct to CMS. J.S. student's parents were scared, because in their mind, Student X's behavior was a sexual assault[5] and her behavior towards J.S. student seemed to be progressing. Spencer told J.S. student's parents that they could come to CMS the following day and file a complaint and that Spencer would assist them with filing that complaint. J.S. parent later testified that the District did not give them information about the HIB process and that J.S. student's parents had to research this process.

J.S. student's parents completed a HIB form and submitted it to the District, and they also called the local police to initiate an investigation. They filed a report with CMS campus police and were told the report would be filed with the Cherry Hill Police Department.

[5] From the evidence presented in the record, the conduct at issue does not appear to rise to the definition of sexual assault pursuant to N.J.S.A. 2C:14-2, as there is no evidence of sexual penetration or sexual contact with a victim less than thirteen years old and the actor is four years older than the victim. In addition, sexual contact is defined as the intentional touching of a victim's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. N.J.S.A. 2C:14-1(d). A person's intimate parts are sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person. N.J.S.A. 2C:14-1(e). There was no evidence presented that Student X touched J.S. student's intimate parts when she allegedly kissed J.S. student.

The police report has been submitted to the County prosecutor's office, and J.S. student's parents are waiting to learn whether Student X will be charged with any criminal offenses. J.S. student's parents did not reschedule the November 30, 2023 meeting with the District, because they were seeking legal representation at that time.

The District has never told J.S. student's parents that J.S. student could not attend CMS. J.S. parent did not know that Student X denied kissing J.S. student, and he also did not know that Student X's schedule had been changed at her request. J.S. parent has never met Student X and does not know her or her mindset.

J.S. parent described an unprofessional interaction that he had with Spencer. According to J.S. parent, Spencer refused to talk to him or his wife about the incident, and J.S. parent said that Spencer was dismissive. J.S. student's parents asked Spencer questions about Student X, and Spencer would not answer those questions. Spencer asked J.S. parent how many times J.S. student went to the bathroom each day, and she offered to allow J.S. student to use the nurse's bathroom. J.S. student has not been interviewed by Spencer as part of the HIB investigation, as J.S. student's parents do not believe that she is qualified to conduct such an interview.

J.S. student's parents pulled J.S. student from CMS because they were concerned for J.S. student's safety. They are concerned about what other things Student X has planned for J.S. student. J.S. student's parents want J.S. student to return to school and want CMS to keep J.S. student and Student X separated. J.S. student has been keeping up with her schoolwork through Google classroom; she has not been receiving the speech supports set forth in her IEP.

The relief that J.S. parent seeks is to have J.S. student free from Student X's predatory behavior and separate the students, because CMS will not do so.

For respondent

Benavides is an assistant principal at CMS, in charge of the sixth and eighth grades. There are 900 students at CMS, about 300 in the sixth grade. She has over twenty

years of educational experience, including over seven years as an assistant principal. Benavides is familiar with J.S. student and the incident giving rise to the motion for emergent relief.

Benavides testified that CMS students are not trained on HIB but are told to consult their guidance counsellor if they are experiencing problems. She described students in the sixth grade as a curious age, where students are unsure about changing classes and meeting new friends. Teachers typically have to guide students with making better choices when they have made mistakes.

Benavides described J.S. student's allegations as a disputed event, because local police are investigating, which puts the HIB investigation on hold until a decision is made about any criminal charges. The decision to pause the HIB investigation came from the Cherry Hill campus police.

Benavides believes that CMS has offered a safe environment for J.S. student since November 30, 2023.

Additional Factual Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. "A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or

with common experience, or because it is overborne by other testimony." Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Having had the opportunity to hear and view both of the witnesses during their testimony, I accept the testimony of J.S. parent and Benavides as credible. They both testified consistently and forthrightly about J.S. student and the incident involving Student X. Accordingly, I **FIND** the following additional **FACTS**:

1. J.S. student did not tell her parents about the instances where Student X allegedly kissed her; J.S. student's friends advised her to report the conduct to CMS.

2. J.S. student's parents completed a HIB form and submitted it to the District, and they also called the local police to initiate an investigation. They filed a report with CMS campus police and were told the report would be filed with the Cherry Hill Police Department.

3. The police report has been submitted to the County prosecutor's office, and J.S. student's parents are waiting to learn whether Student X will be charged with any criminal offenses.

4. J.S. student's parents did not reschedule the November 30, 2023 meeting with the District, because they were seeking legal representation at that time.

5. The District has never told J.S. student's parents that J.S. student could not attend CMS.

6. J.S. parent did not know that Student X denied kissing J.S. student, and he also did not know that Student X's schedule had been changed at her request.

7. J.S. parent has never met Student X and does not know her or her mindset.

8. Spencer asked J.S. parent how many times J.S. student went to the bathroom each day, and she offered to allow J.S. student to use the nurse's bathroom.

9. Because local police are investigating the incident between J.S. student and Student X, the HIB investigation is on hold until a decision is made about any criminal charges. The decision to pause the HIB investigation came from the Cherry Hill campus police.

10. J.S. student's parents pulled J.S. student from CMS because they were concerned for J.S. student's safety.

11. J.S. student's parents want J.S. student to return to school and want CMS to keep J.S. student and Student X separated.

12. J.S. student has been keeping up with her schoolwork through Google classroom; she has not been receiving the speech supports set forth in her IEP.

LEGAL ANALYSIS AND CONCLUSIONS

The regulations governing controversies and disputes before the Commissioner of Education provide that "[w]here the subject matter of the controversy is a particular course of action by a district board of education . . . [,] the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may "[t]ransmit the motion to the OAL for immediate hearing on the motion." N.J.A.C. 6A:3-1.6(c)(3).

At a hearing for emergent relief, the petitioner must show that they satisfy the following four standards:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying petitioner's claim is settled;

3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and

4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

[N.J.A.C. 6A:3-1.6(b) (citing Crowe v. DeGioia, 90 N.J. 126 (1982)).]

The petitioner must prove each of these standards by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). Arguably, the standard is a high threshold to meet, and I will address each prong separately.

1. Irreparable harm

As the New Jersey Supreme Court explained in Crowe, "[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132 [citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)]. Indeed, the purpose of emergent relief is to "prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case." Ibid. [quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854)].

"Irreparable harm is shown when money damages cannot adequately compensate plaintiff's injuries." Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "More than a risk of irreparable harm must be demonstrated." Cont'l Grp., Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). "The requisite for injunctive relief has been characterized as a clear showing of immediate irreparable injury . . . or a presently existing actual threat; [an injunction] may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by the common law." Ibid.

J.S. parent has not provided clear and convincing evidence of any immediate irreparable injury to J.S. student. Whether Student X will approach and potentially harass J.S. student in the future is speculative, and while, as a parent, I understand J.S. parent's concern that J.S. student may be harassed again, there is no tangible evidence in the record indicating the same. J.S. parent admitted that he does not know Student X and has never met her. There is no evidence in this record of any communication between J.S. student and Student X since J.S. student reported to CMS that Student X allegedly kissed her. Student X's schedule has been changed, potentially minimizing her opportunity to harass J.S. student. There is no present, actual threat here, just J.S. parent's fear of a future incident between J.S. student and Student X.

Counsel for J.S. parent argues that J.S. student's missed educational time constitutes immediate irreparably injury. "There can be no reasonable argument that a person classified in special education needs daily supervision and instruction. Each day is important as the student progresses during the limited school year. Every day [J.S. student] misses sets her back in her progress towards successfully completing and fulfilling her IEP." Pl. Br. 2. First, it is important to note that considerations under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401, are not at play here. The issue at hand, as J.S. parent raised them, do not pertain to J.S. student's IEP; it is simply whether the District has addressed the safety concerns that J.S. student's parents have raised.[6]

Second, and more importantly, the District has not barred or prevented J.S. student from attending CMS. J.S. student's parents have unilaterally decided to keep J.S. student from attending CMS, and even when the District attempted to contact J.S. student's parents on December 11, 2023, to discuss issues, J.S. student's parents were already seeking legal counsel, rather than responding to the District. Counsel for J.S. parent argues J.S. student is constructively being prevented from attending CMS; I note there is no legal authority, whether statute, case law or regulation, supporting this argument. Pl.

[6] J.S. parent has sought legal fees and other equitable relief in the petition. Because this is not an IDEA matter, those requests for relief are denied.

Br. 2. The lack of legal authority underpinning this argument merely underscores its specious nature.

Finally, J.S. parent testified that J.S. student is keeping up with her schoolwork through Google classroom. While Google classroom is not a complete substitute for an in-person classroom experience, J.S. student has not missed out on her education in its entirety.

J.S. parent has not sustained his burden to show by clear and convincing evidence that J.S. student has suffered irreparable harm. Accordingly, I **CONCLUDE** that J.S. parent has not shown that J.S. student suffered irreparable harm.

2. Settled Legal Right.

Next, emergent relief "should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. at 304–05). As noted previously, J.S. parent wants for J.S. student to return to CMS and wants CMS to keep J.S. student and Student X separated.

Here, what exactly happened between J.S. student and Student X in November 2023 is not settled. The parties are awaiting a decision from the County prosecutor's office on whether criminal charges will be brought against Student X based upon a police investigation. The HIB investigation to determine whether J.S. student was subjected to harassment, intimidation and bullying has been placed on hold until any charging decisions have been made. Any decisions on whether J.S. student and Student X should be separated while attending CMS will have to wait until decisions on whether Student X will be charged with any criminal charges and the outcome of the HIB investigation. Counsel for J.S. student has cited to no legal authority indicating that the District could or should have handled this situation differently and provided no proof, let alone clear and convincing evidence, that it has a right to the relief it seeks. Therefore, I **CONCLUDE** that J.S. parent has not shown a legal right underlying his claim.

3. Likelihood of Success on the Merits

J.S. parent has not demonstrated that he is likely to succeed on the merits of the underlying claim. Under this emergent relief prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 [citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)]. This typically "'involves a prediction of the probable outcome of the case based on each party's initial proofs, usually limited to documents." Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) [quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)].

Because I have found that J.S. parent has not shown a legal right underlying his claim, it logically follows that there is not a likelihood of success on the merits. J.S. parent has not provided any clear and convincing evidence or legal argument showing that he is likely to prevail against the District.

Counsel for J.S. parent argues, "[J.S. parent] has the likelihood of prevailing on the merits as [CMS] has demonstrated little if any interest addressing the needs of non-white students and students with disabilities." Pl. Br. 2. The facts in the record show otherwise. The District responded to concerns J.S. student's parents raised in October 2023, and the parties believed that those concerns had been resolved. Once J.S. student reported the alleged incident with Student X in November 2023, the District attempted to work with J.S. student's parents, which included an anticipated meeting with Benavides on November 30, 2023. J.S. student's parents canceled that meeting and never rescheduled, even after Benavides contacted J.S. student's parents on December 11, 2023. There is no evidence in this record supporting this argument that the District treated J.S. student differently because she is non-white or disabled.

Counsel for J.S. parent has not provided any clear and convincing evidence or legal authority showing that J.S. parent has a reasonable probability of ultimate success on the merits, and I **CONCLUDE** that J.S. parent has not shown a reasonable probability of ultimate success on the merits.

4. Balancing the Equities

The fourth and final emergent relief standard involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 [citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)].

The only evidence presented here regarding relative hardship to the parties pertains to J.S. student, who has missed school solely based on her parents' decision to keep her from attending CMS since November 29, 2023. Despite the argument that she has been constructively suspended from CMS, an argument that lacks a legal foundation, there is no hardship to J.S. student in denying emergent relief. J.S. student may return to CMS at any time to continue her education.

Requiring the District to grant the emergent relief that J.S. parent seeks, namely ensuring that J.S. student and Student X remain separate, imposes greater harm on the District than it does J.S. student. Again, it is important to note that there is a pending charging decision regarding Student X's conduct, along with a HIB investigation. These decisions should be made and investigations completed before the District determines what, if any, remedial steps should be taken. Requiring a District to ensure that students remain separate when charging decisions have not been made and an HIB investigation is not completed is burdensome on the District.

I **CONCLUDE** that the Board will suffer greater harm should emergent relief be granted than J.S. student if the requested relief is not granted.

J.S. parent's dissatisfaction with the status of this process is not a basis for emergent relief. J.S. student's parents began this process, seeking criminal charges against Student X, and they will have to wait until the process is completed before the District can determine whether Student X's alleged conduct constituted harassment, intimidation and bullying. Once that HIB investigation is completed, then the District can determine whether separating J.S student and Student X is appropriate and to what

degree they will be separated, among any other remedial measures the District deems appropriate.

Based upon the foregoing, I **CONCLUDE** that the petitioner has failed to meet all of the requirements set forth in N.J.A.C. 6A:3-1.6(b) warranting an order for emergent relief in this matter.

ORDER

Accordingly, **I ORDER** that the petitioner's application for emergent relief be and hereby is **DENIED**. From representations made by counsel for the parties during prehearing conferences, I understand that there are no other issues to be decided on the underlying petition, and accordingly, the 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 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.

December 22, 2023
DATE

KIMBERLEY M. WILSON, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMW/am

APPENDIX

WITNESSES

For petitioner

J.S. parent

For respondent

Dr. Julia Benavides

EXHIBITS

For petitioner

Motion papers including Petition, Letter Brief, dated December 11, 2023; and Certification of Service

For respondent

Response papers, including: (i) Letter Brief, dated December 19, 2023; (ii) Certification of Neil Burti, Principal, dated December 18, 2023; and (iii) J.S. student's IEP.

61-24
OAL Dkt. No. EDU 09700-20
Agency Dkt. No. 161-7/20

New Jersey Commissioner of Education

Final Decision

Thordis Mazza,

Petitioner,

v.

Board of Education of Atlantic County Vocational School District, Atlantic County,

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 2 of the Agreement references actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement. Further, with respect to paragraph 9 of the Agreement, the parties are reminded that the Board must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* in regard to information concerning this matter, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement

terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 22, 2024
Date of Mailing: January 24, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. EDU 09700-20

AGENCY DKT. NO. 161-7/20

THORDIS MAZZA,

Petitioner,

v.

BOARD OF EDUCATION OF THE ATLANTIC COUNTY VOCATIONAL SCHOOL DISTRICT, ATLANTIC COUNTY[1],

Respondent.

David R. Castellani, Esq., for petitioner (Castellani Law Firm, LLC, attorneys)

Michael A. Pattanite, Jr., Esq., for respondent (Lenox, Socey, Formidoni, Giordano, Lang, Carrigg & Casey, LLC, attorneys)

Record Closed: December 28, 2023 Decided: December 29, 2023

BEFORE TAMA B. HUGHES, ALJ:

This matter was transmitted to the Office of Administrative Law on October 2, 2020, for determination as a contested case, pursuant to N.J.A.C. 1:1-8.2, N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

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[1] In addition to the Board of Education of the Atlantic County Vocational School District, the petition named Philip Guenther, Superintendent; Joseph Potkay, Principal; Sarah Meyers, Assistant Principal, and Jamie Burrows, Supervisor individually. The parties subsequently entered into a Stipulation of Dismissal against the individual respondents.

The parties have agreed to a settlement and have executed a settlement agreement, which is attached hereto.

I have reviewed the record and the terms of settlement, and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures and the attached Board meeting minutes approving the settlement.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

December 29, 2023
DATE

TAMA B. HUGHES, ALJ

Date Received at Agency: January 4, 2024

Date Mailed to Parties: January 4, 2024

TBH/gd

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT AND GENERAL RELEASE ("**Agreement**," "**Settlement**" and/or "**Release**") is being entered into among and between THORDIS MAZZA ("**Mazza**" or "**Releasor**") and BOARD OF EDUCATION OF THE SPECIAL SERVICES SCHOOL DISTRICT AND THE VOCATIONAL SCHOOL DISTRICT OF THE COUNTY OF ATLANTIC ("**BSSSD**") (collectively "**Releasees**"). Mazza and BSSSD shall be collectively referred to herein as the "**Parties.**"

WHEREAS, by way of employment contract Mazza was employed by BSSSD; and

WHEREAS, Mazza's employment with BSSSD continues to the present; and

WHEREAS, Mazza initiated litigation against BSSSD, alleging, amongst other things, violation of the Conscientious Employee Protection Act, and Law Against Discrimination, in a lawsuit captioned **Thordis Mazza v. Board of Education of the Special Services School District and the Vocational School District of the County of Atlantic**, in the Superior Court, Middlesex Vicinage, New Jersey, Docket No.: ATL – 1297 – 21 (hereinafter referred to as "**The Lawsuit**"); and

WHEREAS, the Parties wishing to resolve The Lawsuit initiated by Mazza in the interest of the public without the need for further litigation, and all of Mazza's claims and potential claims against Releasees, hereby stipulate to settle same, subject to the terms and conditions set forth herein; and

WHEREAS, the meaning, effect and terms of this Agreement have been fully explained to Mazza, who understands that this Agreement settles, bars, and waives any and all claims that he could possibly have against BSSSD as of the date of this Agreement as set forth herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and representations contained herein, the legal sufficiency of which is acknowledged by the Parties, and intending to be legally bound hereby, the Parties agree as follows:

1. Settlement. Mazza agrees, upon execution of the within Settlement Agreement and General Release by the Parties, that she will voluntarily dismiss The Lawsuit with prejudice.

2. Consideration for Release of Claims. Within thirty (30) days of Board approval of this Agreement, BSSSD, or its agent, shall remit payment in the total sum of $30,000.00 (thirty thousand dollars) in full payment for this Release, as follows:

(a) A payment to Mazza and her attorney David R. Castellani, Esq. in the amount of $30,000.00, payable to "The Trust Account of David Castellani, Esq.," from which no taxes or withholdings will be held. This payment is subject to 1099 tax treatment. The insurance carrier will issue an IRS Form 1099 to Mazza for the payment referred to in this Subparagraph.

It is expressly understood and agreed by the Parties that Releasees do not represent or guarantee that payroll, wage or other income taxes should not be paid on the proceeds of the settlement. Releasor agrees to indemnify and hold Releasees, Releasees'

counsel and Releasor's counsel harmless for any withholding taxes owed by Releasor resulting from the receipt of the settlement payment, as well as for any interest and penalties assessed against and/or paid by Releasor to any governmental tax entity by virtue of an adjudication by that entity reclassifying all or any portion of this settlement amount as a wage rather than a non-wage payment.

3. Benefits. This Release does not waive Releasor's vested rights under any applicable retirement plans, including but not limited to, pension benefits.

4. No Admissions. The Parties agree that this Settlement, including BSSSD's approval of the same, does not constitute an admission of liability or wrongdoing by either party.

5. Mazza's General Release of Claims. In consideration for Releasees' promises and representations made herein, Mazza, individually and on behalf of her heirs, representatives, immediate family members (including but not limited to his spouse and children), agents, successors and assigns, hereby releases Releasees, its parents, board members, subsidiaries, shareholders, directors, officers, employees, agents, attorneys, insurers, affiliates, predecessors, successors, assigns, heirs, and all persons acting by, through, under or in concert with any of them (collectively, the "**Released Parties**"), from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, and from any claims of any nature whatsoever, known or unknown, which Mazza now has, claims to have, owns, holds or which Mazza at any time heretofore had, held, or claimed to have based on events occurring through the date of execution of this Agreement, to the fullest extent allowed by law. This Release includes, without limitation, claims arising under 42 U.S.C. § 1983, Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family Medical Leave Act, the National Labor Relations Act, the Employee Retirement Income Security Act (save for claims related to vested benefits, which are exempted from this release), the Equal Pay Act, the New Jersey Law Against Discrimination, the New Jersey Conscientious Employee Protection Act, the New Jersey Workers' Compensation Act, as well as any other federal, state, local, or municipal statute, ordinance or regulation that prohibits improper discrimination, harassment or retaliation in the workplace or otherwise relates to or regulates employment relationships. In addition, this Release extends to and covers claims for tortious conduct or breach of express or implied contract, including wrongful discharge, breach of covenant of good faith and fair dealing, intentional or negligent infliction of emotional distress, negligence, misrepresentation, fraud, detrimental reliance, promissory estoppel, defamation, invasion of privacy, breach of laws governing safety in the workplace, loss of consortium, or any claims under federal, state, and local statutory and common law relating in any manner whatsoever to Mazza's employment with BSSSD. Mazza represents and warrants that she has not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand or cause of action, including any claim for attorney's fees, against the Released Parties that relate to the matters stated above.

6. Liens. It is further understood that as a condition of this settlement, all claims and/or liens, past, current and/or future arising out of this Settlement or asserted against the proceeds of this Settlement are to be satisfied by Releasor and/or his attorney(s), including but not limited to any Child Support Judgment liens, Medicare or Medicaid claims and/or liens, Worker's Compensation claims and/or liens, Social Security claims and/or liens, hospital/healthcare insurer

claims and/or liens, physician or attorney claims and/or liens, or any of the statutory, equitable, common law or judgment claims and/or liens, including but not limited to claims based on subrogation or any other legal or equitable theory. Releasor therefore agrees, upon prompt presentation of any such claims and/or liens, to defend Releasees against any such claims and/or liens, and to indemnify and hold Releasees harmless against any judgment entered against Releasees based on such claims and/or liens, including the payment of any fines, charges and attorney's fees incurred as a result of any such lien. Failure to satisfy any such lien shall be considered a breach of this Agreement and Releasor agrees to pay all costs, interest and attorney's fees relative to any such lien.

7. Public Interest Served. The within Settlement will serve the public interest, eliminating additional litigation costs and expenditure of resources.

8. No Other Legal Action by Mazza. Mazza confirms that, other than The Lawsuit described on page 1 of this Agreement, he does not have any charge, complaint or action pending in any forum or form against any of the Released Parties as of the date of hereof. Further, Mazza covenants and agrees not to bring any charge, complaint, action, suit, or administrative proceeding in any forum before any federal, state, or local administrative agency or in any federal, state or local court against any of the Released Parties for any actions that could or did arise or accrue prior to and including the date of this Agreement. This covenant extends to, but is not limited to, proceedings to negate, modify or reform this Agreement, though nothing in this paragraph is intended to limit Mazza from instituting legal action for the sole purpose of enforcing Releasees' obligations to him under this Agreement. Further, nothing in this paragraph is designed to interfere with or limit Mazza's protected rights to file a charge with or participate in an investigation by or proceeding before the Equal Employment Opportunity Commission or any similar state or local commission that investigates and enforces anti-discrimination laws. Nonetheless, Mazza understands that, by signing this Agreement, he waives any rights he may have to recover money or other relief in any lawsuit or proceeding he brings, or that is brought on his behalf, by any agency or third party against any of the Released Parties based on events arising out of or relating to his employment with BSSSD through the date of this Agreement. Except where otherwise permitted under this paragraph, Mazza agrees that any action she may file against any of the Released Parties based on events that transpired on or before the effective date hereof shall be dismissed with prejudice upon presentation of this Agreement.

9. Confidentiality. Mazza shall keep this Agreement and all of its terms, amounts, and the facts giving rise hereto completely confidential in accordance with existing law and shall not hereafter disclose any information concerning this Agreement or its subject matter or terms to any person other than ~~his~~ her spouse, attorney or accountants, or as otherwise required by law.

Although the Parties may have agreed to keep this settlement and underlying facts confidential, such a provision in an agreement is unenforceable against the employer

if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable.

10. Non-Disparagement. Mazza agrees that to the extent permitted by law, including but not limited to, N.J.S.A. 10:5-12.8., not to make, publicly or privately, through any media or medium (including, without limitation, comments on social media networking sites), any disparaging or derogatory remarks or otherwise make statements that could injure the business or reputation of any of the Released Parties Mazza and Releasees agree not to defame or disparage the other with respect to any matter arising out of the employment relationship or The Lawsuit in the past and in the future.

11. Acknowledgement and Right to Revoke. By his signature below, Mazza acknowledges that, in addition to all other claims outlined in Paragraph 5, she is knowingly and voluntarily waiving and releasing any rights ~~he~~ she may have under the Age Discrimination in Employment Act ("ADEA"). By her signature below, Mazza also acknowledges that the consideration given for the waiver and Release is in addition to anything of value to which ~~he~~ she was already entitled. By her signature below, Mazza further acknowledges that ~~he~~ she has been advised by this writing, as required by the Older Workers' Benefit Protection Act, that: (a) ~~his~~ her waiver and Release does not apply to any rights or claims that may arise after the effective date of this Agreement; (b) ~~he~~ she should consult with an attorney prior to executing this Agreement; (c) ~~he~~ she has twenty-one (21) days to consider this Agreement (although ~~he~~ she may by ~~his~~ her own choice execute this Agreement earlier); (d) ~~he~~ she has seven (7) days following the execution of this Agreement to revoke the Agreement; and (e) this Agreement shall not be effective until the date upon which the revocation period has expired.

12. Entire Agreement. This Agreement sets forth the entire agreement between Mazza and Releasees. All other prior agreements between the Parties are hereby terminated and shall have no other force or effect. Mazza acknowledges and agrees that Releasees have not made any promises to ~~him~~ her other than those set forth in this Agreement. This Agreement may be modified only upon an express written agreement between the Parties. The language of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the Parties.

13. Assent to Terms. The Parties hereby acknowledge that they have entered into this Agreement with a full understanding of their rights and obligations and that they were fully informed of the implications of this Agreement by their respective attorneys, if any, and they do so without duress, of their own free will and volition.

14. Disputes. The validity, performance, construction, and effect of this Agreement shall be governed by the substantive laws of the United States and the State of New Jersey. The Superior Court of New Jersey shall retain jurisdiction to implement and enforce the Agreement and its terms.

15. Severability. The invalidity or unenforceability of any provision of this Agreement, whether in whole or in part, shall not in any way affect the validity or enforceability of any other provision contained herein.

16. Counterparts; Exchange by Electronic Means. This Agreement may be executed in counterparts, which shall be taken together as the entire agreement of the Parties hereto. This Agreement may also be exchanged by the Parties via electronic mail for the purposes of securing signatures and will be fully enforceable as an original document.

MAZZA ACKNOWLEDGES THAT SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND IS ENTERING INTO IT KNOWINGLY AND VOLUNTARILY AND NOT AS A RESULT OF ANY PRESSURE, COERCION OR DURESS.

MAZZA AGREES THAT SHE HAS HAD A REASONABLE AND SUFFICIENT TIME AND OPPORTUNITY TO CONSULT WITH COUNSEL, AND THAT HE HAS FULLY DISCUSSED AND REVIEWED THE TERMS CONTAINED IN THIS AGREEMENT WITH COUNSEL PRIOR TO EXECUTING IT, OR HAS FREELY CHOSEN NOT TO DO SO.

MAZZA FURTHER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT CONTAINS A GENERAL RELEASE OF CLAIMS AS TO ALL RELEASED PARTIES, AND THAT THIS AGREEMENT SETTLES, BARS, AND WAIVES ANY AND ALL CLAIMS THAT HE HAS OR COULD POSSIBLY HAVE AGAINST THE RELEASED PARTIES THROUGH THE DATE OF THIS AGREEMENT AS SET FORTH HEREIN.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, and intending to be legally bound, the Parties agree to the terms of this Agreement.

THORDIS MAZZA

Dated: 8/22/23

BOARD OF EDUCATION OF THE SPECIAL SERVICES SCHOOL DISTRICT AND THE VOCATIONAL SCHOOL DISTRICT OF THE COUNTY OF ATLANTIC

NAME: Mark Ludwick
TITLE: Board President

Dated: 10/5/2023

62-24
OAL Dkt. Nos. EDU 006493-22 and EDU 10008-22
Agency Dkt. Nos. 163-6/22 and 275-10/22

New Jersey Commissioner of Education

Final Decision

David Wronko,

Petitioner,

v.

Board of Education of the City of Asbury Park, Monmouth County,

Respondent.

The record of this matter, the proposed Settlement Agreement (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 22, 2024
Date of Mailing: January 24, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
(CONSOLIDATED)

DAVID WRONKO,
Petitioner,
v.
CITY OF ASBURY PARK BOARD OF EDUCATION, MONMOUTH COUNTY,
Respondent,

OAL DKT. NO. EDU 06493-22
AGENCY DKT. NO. 163-6/22

And

DAVID WRONKO,
Petitioner,
v.
CITY OF ASBURY PARK BOARD OF EDUCATION, MONMOUTH COUNTY,
Respondent.

OAL DKT. NO. EDU 10008-22
AGENCY DKT. NO. 275-10/22

Richard A. Friedman, Esq., for petitioner (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C., attorneys)

Mark W. Strasle, Esq., for respondent (Madden and Madden, P.A., attorneys)

Record Closed: January 3, 2024 Decided: January 8, 2024

BEFORE **DEAN J. BUONO**, ALJ:

These matters were transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The parties have agreed to a settlement and have prepared a Settlement Agreement indicating the terms thereof, which is attached and fully incorporated herein. This Settlement Agreement resolves all disputes.

I have reviewed the record and the terms of settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures on the attached settlement agreement and general release.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

January 8, 2024
DATE

DEAN J. BUONO, ALJ

Date Received at Agency: January 8, 2024

Date Mailed to Parties: January 8, 2024

/cb

APPENDIX

EXHIBITS

Jointly submitted

J-1 Settlement Agreement

ZAZZALI P.C.
150 West State Street, 3rd Floor
Trenton, NJ 08608
p. (973) 623-1822
f. (973) 623-2209
Richard A. Friedman, Esq.
rfriedman@zazzali-law.com
Attorneys for Petitioner

DAVID J. WRONKO, Petitioner, v. ASBURY PARK BOARD OF EDUCATION, MONMOUTH COUNTY, Respondent.	:	NEW JERSEY COMMISSIONER OF EDUCATION/OFFICE OF ADMINISTRATIVE LAW Agency Ref. No. 275-10/22 OAL Dkt. No. EDU 10008-2022S SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the Petitioner, David J. Wronko ("Petitioner" or "Mr. Wronko") and the Respondent, Asbury Park Board of Education ("Respondent" or "Board"), both of whom are collectively referred to as the "Parties".

WHEREAS, Petitioner commenced employment with Respondent in the position of Teacher on or about September 1, 2004; and

WHEREAS, Petitioner holds a standard instructional certificate issued by the State Board of Examiners, with endorsements as an Elementary School Teacher (K-8) and Social Studies Teacher, which he has held at all times pertinent; and

WHEREAS, at a Board meeting held on April 27, 2022, Respondent voted to withhold Petitioner's salary increment for the 2022-2023 school year; and

WHEREAS, effective June 30, 2022, Petitioner's position was abolished and his employment terminated by Respondent as part of a reduction in force ("RIF"); and

WHEREAS, Petitioner filed a Petition of Appeal against Respondent on October 12, 2022, and amended said Petition on March 13, 2023, challenging his termination and the Board's failure to recall him

to a Teacher of pre-K position or a social studies position as a violation of his tenure rights under N.J.S.A. 18A:6-10 *et seq.*; N.J.S.A. 18A:28-5; N.J.S.A. 18A:28-10 *et seq.*; and N.J.A.C. 6A:3-5.1 *et seq.*; and

WHEREAS, the Parties, through their respective counsel, have engaged in the exchange of discovery and in settlement negotiations throughout this matter; and

WHEREAS, at a Board meeting held on January 26, 2023, Respondent reappointed Petitioner to a position as a Teacher at Asbury Park High School, effective March 1, 2023, at Step 16MA of the 2021-2022 Salary Guide, and

WHEREAS, on February 27, 2023, Respondent agreed to settle several grievances arising from the withholding of several employees' salary increments for the 2022-2023 school year, pursuant to which settlement agreement ("February Increment Settlement") those employees' salaries will be restored effective September 1, 2023 to the Step of the Salary Guide where they would have been placed had their increments not been withheld; and

WHEREAS, Petitioner and Respondent, upon consultation with their respective counsel, have independently concluded that it is in their respective best interests to settle and resolve this dispute, with each party to bear their own counsel fees, costs and disbursements; and

NOW THEREFORE, it is agreed by and between the Parties hereto as follows:

1. This Agreement is not and shall not in any way be considered or construed as an admission of wrongdoing and/or liability by Respondent of any kind, including, but not limited to discrimination, retaliation, tortious conduct, or of any violation of any laws, common laws, or federal, State, and local laws, statutes or regulations, or of any employment policies, Board policies, Board regulations, standard operating procedures, practices, contracts, or agreements, or of any alleged duties owed by Respondent, or of any unlawful or wrongful acts whatsoever by Respondent. Respondent wholly denies wrongdoing of any kind. The Parties understand and agree that this settlement is the compromise of disputed claims, and that all payments made by the Respondent and/or Respondent's insurance carrier on behalf of Respondent are not to be construed as an admission of liability on the part of any party or parties hereby released, and that Respondent wholly denies any and all liability

whatsoever and intends merely to avoid litigation and buy the peace. Accordingly, this Agreement shall not be used as an admission by any party in any proceedings; however, this Agreement may be introduced in any proceedings to enforce the terms and conditions of the Agreement and/or used by any Party in connection with any proceeding and/or other enforcement or other action by or before any local, State, or federal agency and/or other like entity.

2. Respondent hereby acknowledges that Petitioner acquired tenure as a Teacher on or about September 1, 2007, and is entitled to and shall receive full seniority credit from his initial date of hire (September 1, 2004) with Respondent, including but not limited to the six-month period between September 1, 2022 and March 1, 2023;

3. Respondent agrees to pay to Petitioner the gross amount of $15,000.00, subject to standard and ordinary payroll taxes and deductions. This $15,000.00 payment amount will be provided through the School Alliance Insurance Fund in the form of a check made payable to the "Asbury Park Board of Education" within thirty (30) days of approval of this Agreement by the Commissioner of Education. Upon receipt of this check, Respondent will then issue Petitioner the gross amount of $15,000.00, subject to standard and ordinary payroll taxes and deductions. Respondent shall make such payment within thirty (30) days of its receipt of the $15,000.00 payment from the School Alliance Insurance Fund.

4. The foregoing payment(s) to by the Carrier to the Respondent shall only be made upon the acceptance, approval and ratification of this Agreement by the Respondent and subsequent to Carrier(s)'s receipt of a fully executed and notarized copy of this Agreement, a clear child support search report for Petitioner and completed W-9 form for Petitioner. If Respondent has not already done so, it shall promptly reinstate all accrued sick days and personal days which Petitioner had at the time of the termination of his employment on June 30, 2019.

5. It is further understood and agreed that as a condition of this settlement, all claims and/or liens, past, current and/or future arising out of this settlement or asserted against the proceeds of this settlement are to be satisfied solely and entirely by Petitioner, including but not limited to any Medicare or Medicaid claims and/or

liens, Worker's Compensation claims and/or liens, Social Security claims and/or liens, hospital/healthcare insurer claims and/or liens, physician claims and/or liens, attorney claims and/or liens, and/or any of the statutory, equitable, common law and/or judgment claims and/or liens, including but not limited to claim based on subrogation or any other legal or equitable theory.

6. Petitioner shall receive full seniority credit for the 2022-2023 school year.

7. Petitioner represents and warrants that neither Respondent nor Respondent's attorneys provided any advice regarding the taxability and/or the pension implications of the settlement amounts paid pursuant to this Agreement. Exclusive of all applicable payroll taxes and deductions, which Respondent shall deduct from the $15,000.00 settlement proceeds to Petitioner, Petitioner acknowledges and agrees that he is solely responsible for the payment of any and all federal, State and local taxes, and pension contributions, which may be due from the settlement sum, in the event that it is determined that any taxes are owed based on the taxation laws in effect on the date of execution of this Agreement or become due at any time in the future because of a change to the laws governing the taxation of such settlement proceeds.

8. Respondent will provide Petitioner, who is similarly situated to those teachers covered by the February Increment Settlement, the benefit thereof such that his salary increment will be restored and his salary will be placed at Step 18+MA of the 2023-2024 Salary Guide effective for the 2023-2024 school year.

9. This Agreement shall be subject to ratification by the Asbury Park Board of Education and is without prejudice to any party if the terms are not ratified, Petitioner is not bound by this Agreement until it has been ratified by the Asbury Park Board of Education.

10. Subject to the terms of this Settlement Agreement and the approval thereof by the Commissioner of Education, the Petition of Appeal presently pending before the Office of Administrative Law and Commissioner of Education, shall be deemed dismissed with prejudice.

11. In consideration for the payment and promises described in this Agreement, Petitioner fully releases and forever discharges Respondent, including but not limited to its officers, administrators and employees, collectively and individually, of and from any and all claims, actions, causes of action, back pay, front

pay, contracts, agreements, promises, charges, judgments, grievances, obligations, rights, demands, debts, physical injuries, pain, suffering, emotional distress, compensatory damages, punitive damages, attorneys' fees, expenses, costs, losses, liabilities, damages, or accountings of whatever nature, whether known or unknown, disclosed or undisclosed, asserted or unasserted, in law or equity, contract or tort or otherwise (herein collectively designated "Claims"), up to and including the date on which the Respondent ratifies this Agreement, including, but not limited to, any and all Claims of harassment, hostile work environment, failure to conduct employment-related investigation(s), infliction of emotional distress, improper termination, discrimination, retaliation, and any and all tort Claims or contract Claims for general damages, and any and all Claims arising under, made, regarding, or involving: any federal, State, or local laws or under the common law; violations of any federal, State, or local fair employment practices or civil rights laws, statutes, regulations and/or ordinances; Pierce claims; Claims for personal injury; the Civil Rights Acts of 1866 and 1871, as amended, 42 U.S.C. §1981; the Civil Rights Act of 1964, as amended, including Title VII; the Civil Rights Act of 1991 and all subsequent amendments; the New Jersey Law Against Discrimination; federal anti-discrimination laws; the Americans with Disabilities Act; the Age Discrimination in Employment Act of 1967; the District's policies, regulations, standard operating procedures, practices, collective bargaining agreements, contracts, benefits, or understandings; any Claims arising out of any relationship, including employment relationship, between or among Petitioner and Respondent predating the effective date of this Agreement; and all Claims for employment, reemployment, or reinstatement of employment to the District; any and all grievances or demands for mediation and/or arbitration; any and all or Claims or demands under the District's policies and procedures; and any and all Claims asserted, or which could have been asserted by Petitioner, including any Claims against any current or former officers, employees, agents, elected and/or appointed representatives of the District. Petitioner hereby specifically waives, releases, and gives up all Claims and rights, as described in the preceding paragraphs, whether now known or unknown, which he has or may have against Respondent, based on any fact, act, event, or omission, whether now known or unknown, occurring before the date on which the Respondent ratifies this Agreement. Petitioner understands that he is waiving, releasing, and giving up all Claims and rights that he knows about and all Claims and rights that he may

not know about; except for, and notwithstanding any provision to the contrary, claims which cannot be released solely by private agreement. This waiver and release shall not apply to any claims that may arise or have arisen under the Worker's Compensation or the Teachers' Pension and Annuity Fund laws.

12. This Agreement contains all the terms of the Parties' agreement and cannot be modified or changed unless the Parties agree to do so in writing.

13. The Parties agree that they have been represented by counsel and enter into this Agreement voluntarily. Neither party admits any wrongdoing whatsoever by executing this document.

14. The Parties agree that neither party is responsible for the payment of the other party's counsel fees in connection with this matter.

15. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, except where federal law controls. Should any provision of this Agreement be declared or determined by any Court to be illegal or invalid, the validity of the remaining parts, terms, and/or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement or may be modified as necessary.

16. This Agreement sets forth the entire Agreement among the Parties and fully supersedes any and all prior agreements or understandings, written or oral, among the Parties pertaining to its subject matter. The Parties agree that this Agreement may not be modified, altered, or changed except by a written agreement and/or addendum signed by the Parties.

17. This Agreement may be signed in counterparts. However, this Agreement will not be binding among the Parties until it has been executed and delivered by and among the Parties.

18. Petitioner understands that pursuant to the Older Workers Benefit Protection Act of 1990, he is entitled to consult with an attorney and that he will have twenty-one (21) days within which to fully consider this Agreement. Petitioner shall have seven (7) days following his signing of this Agreement to revoke this Agreement, and he agrees and understands that a revocation of this Agreement shall be submitted to Respondent in writing

within this seven (7) day revocation period. Petitioner may not waive this seven (7) day revocation period, but he may waive the twenty-one (21) period within which to consider the Agreement.

DAVID WRONKO FURTHER CERTIFIES, ACKNOWLEDGES, AND REPRESENTS THAT HE IS ABLE TO READ AND UNDERSTAND ENGLISH, THAT HE UNDERSTANDS ALL OF THE PROVISIONS HEREIN, WITH THE ADVICE AND ASSISTANCE OF HIS ATTORNEYS, AND THAT HE ENTERS INTO THIS AGREEMENT KNOWLINGLY AND VOLUNTARILY.

DAVID WRONKO ACKNOWLEDGES THAT HE HAS NO PHYSICAL OR MENTAL PROBLEM, CONDITION, OR IMPAIRMENT OF ANY KIND, WHICH HAS INTERFERED WITH HIS ABILITY TO READ AND UNDERSTAND THE MEANING OF THIS AGREEMENT AND ITS TERMS.

DAVID WRONKO FURTHER REPRESENTS THAT IN SIGNING THIS RELEASE, HE DOES NOT RELY UPON ANY PROMISES OR REPRESENTATIONS MADE BY ANYONE OTHER THAN THOSE PROMISES AND REPRESENTATIONS SPECIFICALLY STATED HEREIN.

Mr. Wronko further warrants, represents, and agrees that in signing this Agreement, he does so with full knowledge of any and all rights which he may have with respect to Respondent and the instant matter.

By: _____ Dated: 11/1/2023
David J. Wronko

Asbury Park Board of Education

By: _____ Dated: 12/14/2023
Carritta Cook, President

Asbury Park Board of Education

910 Fourth Avenue
Asbury Park, NJ 07712
(732) 776-2606, Ext. 2437
Fax: (732) 988-7315

CERTIFICATE

I, Dr. Melissa Simmons, Interim Business Administrator/Interim Board Secretary of the Board of Education of the City of Asbury Park in the County of Monmouth, State of New Jersey, HEREBY CERTIFY that the foregoing annexed extract from the minutes of a meeting of the governing body of the Board of Education duly called and held on December 14, 2023 has been compared by me with the original minutes as officially recorded in my office in the Minute Book of the Board of Education and is a true, complete and correct copy thereof and of the whole of the original minutes so far as they relate to the subject matters referred to in the extract.

11. Settlement Agreement

Recommend that the Board accept and approve the settlement agreement and release of claims relating to OAL Dkt. No. EDU 10008-2022S, on file in the Business Office, and further directs that the Administration, Interim Business Administrator and Attorney take any and all actions necessary to effectuate the terms thereof.

Motion to approve:Ms. Cook **Second**: Ms. Ricks
Aye: 4 **Nay**: 1 **Abs**: 1 Upon roll call the motion was adopted with Mr. Rogers abstaining.

IN WITNESS WHEREOF, I have here unto set my hand and affixed the corporate seal of the School District this 21st day of December 2023.

Dr. Melissa Simmons, Interim Business Administrator/Interim Board Secretary

63-24
OAL Dkt. No. EDU 05034-23
Agency Dkt. No. 84-3/23

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificate of Jacklyn Torres, Board of Trustees of the TEAM Academy Charter School, Essex County.

The record of this matter, the proposed Settlement Agreement (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 25, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
DISMISSAL
OAL DKT. NO. EDU 05034-23
AGENCY DKT. NO. 84-3/23

IN THE MATTER OF THE TEACHING CERTIFICATE OF JACKLYN TORRES, BOARD OF TRUSTEE OF THE TEAM ACADEMY CHARTER SCHOOL, ESSEX COUNTY,

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Thomas O. Johnston, Esq. on behalf of petitioner

Jacklyn Torres, pro se, respondent

Record Closed: January 9, 2024 Decided: January 10, 2024

BEFORE **KIMBERLY A. MOSS**, ALJ:

STATEMENT OF THE CASE

The Team Academy Charter School (petitioner) sought to suspend Jacklyn Torres's (respondent) teaching certificate. Petitioner's appeal was transmitted to the Office of Administrative Law (OAL) on June 6, 2023, for hearing as a contested case. A telephone prehearing was conducted, and a hearing was scheduled for January 8, 2024. On January 9, 2024, petitioner's counsel submitted a Settlement Agreement with

a cover letter requesting that the matter be dismissed. The cover letter and agreement are attached hereto for reference.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is therefore **ORDERED** that this matter be and is hereby **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 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 10, 2024

DATE

NANCI G. STOKES, ALJ

Date Received at Agency: January 10, 2024

Date Mailed to Parties: January 10, 2024

ljb

SETTLEMENT AGREEMENT

This settlement agreement ("Agreement") made by and between

TEAM ACADEMY CHARTER SCHOOL, INC.
(Hereinafter referred to as "TEAM")

AND

JACKLYN TORRES
(Hereinafter referred to as "Ms. Torres")

WITNESSETH:

WHEREAS, Ms. Torres was employed by TEAM, pursuant to an Employment Agreement; and

WHEREAS, TEAM filed an Order to Show Cause with the Office of Controversies and Disputes within the State of New Jersey, Department of Education, docketed as EDU 0503Y-23N; and

WHEREAS, ~~on or about November 15, 2023~~, the aforesaid case was transferred to the State of New Jersey, Office of Administrative Law, Docket No. EDU 12956-2023; and Agency Ref. No. 8Y-3123

WHEREAS, the parties desire to enter into a settlement for any and all claims arising from Ms. Torres's separation of her employment with TEAM;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties desire to enter into this Agreement as follows:

1. **EXECUTION DATE.** As used in this Agreement, the "Execution Date" shall mean the date as of which the Agreement is fully executed.

2. **CONSIDERATTION.** In consideration of the release described in Section 3 below, Ms. Torres agrees to not enter into employment with any public school or private school for the disabled through one year from the Executiion Date. Upon receipt of the fully executed

Agreement, TEAM's counsel will file a request with the Office of Administrative Law that the the matter be dismissed, in accordance with this Settlement Agreement.

3. **RELEASE.** In consideration for the agreement described in Section 2 above, the parties hereby mutually release each other and any of their predecessors, successors, parents, agents, affiliates or subsidiary entities, and its or their present or former officers, directors, agents, including KIPP New Jersey, Board of Trustees, representatives, employees, attorneys, committees, trustees, fiduciaries, trusts and their respective successors and assigns, heirs, executors and personal or legal representatives (hereinafter collectively referred to, together with TEAM, as the "Parties") from any and all claims or causes of action they may have or claim to have against another party arising out of or related to Ms. Torres's employment with TEAM. The claims released include, but are not limited to:

a. all statutory claims, including but not limited to claims arising under the New Jersey Law Against Discrimination (as amended), the New Jersey Civil Rights Act, the New Jersey Conscientious Employee Protection Act (as amended), the New Jersey Family Leave Act, Title VII of the Civil Rights Act of 1964 (as amended), Sections 1981 through 1988 of Title 42 of the United States Code (as amended), the Americans with Disabilities Act of 1990 (as amended), the Rehabilitation Act, the Employee Retirement Income Security Act of 1974 (as amended), the Fair Labor Standards Act (as amended), the Uniformed Services Employment and Reemployment Rights Act of 1994, the National Labor Relations Act (as amended), the Federal Warn Act (as amended), the New Jersey Millville Dallas Airmotive Plan Job Loss Notification Act (as amended), the Family and Medical Leave Act of 1993, the Occupational Safety and Health Act (as amended), the Equal Pay Act (as amended), the New Jersey Minimum Wage Law (as amended), the New Jersey Wage and Hour Law (as amended), Equal Pay Law for New Jersey (as amended), the New Jersey Worker Health and Safety Act (as amended), the Labor Management Relations Act (as amended) and State Education Laws, N.J.S.A. 18A et seq.;

b. all claims arising under the United States or New Jersey Constitutions;

c. all claims arising under any Executive Order or derived from or based upon any State or Federal regulations;

d. all common law claims, including but not limited to any and all rights to discovery, claims for wrongful discharge, constructive discharge, violation of public policy, breach of an express or implied contract, breach of an implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, defamation, conspiracy, tortious interference with contract or prospective economic advantage, promissory estoppel, equitable estoppel, fraud, misrepresentation, detrimental reliance, retaliation, and negligence;

e. all claims for any compensation including commissions, back wages, front pay, punitive damages, pay increases, bonuses or awards, fringe benefits, disability benefits, severance benefits, reinstatement, retroactive seniority, pension benefits, contributions to retirement plans, or any other form of economic loss;

f. all claims for personal injury, including physical injury, mental anguish, emotional distress, pain and suffering, embarrassment, humiliation, damage to name or reputation, interest, liquidated damages, and punitive damages; and

g. all claims for costs, interest, and attorneys' fees;

4. **NON-ADMISSION OF LIABILITY**. This Agreement shall not be construed as an admission by either party of any of the acts or omissions alleged, or which could have been alleged against the other party. The Parties specifically deny any liability whatsoever for any damages, injuries or other claims made by either party against the other party.

5. **AGREEMENT NOT TO SUE.** Each party mutually represents that they have not, and agrees will not, file any lawsuit or claim against the other based on any events, whether known or unknown, occurring prior to the date of the execution of this Agreement, including, but not limited to, any events related to, arising out of, or in connection with, Ms. Torres's employment with TEAM, or the termination of such employment, in any court or tribunal of the United States, New Jersey, or any other state, city, county, or locality. Parties expressly represent that they have not filed a lawsuit or claim or initiated any other administrative proceeding other than as noted herein, and further promise not to initiate a lawsuit or to bring any other claim pursuant to N.J.S.A. 18A:26-10 arising out of or in any way related to Ms. Torres's employment by TEAM. Ms. Torres

also acknowledges and agrees that while this release does not preclude her from filing a charge with the Public Employment Relations Commission, the Equal Employment Opportunity Commission or a similar state or local agency, or from participating in any investigation or proceeding with such an agency, she will not personally recover monies, and expressly waives the right to recover such monies, for any complaint or charge filed against TEAM with any federal, state or local board, agency or court.

6. **NON-DISPARAGEMENT.** The Parties agree that they will not at any time, from the time of signing this Agreement, through any medium, either orally or in writing, including but not limited to, electronic mail, television or radio, computer networks or internet bulletin boards, blogs, social media, such as META (formerly known as Facebook), LinkedIn, or X Corp (formerly known as Twitter), or any other form of communication, disparage, defame, impugn, damage or assail the reputation of the other party, but rather shall act in good faith to refrain from any conduct or communication which might reasonably be expected to cause the recipient of a communication to question the business condition, integrity, competence, good character or professionalism of the other party.

7. **CONSIDERATION.** Ms. Torres acknowledges that the only consideration she has received for signing this Agreement is that set forth herein. No other promise, inducement, threat, agreement or understanding of any kind or description has been made with her or to her to cause her to enter into this Agreement.

8. **SEVERABILITY.** Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language set forth in Section 3, such provision shall immediately

become null and void, leaving the remainder of this Agreement in full force and effect. If the general release language in Section 3 is found to be illegal or unenforceable, Ms. Torres and TEAM agree to execute a binding replacement release.

9. CONSTRUCTION. The Parties and their representatives, if any, have participated fully in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

10. AMENDMENT. This Agreement may only be amended by a writing signed by all of the Parties to this Agreement.

11. AGREEMENT ENTERED VOLUNTARILY. Ms. Torres acknowledges that she:

a. has carefully read and fully understands all of the terms of this Agreement;

b. understands that by signing this Agreement, she is waiving her rights under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, 29 U.S.C. § 621, et seq., as well as all rights to all claims described in Section 2 of this Agreement, and that she is not waiving any rights after the date that this Agreement is signed;

c. knowingly and voluntarily agrees to all of the terms set forth in this Agreement;

d. knowingly and voluntarily intends to be legally bound by this Agreement;

e. is receiving consideration in addition to anything of value to which she is already entitled;

f. is hereby advised to consult with an attorney prior to the signing of this Agreement; and

g. has not been coerced, threatened, or intimidated in any way into signing this Agreement.

13. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and fully supersedes any and all prior contracts or agreements between the Parties pertaining to compensation or severance, and it likewise fully supersedes any and all other conflicting agreements or understandings between the Parties.

14. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed, including execution by electronic signature (e.g. pdf or tif file), in one or more counterparts, each of which shall be deemed an original, and which shall collectively be deemed to be one and the same instrument.

Ms. Jacklyn Torres

Date: 1/8/2024

For TEAM Academy Charter School, Inc.

Name: Jasmin Ampaw

Title: Director of Employee Relations

Date: 01/09/24

64-24
OAL Dkt. No. EDU 5869-23
Agency Dkt. No. 160-6/23

New Jersey Commissioner of Education

Final Decision

E.G., on behalf of minor child, G.S.,

Petitioner,

v.

Board of Education of the Township of Belleville, Essex County,

Respondent.

The record of this matter, the proposed Settlement Agreement (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 25, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. EDU 05869-23

AGENCY DKT. NO. 160-6/23

E.G., ON BEHALF OF MINOR CHILD, G.S.,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWNSHIP OF BELLEVILLE, ESSEX COUNTY,

Respondent.

George Soliman, parent on behalf of minor child, G.S., pro se

Caitlin Lundquist, Esq., for respondent (Busch Law Group, LLC, attorneys)

Record Closed: January 5, 2024 Decided: January 8, 2024

BEFORE **ELISSA MIZZONE TESTA**, ALJ:

This matter was transmitted to the Office of Administrative Law on July 3, 2023 for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

A hearing was scheduled for January 22, 2024 but was adjourned because the parties advised the undersigned that they agreed to settle the matter. The executed

Settlement Agreement indicating the terms of agreement was forwarded to the OAL on January 5, 2024 and is attached hereto.

I have reviewed the record and the terms of settlement, and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures on the attached settlement agreement and the attached Board resolution.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

January 8, 2024

DATE

ELISSA MIZZONE TESTA, ALJ

Date Received at Agency: January 11, 2024

Mailed to Parties: January 11, 2024

sej

BUSCH

Caitlin W. Lundquist
Counsel
clundquist@buschgroupnj.com

January 5, 2024

VIA LAWYERS SERVICE
VIA EMAIL: Sharon.Jeffers@oal.nj.gov
The Honorable Elissa Mizzone Testa, A.L.J.
State of New Jersey
Office of Administrative Law
33 Washington Street, 7th Floor
Newark, NJ 07102

RE: E.G. o/b/o G.S. v. Belleville Board of Education
OAL Docket No.: EDS 5869-23
Our File No.: 12665

Dear Judge Testa:

This office represents the Belleville Board of Education ("Board"), the Respondent in the above matter. We are pleased to report that the parties have reached a settlement agreement that will fully resolve this matter. A copy of the fully executed settlement agreement is enclosed. Please accept this letter as a mutual request by the parties for the Court to issue an order and decision that approves and incorporates the settlement agreement.

We thank the Court for its courtesies and cooperation.

Respectfully,

THE BUSCH LAW GROUP LLC

Caitlin Lundquist

Caitlin Lundquist, Esq.
Counsel

CWL:ss
Encl.: Settlement agreement

cc: Petitioner Ereen Ghaly o/b/o G.S. (via regular & certified mail and via email)
Dr. Richard Tomko, Superintendent of Schools (via email only)

REPLY TO

450 MAIN ST
METUCHEN, NJ 08840
732 243 9588
FAX: 732 243 9590

397 PARK AVENUE
5TH FLOOR
NY, NY 10016
212 378 0058

309 FELLOWSHIP RD
STE 200
MT LAUREL, NJ 08054
856 350 1030

THE BUSCH LAW GROUP LLC
450 Main Street
Metuchen, New Jersey 08840
P: (732) 243-9588; F: (732) 243-9590
Attorneys for Respondent Belleville Board of Education

E.G. o/b/o G.S.,

Petitioner,

v.

Belleville Board of Education,

Respondent.

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DOCKET NO.: EDU 05869-2023 N
AGENCY REF. NO.: 160-6/23

SETTLEMENT AGREEMENT

WHEREAS, G.S. is a student residing within the Belleville School District (hereinafter referred to as "the District"), a public school district operated by the Belleville Board of Education (hereinafter referred to as "the Board") and E.G. (hereinafter referred to as "Petitioner") is the parent of G.S.; and

WHEREAS, Petitioner filed a Petition of Appeal (hereinafter referred to as "the Petition") with the Commissioner of Education on or about June 8, 2023, challenging the decision issued by the Board on April 24, 2023, regarding a harassment, intimidation, and bullying ("HIB") matter involving G.S.; and

WHEREAS, the Petition was assigned Agency Reference Number 160-6/23; and

WHEREAS, the Commissioner of Education transmitted the Petition to the New Jersey Office of Administrative Law ("OAL") for a hearing, and the Petition was then assigned OAL Docket Number EDU 05869-2023 N; and

WHEREAS, the Board maintains that it has at all times acted appropriately with regard to the HIB determination regarding G.S. as well as the application of the Board's

Code of Student Conduct to G.S., and fully complied with any and all obligations, requirements, and procedural timelines pursuant to State and federal statutes and regulations, as applicable; and

WHEREAS, Petitioner and the Board are desirous of resolving the issues and have reached an amicable resolution thereby avoiding the time and expense associated with further litigation.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the undersigned agree as follows:

1. Subject to the terms of this Agreement, the Board shall not submit, send, provide a copy of, or otherwise disseminate any of G.S.'s student records relating to the HIB matter, or any information contained within said records, to any college, university, or other post-secondary institution at any time. The Board also shall not disclose any of G.S.'s student records relating to the HIB matter, or any information contained within said records, in response to any civil subpoena, unless the Board receives written parental consent for such disclosure. Notwithstanding this Agreement, Petitioner understands and agrees that the Board is obligated to comply and will comply with the requirements of State and federal law and regulation regarding confidentiality of and access to student records, including, but not limited to, N.J.A.C. 6A:32-7.5(e).

2. In the event of any transfer by G.S. from the District to another public school district, the parties agree that the District will provide the receiving district with a copy of G.S.'s student records regarding disciplinary actions taken by the District as to G.S., including, but not limited to, short-term and long-term suspensions, regardless of whether the action was imposed due to a HIB matter. The parties further understand and

agree that a copy of the "HIB 338 Form" relating to G.S. will be provided to any receiving district which G.S. may transfer into after moving out of the District, but only if such "HIB 338 Form" relates to any disciplinary action taken by the District as to G.S. However, except as specifically stated above, the parties expressly agree that no other HIB records relating to G.S. will be provided to any receiving district at any time, including, but not limited to, HIB investigation reports, incident reports, witness statements, correspondence, and/or notice(s) issued by the District to G.S.'s parent(s) or guardian(s).

3. Subject to the terms of this Agreement, the Board agrees that the Board's HIB determination regarding G.S. issued on April 24, 2023 shall not have any impact on G.S.'s eligibility for or ability to fully participate in any extracurricular activities available to G.S. within the District, or in any honors classes available to G.S. within the District.

4. The Board will not disclose any of G.S.'s student records relating to the HIB matter, or any information contained within said records, to any teaching staff member, guidance counselor, coach, or school district administrator, except insofar as such disclosure is necessary in order to allow access to such records by "certified school district personnel who are assigned educational responsibility" for G.S., pursuant to N.J.A.C. 6A:32-7.5(e)(4), or insofar as such disclosure is made with written parental consent.

5. Each party shall be fully responsible for their own fees, costs and expenses incurred to date in all respects. This includes, but shall not be limited to, attorney's fees, expert fees, evaluation costs, transportation costs, and/or any other costs related to this matter, whether disclosed or undisclosed to the other party.

6. The terms of this Agreement represent the compromise of disputed claims between the parties. This Agreement shall not be treated as an admission on the part of the

Board that it has not offered G.S. an appropriate education at any time, or failed to meet its obligations with respect to G.S. pursuant to State and/or federal law, or that either party has failed to act in accordance with any laws, statutes, regulations and/or codes.

7. This Agreement shall be governed by the laws of the State of New Jersey and may not be altered, amended, modified, superseded, canceled or terminated except by an express written agreement duly executed by all of the parties or their attorneys on their behalf, which makes specific reference to this Agreement.

8. Upon its full execution, this Agreement shall be sent to the Office of Administrative Law to be incorporated into an Initial Decision approving same.

9. Each party with respect to the other party hereby waives all past, present and potential claims regarding G.S.'s education up to and including the date on which this Agreement is fully executed by the parties. It is expressly understood and further agreed that neither party is considered a "prevailing party" for any purposes. It is further expressly understood that this Agreement does not require either party to waive any claim related to the enforcement of this Agreement, including any attorney's fees that may be incurred as part of such enforcement claim(s) as may be allowable by law.

10. Petitioner agrees, certifies, acknowledges, and represents: (a) that she has had an opportunity to consult with an attorney of her choice and at her expense, prior to signing this Agreement; (b) that she has had adequate time and opportunity to thorough read and review and, and has read and reviewed, all of the terms and sections of this Agreement; and (c) that she and the Board do not waive any rights or claims that may arise after the effective date of this Agreement.

11. The undersigned understand and agree that they fully understand and consent to the terms set forth herein. The undersigned further agree and acknowledge that the drafting and negotiation of this Agreement have been participated in by the undersigned and their respective counsel and, for all purposes, this Agreement shall be deemed to have been drafted jointly by each of the parties. No ambiguity shall be resolved against any party based upon authorship.

12. The terms and conditions of this Agreement shall be held in strictest confidence by all parties and shall not be publicized or disclosed in any manner whatsoever, except that: (a) either party may disclose this Agreement in confidence to their attorneys, accountants, auditors, tax preparers; (b) the Board may disclose this Agreement as necessary or required by law and as required by any other mandated/regulatory reporting or disclosure requirements; and (c) the parties may disclose this Agreement insofar as such disclosure many be necessary to enforce its terms or as otherwise required by law such as to explain or enforce same with a government agency or court of law.

13. The parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to obtain the full force and effect of the basic terms and interest of this Agreement.

14. Petitioner's signature below represents her agreement to the terms stated herein on behalf of herself and on behalf of G.S. The Parties further understand that the Board's representative named below has been duly authorized to execute this Agreement on the Board's behalf. This Agreement and may be signed by the parties in counterparts on separate copies of the Agreement, and all signature pages shall be incorporated into the Agreement as if all the signatures are affixed on one (1) page.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the date and year set forth below.

WITNESS:

BELLEVILLE BOARD OF EDUCATION

DATED: _____

DATED: 11/5/2024

WITNESS:

E.G. o/b/o G.S.:

DATED: 12/30/23

DATED: 12/30/2023

65-24

New Jersey Commissioner of Education

Final Decision

Michael Fidler,

Petitioner,

v.

Board of Education of the Eastern Camden County Regional School District, Camden County, William J. McGroarty, III, and Robert Cloutier,

Respondents.

Synopsis

Petitioner, whose daughters attended Eastern Camden Regional High School and played on the Eastern Girls Soccer Team (Team) at the time of the events at issue here, filed an amended petition seeking declaratory relief pursuant to what he alleged was respondent's conversion of funds intended as donations to benefit the Team in contravention of *N.J.A.C.* 6A:23A-16.12(b). Respondent McGroarty served as head coach of the Team and was also a teacher at the high school, and at times solicited donations from petitioner and others through various fundraising efforts on behalf of the Team. In 2021, petitioner submitted the first of several Open Public Records Act requests to confirm that donations solicited by McGroarty were being managed properly. The responses led petitioner to believe that McGroarty was inappropriately depositing the funds into a personal bank account instead of one maintained by the high school or board. McGroarty filed a motion to dismiss in lieu of an answer, contending that petitioner's attempt to compel disciplinary action against him under the guise of a request for declaratory relief was procedurally improper. McGroarty further contended that petitioner lacked standing. Petitioner opposed the motion to dismiss and sought to amend his petition for a second time, explaining that his second amended petition would separate, into different counts, the declaratory relief he sought from the consequential relief he sought.

The ALJ found, *inter alia*, that: pursuant to *N.J.A.C.* 6A:3-2.1(a), a request for a declaratory ruling may not seek consequential relief, and each of petitioner's requests for relief were clearly consequential in nature and exceeded what was permitted by the rule; the amended petition was procedurally defective and should be dismissed; petitioner failed to provide valid legal support for his motion to amend, and the amendment he sought failed to comport with limitations on the amendment of pleadings set forth at *N.J.A.C.* 1:1-6.2(a) or in relevant case law. Accordingly, the ALJ granted the Board's motion and dismissed petitioner's appeal with prejudice.

Upon review, the Commissioner concurred with the findings and determination of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

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.

65-24
OAL Dkt. No. EDU 04726-22
Agency Dkt. No. 86-4/22

New Jersey Commissioner of Education

Final Decision

Michael Fidler,

Petitioner,

v.

Board of Education of the Eastern Camden County Regional School District, Camden County, William J. McGroarty, III, and Robert Cloutier,

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 the reply thereto of respondent William J. McGroarty, III, (McGroarty) have been reviewed and considered.[1]

This matter arises from an amended petition of appeal filed May 17, 2022, with the Department of Education's Office of Controversies and Disputes. By way of background, petitioner has two daughters who attended Eastern Camden Regional High School (ECRHS) in respondent Board's school district when the petition was filed, and they played on the girls' soccer team. Petitioner made numerous financial donations to the team. Respondent McGroarty coached the

[1] Petitioner's sur-reply, and respondent McGroarty's opposition to the sur-reply, were not considered as such submissions are not permitted under *N.J.A.C.* 1:1-18.4.

girls' soccer team at ECRHS and taught at the school. Respondent Cloutier was the Board's Superintendent.[2]

In the amended petition, petitioner alleged that McGroarty was mishandling donations he collected for the girls' soccer team by, among other things, depositing the funds into a personal bank account. Petitioner further alleged that he notified Cloutier about the issue and that an internal investigation ensued. However, according to petitioner, McGroarty was neither reprimanded nor suffered any other consequences for his misconduct and continued to coach and teach at ECRHS.

Unsatisfied with the outcome of the investigation, petitioner's amended petition specifically sought "declaratory relief from the Commissioner pursuant to *N.J.A.D.C.* [sic] 6A:3-2.1 in an appropriate Order as follows":

> A. Directing the High School and the Board to engage a neutral third party, preferably a certified public accountant, to thoroughly investigate McGroarty's handling of student activity funds to determine the full extent of his misconduct, which currently remains unknown;
>
> B. Determining and declaring that, based on the evidence adduced thus far, McGroarty violated N.J.A.D.C. [sic] 6A:23A-16.12(b) and Policy No. 6660 by opening and maintaining an unauthorized Account that McGroarty used to deposit and disburse monies directly related to the Team and McGroarty's personal camps;
>
> C. Advising Cloutier to submit tenure charges to the Board to determine "whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary" pursuant to *N.J.S.A.* 18A:6-11;

[2] While this matter was pending at the OAL, petitioner's daughters transferred to a different high school outside of respondent Board's district and McGroarty retired from his teaching position. However, according to petitioner, McGroarty is still coaching the girls' soccer team.

D. Determining and Declaring that Fidler shall file tenure charges with the Board, in the event that Cloutier is unwilling to do so within twenty (20) days of the Commissioner's Order; and,

E. Providing for such additional relief as the Commissioner deems reasonable.

The Board and Cloutier filed an answer. McGroarty filed a motion to dismiss in lieu of answer, contending that petitioner's attempt to compel disciplinary action against him under the guise of a request for declaratory relief was procedurally improper. McGroarty also contended that petitioner lacked standing. The matter was transmitted to the OAL for further proceedings. Petitioner filed opposition to McGroarty's motion to dismiss and sought leave to amend his petition for a second time. Petitioner explained that his second amended petition would separate, into different counts, the declaratory relief he sought from the consequential relief he sought.

Following briefing, oral argument, and consideration of post-argument correspondence, the Administrative Law Judge (ALJ) granted McGroarty's motion to dismiss the amended petition and denied petitioner's request to amend his petition for a second time. The ALJ found that, pursuant to *N.J.A.C.* 6A:3-2.1(a), a request for a declaratory ruling may not seek consequential relief, and that each of petitioner's requests for relief were clearly consequential in nature and exceeded what was permitted by the rule. Therefore, the ALJ concluded that the amended petition was procedurally defective and should be dismissed.

Additionally, the ALJ found and concluded that petitioner failed to provide valid legal support for his motion to amend, and that the amendment he sought did not comport with limitations on the amendment of pleadings set forth at *N.J.A.C.* 1:1-6.2(a) or in relevant case law. The ALJ reasoned that petitioner's request to expand the terms of his current petition neither simplified nor clarified the issues. Instead, the ALJ determined that petitioner's proposed amendment sought "to cure vulnerabilities of his first amended petition highlighted by

respondent's motion to dismiss" and that "[t]his exceeds the purpose for which motions to amend are normally treat[ed] with liberality and a light touch." Initial Decision, at 11.[3]

In his exceptions, which petitioner expressly limited to the ALJ's denial of his motion for leave to amend, petitioner asserts that the ALJ abused his discretion by denying the motion. He asks the Commissioner to reject the Initial Decision, grant petitioner's motion for leave to amend, and reinstate petitioner's appeal. Petitioner states that he sought leave to amend to avoid any argument that he failed to comply with the technical requirements of *N.J.A.C.* 6A:3-2.1(a)(1). He asserts that New Jersey courts liberally permit amendments to pleadings to secure a determination of cases on their merits so long as the amendments would not violate a rule of law, prejudice a non-moving party, or be futile. He claims that the proposed amendment neither violated a rule of law nor prejudiced respondents and therefore should have been permitted.

In reply, McGroarty asserts that the ALJ appropriately denied petitioner's request to amend the petition for a second time as the request was improper and futile not only for the reasons expressed in the Initial Decision, but also because the disenrollment of petitioner's daughters from the district rendered his requests for relief moot and negated his standing to bring the action. Additionally, McGroarty claims that the Commissioner now lacks jurisdiction to adjudicate the controversy since petitioner disenrolled his daughters from the district. McGroarty also contends that granting the request to amend would clearly prejudice him because it would force him to defend against baseless claims. Accordingly, McGroarty asks the Commissioner to adopt the ALJ's Initial Decision in its entirety.

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[3] Regarding the substance of petitioner's requests for relief, the ALJ found that *N.J.A.C.* 6A:23A-16.12(b), by its plain language, applies to boards of education and not teaching staff members or coaches such as McGroarty. Furthermore, the ALJ found that petitioner could not compel the Board to file tenure charges against McGroarty as the filing of tenure charges by boards of education is governed by specific procedures set forth in the Tenure Employees Hearing Law, *N.J.S.A.* 18A:6-10 to -18.1.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter. The Commissioner concurs with the ALJ's findings and conclusion that a request for a declaratory ruling may not seek consequential relief, and that each of petitioner's requests for relief were clearly consequential in nature and exceeded what was permitted by the rule. *See N.J.A.C.* 6A:3-2.1(a)(1) ("A request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts that are future, contingent, uncertain, or disputed."). Therefore, petitioner's amended petition was procedurally defective.

Additionally, the Commissioner finds and concludes that the ALJ did not abuse his discretion when he denied petitioner's motion to amend the petition for a second time. *N.J.A.C.* 1:1-6.2(a) provides that "[u]nless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice." Here, the ALJ found, and the Commissioner agrees, that amending the petition for a second time was not in the interest of efficiency or expediency as the amendment would neither simplify nor clarify the issues. Instead, the petitioner sought to expand the scope of his petition and cure deficiencies highlighted by McGroarty's motion to dismiss. The Commissioner further finds that to allow petitioner to attempt to cure deficiencies in his petition only after those deficiencies were brought to his attention by McGroarty in a motion to dismiss would prejudice McGroarty.

Moreover, the Commissioner finds that the amendment proposed by petitioner—i.e., to separate his requests for declaratory relief and consequential relief into two separate counts within a single petition—would not have cured the procedural defects which resulted in the ALJ's

recommendation to dismiss the petition. Granting the motion to amend would be futile because the regulations do not permit a petitioner to seek both declaratory relief and consequential relief in a single petition. *N.J.A.C.* 6A:3-1.3(a) provides that "[t]o initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements of *N.J.A.C.* 6A:3-1.4 . . . ." In contrast, petitions for declaratory ruling must conform to the requirements set forth at *N.J.A.C.* 6A:3-2.2, which differ from the requirements of *N.J.A.C.* 6A:3-1.4. Petitioner's proposed hybrid petition is neither contemplated nor allowed under the controlling regulations. For these reasons, the ALJ did not abuse his discretion by denying petitioner's motion to amend.

Accordingly, McGroarty's motion to dismiss the petition is granted, petitioner's request to amend the petition for a second time is denied, and the petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.[4]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 25, 2024

[4] 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 04726-22
AGENCY DKT. NO. 86-4/22

MICHAEL FIDLER,
Petitioner,
v.
BOARD OF EDUCATION OF THE EASTERN CAMDEN COUNTY REGIONAL SCHOOL DISTRICT, CAMDEN COUNTY, WILLIAM J. MCGROARTY, III, AND ROBERT CLOUTIER,
Respondents.

Anthony R. Twardowski, Esq., member of the Pennsylvania Bar and **Andrew DeLuca**, Esq., member of the Pennsylvania Bar for petitioner, admitted pro hac vice pursuant to N.J.A.C. 1:1-5.2(a) for petitioner Michael Fidler (Zarwin Baum DeVito Kaplan Schaer & Toddy, P.C., Attorneys), Attorney of Record: **Bryan P. Werley**, Esq. (Zarwin Baum DeVito Kaplan Schaer & Toddy, P.C., Attorneys)

Anthony I. Padovani, Esq., for respondents, Eastern Camden County Regional School and Robert Cloutier, (Sahli and Padovani, attorneys)

Eric J. Riso, Esq. for respondent, William J. McGroarty, III, (Zeller & Wieliczko, LLP, attorneys)

Record Closed: February 23, 2023 Decided: November 21, 2023

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner in this matter by way of amended petition seeks declaratory relief pursuant to what he alleges is respondent's conversion of funds intended as donations to benefit the Eastern Girls Soccer Team in contravention of N.J.A.C. 6A:23A-16.12(b). Respondent McGroarty filed a motion to dismiss in lieu of answer on June 1, 2022. The matter was fully briefed by counsel for the parties and oral argument was held on October 14, 2022. Post argument correspondence on the motion was exchanged and the record on motion closed on February 21, 2023.

The relief sought by petitioner is a declaratory ruling:

> A. Directing the High School and the Board to engage a neutral third party, preferably a certified public accountant, to thoroughly investigate McGroarty's handling of student activity funds to determine the full extent of his misconduct, which currently remains unknown;
>
> B. Determining and declaring that, based on the evidence adduced thus far, McGroarty violated N.J.A.C. 6A: 23A16.12(b) and Policy No. 6660 by opening and maintaining an unauthorized Account that McGroarty used to deposit and disburse monies directly related to the Team and McGroarty's personal camps;
>
> C. Advising Cloutier to submit tenure charges to the Board to determine "whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary" pursuant to N.J.S.A. 18A:6-11;
>
> D. Determining and Declaring that Fidler shall file tenure charges with the Board, in the event that Cloutier is unwilling to do so within twenty (20) days of the Commissioner's Order; and,
>
> E. Providing for such additional relief as the Commissioner deems reasonable.

In moving to dismiss, respondent argues that the amended petition must be dismissed because petitioner lacks standing and because petitioner's attempt to compel disciplinary action against Mr. McGroarty under the guise of a request for declaratory relief is improper. In opposition, petitioner argues that he has set forth a valid basis upon which the commissioner can grant request for declaratory relief and that he has standing.

FACTUAL DISCUSSION

Although the motion at hand can be decided largely on procedural grounds, in the interest of context a summation of relevant facts alleged by petitioner follows.

Petitioner is an adult whose daughters attended Eastern Camden Regional High School at the time of the events described and were members of the High School Girls Soccer Team. Respondent McGroarty served as the head coach of the team and was also a teacher at the high school. McGroarty at times solicited donations from petitioner and others through various fundraising efforts on behalf of the team.

In November of 2021, petitioner submitted the first of several Open Public Records Act ("OPRA") requests to the high school and the board to confirm that the donations solicited by McGroarty were being handled properly. The responses led petitioner to believe that McGroarty was inappropriately depositing the funds into a personal bank account instead of one maintained by the high school or board.

On or about December 7, 2021, petitioner sent a letter to the District's superintendent, Robert Cloutier, requesting a meeting to discuss petitioner's concerns. Such meeting occurred on January 6, 2022. Cloutier indicated that he would assign an internal investigative team to look into the matter. A follow-up meeting was held with petitioner on January 31, 2022, to provide an update and during which petitioner identified additional issues he felt needed to be addressed, which he summarized in a letter a few days later, on February 2, 2022. A report was issued on February 3, 2022, by the committee which appeared to confirm petitioner's assertions but did not identify any

consequence for respondent McGroarty. Petitioner expressed his dissatisfaction in a February 16, 2022, letter.

After no further action, to his knowledge, was taken by the Board, petitioner sought relief from the Commissioner to direct the high school and the board to conduct a further investigation into McGroarty's alleged misconduct, and that they hold McGroarty accountable for same, specifically, by way of a declaratory order:

> A. Directing the High School and the Board to engage a neutral third party, preferably a certified public accountant, to thoroughly investigate McGroarty's handling of student activity funds to determine the full extent of his misconduct, which currently remains unknown;
>
> B. Determining and declaring that, based on the evidence adduced thus far, McGroarty violated N.J.A.C. 6A:23A16.12(b) and Policy No. 6660 by opening and maintaining an unauthorized Account that McGroarty used to deposit and disburse monies directly related to the Team and McGroarty's personal camps;
>
> C. Advising Cloutier to submit tenure charges to the Board to determine "whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary" pursuant to N.J.S.A. 18A:6-11;
>
> D. Determining and Declaring that Fidler shall file tenure charges with the Board, in the event that Cloutier is unwilling to do so within twenty (20) days of the Commissioner's Order; and,
>
> E. Providing for such additional relief as the Commissioner deems reasonable.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision is appropriate if the papers and discovery which have been filed, together with the affidavits, 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. Summary decision is "substantially the same" as a motion for summary judgment under Rule 4:46-2. Contini v. Bd. of Educ., 286 N.J. Super. 106, 121,

(App. Div. 1995), certif. denied, 145 N.J. 372 (1996). The court must first determine "whether the competent evidential material 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." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). If there is no genuine issue of material fact, the court must decide whether the agency's application of the law was correct. Contini, 286 N.J. Super. 106, 122. In administrative proceedings, as in the courts, it is "the movant's burden to exclude any reasonable doubt as to the existence of any genuine issue of material fact." Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J 67, 74 (1954). Thus, "[a]ll inferences of doubt are drawn against the movant in favor of the opponent of the motion. the papers supporting the motion are closely scrutinized and the opposing papers indulgently treated." Id. at 75.

The New Jersey Supreme Court in Brill, 142 N.J 520, 539-40 (1995), requires the nonmovant to raise a factual issue substantial enough to sustain a reasonable conclusion in the nonmovant's favor if a hearing were held. If the evidence, along with reasonable inferences, could sustain a judgment in favor of the nonmovant the motion must be denied.

The Commissioner of Education "has primary jurisdiction to hear and determine all controversies arising under the school laws." Bower v. Bd. Educ. of East Orange, 149 N.J. 416, 420 (1997); see N.J.S.A. 18A:6-9. However, "[w]here the controversy does not arise under the school laws, it is outside the Commissioner's jurisdiction even though it may pertain to school personnel." Bd. of Educ. of East Brunswick v. Twp. Council of East Brunswick, 48 N.J. 94, 102 (1966).

"To exercise jurisdiction over a dispute, an administrative agency must have specific legislative authority." Dolan v. Centuolo, nos. A-2470-10T4, A-2710-10T4, at *11 (App. Div. July 9, 2012), <http://njlaw.rutgers.edu/collections/courts/> (citing Archway Programs, Inc. v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 426 (App. Div. 2002)). Pursuant to N.J.S.A. 18A:6-9, the Commissioner of Education

> 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 . . .
>
> [N.J.S.A. 18A:6-9 (emphasis added).]

"Our courts have long recognized the sweep of the Commissioner's reviewing powers . . . ". Bd. of Educ. of E. Brunswick v. Twp. Council of E. Brunswick, 48 N.J. 94, 101 (1966). However, "the sweep of the Department's interest and the Commissioner's jurisdiction does not extend to all matters involving boards of education." Archway, 352 N.J. Super. at 424-25. "Where the controversy does not arise under the school laws, it is outside the Commissioner's jurisdiction even though it may pertain to school personnel." E. Brunswick, 48 N.J. at 102.

In bringing the present motion to dismiss in lieu of an answer, respondent argues that the relief sought by petitioner is unavailable as petitioner seeks a declaratory ruling and does not meet the essential criteria to obtain such a decision from the Commissioner.

N.J.A.C. 6A:3-2.1(a) provides that:

> any interested person(s) may petition the Commissioner for a declaratory ruling with respect to rights, responsibilities, and status arising from any statute or rule within the jurisdiction of the Commissioner. The determination to entertain such petitions for declaratory ruling shall be within the sole discretion of the Commissioner. If such request is granted, the matter shall proceed in accordance with this chapter as they pertain to petitions. A declaratory ruling shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

However, this section is qualified by N.J.A.C. 6A:3-2.1(a)1, which provides that "[a] request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts that are future, contingent, uncertain, or disputed."

It is undisputed, and I **FIND**, that petitioner's amended petition seeks an order:

> A. Directing the High School and the Board to engage a neutral third party, preferably a certified public accountant, to thoroughly investigate McGroarty's handling of student activity funds to determine the full extent of his misconduct, which currently remains unknown;
>
> B. Determining and declaring that, based on the evidence adduced thus far, McGroarty violated N.J.A.C. 6A: 23A16.12(b) and Policy No. 6660 by opening and maintaining an unauthorized Account that McGroarty used to deposit and disburse monies directly related to the Team and McGroarty's personal camps;
>
> C. Advising Cloutier to submit tenure charges to the Board to determine "whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary" pursuant to N.J.S.A. 18A:6-11;
>
> D. Determining and Declaring that Fidler shall file tenure charges with the Board, in the event that Cloutier is unwilling to do so within twenty (20) days of the Commissioner's Order; and,
>
> E. Providing for such additional relief as the Commissioner deems reasonable.

As also noted above, a request for a declaratory ruling may not seek consequential relief beyond a declaration as to the meaning of a statute or rule. Here, clearly, each aspect of the relief sought for the declaratory ruling is consequential in nature and goes beyond seeking a declaration as to the meaning of the statute. The petitioner seeks an order forcing the board to engage a party to conduct an investigation and to declare that respondent McGroarty violated policy and regulation. The petitioner further seeks that the order advises the superintendent of the district to bring tenure charges against respondent McGroarty, and in the absence of such action to permit petitioner to do so.

Each of these requests is clearly consequential in nature, and clearly goes beyond what is contemplated by the rules governing declaratory relief. Accordingly, I

CONCLUDE that the request for declaratory relief is inappropriate and that the amended petition must be **DISMISSED**.

Furthermore, petitioner is seeking a declaration that McGroarty violated N.J.A.C. 6A: 23A16.12(b) seems to be misplaced. That regulation provides that:

> Each district board of education and charter school board of trustees shall maintain student activity funds in an interest-bearing account separate from all other funds of the district board of education or charter school board of trustees. The district board of education or charter school board of trustees shall disburse interest on this account(s) to each student activity fund in proportion to the balances on deposit for each activity.

By its plain language, this regulation places responsibility upon a board of education, requiring that they maintain the account in question. I **FIND**, pursuant to the arguments asserted and the petition filed, that the relief sought is premised upon a violation of this regulation by McGroarty. While it is no stretch to conclude that failure to utilize the account in question may not be appropriate action for an employee or teaching staff member to undertake, it is not for the teaching staff member to maintain the account; the regulation itself does not apply to teaching staff members; and, declaring that the regulation has been violated is not the appropriate way to address what is alleged. It may provide context for what is alleged but the responsibility it identifies is placed upon the Board.

N.J.A.C. 6A:23A-1.1 establishes the scope and purpose of Chapter 23 of Title 6A of the New Jersey Administrative Code. It states that:

> (a) The purpose of this chapter is to assure the financial accountability of district boards of education through enhanced State monitoring, oversight, and authority, and to ensure each district board of education adopts an annual budget that provides adequate resources to meet the State Constitution's mandate for a thorough and efficient system of free public schools for all children. This chapter sets forth the roles of the Commissioner of Education and the executive county superintendent in overseeing district board of education budgeting and expenditures. The chapter also

> establishes mechanisms to ensure the efficient expenditure of budgeted funds in a manner consistent with a school district's approved annual budget.
>
> (b) Pursuant to this chapter, the Commissioner delegates to the executive county superintendent powers, tasks, and duties that further support efficiency of school district operation pursuant to N.J.S.A. 18A:7F-43 et seq., and that complement the powers, tasks, and duties set forth in N.J.S.A. 18A:7-1 et seq.

The chapter by its own language governs the roles of the Commissioner and the executive county superintendent and lays out procedures to be followed by boards in assuring its goals. It does not create a code of conduct to be followed by or grounds for a cause of action against teaching staff members. Accordingly, I again **CONCLUDE** that petitioner's amended petition must be **DISMISSED**.

Additionally, a tenured school district employee may only be dismissed or reduced in compensation for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing before the Commissioner of Education following the filing of written charges signed by the person making the charges. N.J.S.A.18A:6-10(b). The person filing such charges "may or may not be a member . . . of a board of education." Ibid.

The Tenure Employees' Hearing Law provides specific procedures for filing tenure charges. Charges must be filed in writing with the secretary of the board, along with a written statement of evidence executed under oath. N.J.S.A. 18A:6-11; N.J.A.C. 6A:3-5.1(b). The charges must be stated with specificity. N.J.A.C. 6A:3-5.1(b)(1). The board of education must provide the affected employees with copies of the charge and statement of evidence, and they must be given an opportunity to respond. N.J.S.A. 18A:6-11; N.J.A.C. 6A:3-5.1(b). After considering the charge in a private meeting, the board must determine whether there is probable cause to credit the evidence in support of the charge, and if the charge is sufficient to warrant dismissal or a reduction in salary. Ibid. If the board determines that probable cause exists to support the charge, which, if credited, is sufficient to warrant dismissal or a reduction in salary, then the charge is forwarded to the commissioner with a certificate of tenure charges. Ibid.

However, if the board does not certify the tenure charges within forty-five days after receipt of the written charge, the charge shall be dismissed "and no further proceeding or action shall be taken thereon." N.J.S.A. 18A:6-13.

A party may appeal to the Commissioner to review a board's determination not to certify tenure charges. See, e.g., Manalapan-Englishtown Educ. Ass'n v. Bd. of Educ., 187 N.J. Super. 426 (App. Div. 1981); Carteret Educ. Ass'n v. Bd. of Educ. of Carteret, EDU 2677-07, Initial Decision, (February 14, 2008), adopted, Comm'r, (March 31, 2008) <http://njlaw.rutgers.edu/collections/oal/>. The Commissioner is limited to determining whether the board answered these questions in making its decision: first, whether there is probable cause sufficient to credit the evidence in support of the charge, and second, whether the charge, if credited, is sufficient to warrant dismissal or a reduction of salary. Manalapan-Englishtown, supra 187 N.J. Super. at 429. The board of education's action is entitled to a presumption of correctness and is not subject to change unless the Commissioner determines that it acted in an arbitrary, capricious or unreasonable manner. Carteret, supra (citing Bey v. Bd. of Educ. of Newark, 93 N.J.A.R.2d (EDU) 288, 291).

In Galante, the petitioner, a teacher and high school football coach, appealed the Board's decision to not certify tenure charges filed against a high school principal. Galante v. Bd. of Educ. of North Arlington, EDU 1149-06, Final Decision, (August 21, 2008) <http://njlaw.rutgers.edu/collections/oal/>. The ALJ directed the Board to certify tenure charges to the Commissioner, on grounds that the Board failed to meet the two-part Manalapan standard for consideration of tenure charges. The Commissioner agreed with the ALJ that the Board offered no support for its conclusory statements that petitioner's charges were not creditable and did not rise to the level warranting discipline. However, the Commissioner remanded to the Board on grounds that the ALJ substituted her judgment for that of the Board. The Commissioner ordered the Board to undertake the necessary investigations and deliberations to articulate the basis for its decision.

In the present matter, petitioner is asking the commissioner to forego procedure and to substitute petitioner's own judgment for that of the Board, or, more specifically, to

impose his will upon it – a request which clearly exceeds the role of an individual seeking to bring tenure charges or challenging a board's decision; that of an ALJ; and, potentially, even that of the Commissioner. Petitioner is clearly dissatisfied with the District's handling of his allegation and is asking the Commissioner to adopt and prescribe a specific set of preferred outcomes, which clearly exceed the contemplation of the law. That is not to say there isn't an appropriate way to assert his grievance, as described above – there is. But this is not it. While asking that an investigation be conducted, he also presumes the outcome of that investigation and seeks the filing of charges. Accordingly, I **CONCLUDE** that for this additional reason, the amended petition must be **DISMISSED**.

Finally, petitioner also now seeks leave to file an additional amended petition. Motions to amend are to be granted when they "would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice," citing N.J.A.C. 1:1-6.2(a).

There are general limitations on amending pleadings, especially when the amendment raised new or additional matters not set forth in the original petition. In A.D. and S.F. o/b/o P.F. v. Mine Hill Twp. Bd. of Educ., OAL Dkt. No. EDS 7465-07 (2007), the ALJ ruled that additional claims made in an amendment request were not proper, as the "second pleading constitute[d] an expansion" of the matter already filed. See also K.D. o/b/o E.D. v. Marlboro Twp. Bd. of Educ., OAL Dkt. No. EDS 17946-18 (June 10, 2020).

In the present matter, not only have issues not been simplified or clarified, it appears that petitioner actually seeks to expand the terms of his current petition. Or rather seeks to cure vulnerabilities of his first amended petition highlighted by respondent's motion to dismiss. This exceeds the purpose for which motions to amend are normally treaty with liberality and a light touch.

Accordingly, I **CONCLUDE** that petitioner has failed to provide valid legal support for his Motion to Amend, and that such amendment does not comport with the statutory and caselaw limitations on amendments. I further **CONCLUDE** that respondent's Motion to again amend his petition must be **DENIED**.

None of this is to say that allegations regarding inappropriate handling of finances in the school context are to be taken lightly – they are not. Nor is it to say that such allegations could not appropriately form the basis of a tenure charge – they could. And a party may challenge the handling or lack thereof by a board in addressing such a claim. However, there are procedures and avenues by which to do so, and they simply have not been followed in the present matter.

ORDER

It is **ORDERED** that respondent's motion to dismiss is **GRANTED** and petitioner's appeal is **DISMISSED** with prejudice. It is further **ORDERED** that petitioner's motion to further amend his petition is **DENIED**.

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 (45) 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 (13) 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.

November 21, 2023
DATE

ELIA A. PELIOS, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

EAP/caa

66-24

New Jersey Commissioner of Education

Final Decision

Stephanie Florio,

Petitioner,

v.

New Jersey State Board of Examiners,

Respondent.

Synopsis

In this matter on remand, *pro-se* petitioner appealed the determination of the respondent New Jersey State Board of Examiners (SBE) that she had not met the requirements for issuance of a Reading Specialist Certificate because she failed to complete the required three credit hours in a supervised practicum in reading. Petitioner argued that her alternative education and experience satisfied a one-to-one correspondence to the missing credits, in accordance with *N.J.A.C.* 6A:9B-4.13(b). The SBE did not accept petitioner's alternative education and experience, finding that petitioner did not establish a compelling one-to-one correspondence with the Reading Specialist certification requirements. The Commissioner rejected an Initial Decision issued by the Office of Administrative Law in November 2022 and remanded the matter to the OAL for reconsideration under the correct standard of review, which is whether the SBE's decision was consistent with the applicable statutory and regulatory provisions of *N.J.A.C.* 6A:3.

On remand, the ALJ found, *inter alia*, that: *N.J.A.C.* 6A:9B-14.13, which sets forth criteria for a reading specialist certification, does not define "Supervised practicum in reading"; the burden of proof is upon the petitioner to establish that the SBE's decision did not comport with the applicable statutory and regulatory provisions; petitioner submitted her work in a course entitled "Assessment and Remediation of Severe Reading Disabilities" (SPED 609) as the course meeting the supervised reading practicum requirement for a reading specialist certification; SPED 609 is a three credit course which in fact does contain a supervised reading practicum; while the SBE acknowledged that the course petitioner submitted to fulfill the practicum requirement did have a practicum component, the course was rejected because "the focus in the school setting was limited to one type of reading problem and a specific methodology, rather than covering a broad array of methods, strategies and techniques in the correction of reading problems"; however, the SBE did not, prior to issuing its decision, specify by rule amendment, or other writing, what the supervised reading practicum requirement actually was. The ALJ concluded that the SBE's decision in this matter was not consistent with the applicable statutory and regulatory provisions, as the SBE expanded "supervised reading practicum" from what is stated in the governing rule. Accordingly, the SBE's denial of petitioner's Reading Specialist Certificate was reversed.

Upon review, the Commissioner found, *inter alia,* that: while the SBE contended that the practicum must involve a broad array of topics related to reading disabilities, the applicable regulation contains no such requirement, and a regulation must be construed according to its plain reading. Accordingly, the Commissioner adopted the Initial Decision as the final decision in this matter.

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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OAL Dkt. No. EDU 00609-23
(EDU 06851-22 on remand)
Agency Dkt. No. 172-7/22

New Jersey Commissioner of Education

Final Decision

Stephanie Florio,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

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

In this matter, petitioner challenges the Board's denial of her application for a Reading Specialist Certificate. The Board denied petitioner's application because she did not satisfy three credit hours in a supervised practicum in reading. Petitioner argued that her alternative education and experience satisfied a one-to-one correspondence to the missing credits, in accordance with *N.J.A.C.* 6A:9B-4.12(b). Following a hearing, the Administrative Law Judge (ALJ) concluded that petitioner had met her burden of proof to demonstrate that her completion of a course entitled "Assessment and Remediation of Severe Reading Disabilities" (SPED 609) met the requirement of a supervised reading practicum and that the Board's

decision denying her application was not consistent with the applicable statutory and regulatory provisions.

In its exceptions, the Board argues that petitioner did not provide sufficient evidence to demonstrate that her alternate education or experience demonstrated a one-to-one correspondence to the missing coursework as required by *N.J.A.C.* 6A:9B-4.12. According to the Board, if the ALJ believed there was a question regarding the interpretation of what "supervised reading practicum" means, the ALJ should have engaged in an analysis of the principles of statutory construction. The Board contends that merely proffering a course that had a practicum component does not automatically mean that petitioner has met the requirements for the Reading Specialist Certificate. The Board argues that the SPED 609 course was limited to only one specific type of reading difficulty and one specific methodology, rather than a course focused on a broad array of methods, strategies, and techniques in the correction of reading problems. Accordingly, the Board urges the Commissioner to reject the Initial Decision and dismiss the petition of appeal.

In reply, petitioner argues that the ALJ correctly found that the SPED 609 course included a supervised practicum in reading and that she has therefore met the requirements for a Reading Specialist Certificate.

Upon review, the Commissioner concurs with the ALJ that petitioner has demonstrated that her completion of the SPED 609 course meets the requirement of *N.J.A.C.* 6A:9B-14.13(b)(2)(iv) for a supervised practicum in reading. The course syllabus for SPED 609 specifically states:

> Students will be required to develop an intervention plan based upon the results of their assessment and to deliver that remediation in the practicum placement.

> The focus of the remediation portion of the course will be structured sequential multi-sensory reading program interventions, Orton Gillingham based, to address phonemic awareness development, decoding skills, word recognition.

Clearly, the SPED 609 course includes a reading practicum. While the Board contends that the practicum must involve a broad array of topics related to reading disabilities, the applicable regulation contains no such requirement, and a regulation must be construed according to its plain reading.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The Board's denial of petitioner's application for a Reading Specialist Certificate is reversed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.d.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 25, 2024

[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 00609-23
AGY. DKT. NO. 172-7/22

STEPHANIE FLORIO,
Petitioner,
vs.
NEW JERSEY DEPARTMENT OF EDUCATION, BOARD OF EXAMINERS,
Respondent.

ON REMAND
OAL DKT. NO.: EDU 06851-22

Perry Florio, Esq., for Petitioner (Waters, McPherson, McNeill, attorneys)

Colin Klika, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorneys)

Record Closed: September 18, 2023 Decided: November 15, 2023

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Stephanie Florio, applied for a Reading Specialist Certification. The State Board of Examiners (Board) determined that Petitioner satisfied all requirements, except for a one-to-one correspondence between alternative education and experience presented and the practicum requirement.

Petitioner appealed that decision to the Office of Controversies and Disputes. The matter was transferred to the Office of Administrative Law (OAL) as a contested case, where it was filed on August 8, 2022, under Docket No. EDU 06851-22. In this matter Respondent filed a motion to dismiss, which was granted by the undersigned by Order dated November 15, 2022.

The Acting Commissioner of Education remanded the matter to the undersigned as noted in her Final Decision dated December 14, 2022. In said Final Decision the Acting Commissioner noted that the undersigned applied the incorrect standard of review for an appeal filed under N.J.A.C. 6A:-3. The correct standard of review is whether a decision is consistent with the applicable statutory and regulatory provisions.

The remanded matter was filed with the OAL on January 18, 2023, under Docket No. EDU 00609-23.

A prehearing conference on the remanded matter was held on January 31, 2023, and a prehearing Order was entered on the same date.

Respondent had filed a motion to dismiss in lieu of an answer in the prior matter. Accordingly, Respondent filed its Answer on February 1, 2023.

A hearing on the remanded matter was held on July 5, 2023. The parties were afforded the opportunity to submit post hearing briefs. Each party filed their respective post hearing briefs on September 18, 2023, whereupon the record closed.

ISSUE

Whether Board's denial is supported by the evidence and is consistent with the applicable statutory and regulatory provisions. The board, in its decision of April 7, 2022, determined that Petitioner failed to meet the practicum requirement for a reading specialist certificate.

SUMMARY OF RELEVANT TESTIMONY

Stephanie Florio, Petitioner, testified as follows:

DIRECT EXAMINATION

She is a teacher employed by the Randolph Board of Education. She teaches reading and writing.

She is a graduate of The College of New Jersey (TCNJ) and holds a Bachelor's degree in Education, a Bachelor's degree in Psychology and a Master's degree in Psychology.

In 2017 she decided to apply for a reading specialist certificate.

Ms. Florio then reviewed the State Board of Examiners' decision on her application for a reading specialist certificate. (J-2) She noted the requirements for such a certificate. At the time of making her application she believed that her education met the criteria. The application was denied and she appealed to the Board of Examiners. The application was denied as the practicum she participated in did not meet requirements. The decision, J-2, did not list specifics as to the reading practicum.

She participated in a course at TCNJ which had supervised practicum in reading. She had inquired of the Board as to the criteria for the reading practicum. She never received a response.

Referring back to J-2 she reviewed a letter from TCNJ outlining course descriptions and was presented to the Board.

Ms. Florio then described a practicum as a practical application under the supervision of a professor based on the skill taught in the classroom. The class she took had a reading practicum.

CROSS EXAMINATION

The classes she taught were in her capacity as either an English Language Arts teacher or a special education teacher.

The first class she taught was strictly teaching reading and writing.

RE-DIRECT EXAMINATION

English Language Arts is synonymous to reading and writing. The terms are interchangeable.

BY THE ALJ

The partial denial by the Board was for the reading practicum. The practicum did not meet the requirements of the Department.

Rani Singh testified as follows:

DIRECT EXAMINATION

She is employed as the Director of the Office of Recruitment, Prep and Certification at the New Jersey Department of Education (DOE). She has been employed at DOE for twenty-one years. Prior to that she was a teacher. She taught biology and elementary. She never taught reading. She does not hold a reading specialist certification. She does not hold a degree in education. She was an alternate route teacher.

Ms. Singh then reviewed J-1: Respondent's Responses to Petitioner's First Set of Interrogatories and Request for Production of Documents. She signed on behalf of DOE. She provided the responses. She provided no response to the question asking to name all persons who have knowledge of facts relating to the within matter.

She also provided no response to the question asking to set forth all facts relied upon in denying Ms. Florio's application. The answer just refers to the Board's written decision.

The response to question 22 refers to N.J.A.C. 6A:9B-14.13 in response to a question for the criteria for supervised practicum in reading relating to a reading specialist endorsement. The response to Question 23, asking for detail in the content of supervised practicum in reading relating to reading specialist endorsement, was "see interrogatory 22".

No details were provided.

Ms. Singh was asked to review J-2, which were the documents she produced in response to Petitioner's request for production of documents. She reviewed N.J.A.C. 6A:9B-14.13 and stated that is the sole criteria for a reading specialist certification.

She was present at the telephone conference where the Board heard Ms. Florio's appeal. She is the Board secretary.

She confirmed that 6A:9B-14.13 merely states "supervised practicum in reading".

Nothing was provided that provides any detail or insight into what a reading practicum must contain.

Ms. Singh then read into the record the description of SPED 609 found in J-2, page NJDOE 0011. She then reviewed page DOE 0097 of J-2, and confirmed that the course is for the assessment and remediation of reading disabilities for students who have special needs. This was submitted to the Board by Ms. Florio.

THERE WAS NO CROSS EXAMINATION BY COUNSEL FOR RESPONDENT.

MS. SINGH WAS CALLED AS RESPONDENT'S WITNESS

DIRECT EXAMANTION OF MS. SINGH AS RESPONDENT'S WITNESS

Ms. Singh described the duties of her office. She described the steps for requesting certificate or an endorsement. After an application is received an examiner reviews it. The examiner reviews all supporting documentation provided.

If an applicant had not completed an approved program the examiner does a course by course review to make sure it meets the criteria that's listed in Code. This is what occurred with Ms. Florio's application.

Ms. Singh then described what occurs after a denial and the appeal process to the Board.

She then described the role of someone with a reading specialist certification.

She then reviewed what Ms. Florio submitted as alternative education experience in support of her application.

Ms. Singh then reviewed the various courses submitted and opined that they did not contain a supervised practicum. When asked this question as to SPED 609 she stated "There's no practicum component here." When directed by the undersigned, Ms. Singh read the following part of the course description:

> "Students will be required to develop an intervention plan based upon the results of their assessment and to deliver that remediation in the practicum placement. The focus of the remediation portion of the course will be structured sequential multi-sensory reading program interventions, Orton Gillingham based, to address phonemic awareness development, decoding skills, word recognition."

When asked by the undersigned if this means there is a practicum element to the course, Ms. Singh replied she was not sure.

Ms. Singh then described the types of reading difficulties and methodologies a reading specialist needs to be familiar with.

CROSS EXAMINATION

Ms. Singh again reviewed N.J.A.C. 6A:9B-14.13 and noted it does not say a reading practicum must cover all grade levels. She could not answer how a three hour course could cover all grade levels.

CREDIBILITY

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see Polk, supra, 90 N.J. 550. Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

When facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings. Credibility is the value that a

finder of fact gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, its internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (8th Cir. 1963).

I had difficulty with Ms. Singh's testimony. I was particularly concerned with her response to the question about SPED 609 where she stated, "There's no practicum component here." Clearly the course description identifies a practicum component. She either answered the question not knowing what the course description stated, or misrepresented what the course description stated. Either way, the response renders her testimony in this regard not credible. Ms. Singh was proffered by the Board to support their denial of Ms. Florio's application. It is important to note that the denial was based solely on the Board's position that she lacked three credit hours in reading practicum.

JOINT STIPULATION OF FACTS

1. Appellant applied to the NJDOE for a reading specialist certificate in 2017.

2. On August 6, 2021 the NJDOE determined that Appellant had met the requirements of a Master's Degree and had completed 2 years of teaching experience, but advised that Appellant would need to complete an additional 12 graduate semester-hour credits to include "Reading Foundations," "Diagnosis of Reading Problems", "Correction of Reading Problems" and a "Supervised Practicum in Reading".

3. After further submissions to and review by the NJDOE, on September 28, 2021, the NJDOE re-evaluated Appellant's application and advised that Appellant would need to complete an additional 6 graduate semester-hour credits to include "Reading Foundations" and a "Supervised Practicum in Reading".

4. Thereafter, Appellant appealed the decision of the NJDOE examiner to the State Board of Examiners and requested that the Board consider alternative

education and experience to substitute as equivalent to her semester-hour credits deficiency.

5. After review and consideration of this information, the Board determined that the alternative education and experience Appellant provided was sufficient to satisfy the foundations requirement. However, the Board determined that Appellant failed to meet the practicum requirement and Appellant's application was denied on April 7, 2022.

6. On July 1, 2022, Appellant filed a petition of appeal of the Board's decision with the Bureau of Controversies and Disputes.

7. The matter was transmitted to the Office of Administrative Law and following a motion to dismiss filed on behalf of Respondent, the court dismissed the Appellant's petition.

8. On December 14, 2022, the Acting Commissioner of the State of New Jersey determined that the Administrative Law Judge applied a standard of whether or not the Board's denial was "arbitrary, capricious , or unreasonable" in denying the petition when the appropriate standard was whether "the Boards' decision is consistent with the applicable statutory and regulatory provisions" and remanded the matter to the Office of Administrative Law for further proceedings.

FINDINGS OF FACT

I **FIND** the following **FACTS**, in addition to the Stipulated Facts:

1. N.J.A.C. 6A:9B-14.13, which sets forth criteria for a reading specialist certification does not define "Supervised practicum in reading".

2. Petitioner submitted her course work in SPED 609 as the course meeting the "supervised reading practicum requirement" for a reading specialist certification. (J-2, Bates NJDOE 0011 and NJDOE 0097-00100)

3. SPED 609 is a three credit course. (J-2, Bates NJDOE 0011)

4. The Board, in its decision of April 7, 2022, stated: "However, the Board finds she did not provide compelling evidence of a one-to-one correspondence between the remaining requirement of a supervised reading practicum and the alternative experience and education she presented." The Board went on to explain what this practicum should entail. (J-7, Bates NJDOE 0114)

5. The Board noted that the course Petitioner submitted for the practicum requirement, Assessment and Remediation of Severe Reading Disabilities, did have a practicum component "but the focus in the school setting was limited to one type of reading problem and a specific methodology, rather than covering a broad array of methods, strategies and techniques in the correction of reading problems." (J-7, Bates NJDOE 0114)

6. The Board did not, prior to issuing its decision, specify by rule amendment, or other writing, what the supervised reading practicum requirement was.

7. SPED 609 contains a supervised reading practicum. (J-2, Bates NJDOE 0097)

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

All teaching staff members in the state's public schools must hold a valid certificate before serving in any role in which they "teach, administer, direct or supervise the teaching, instruction, or educational guidance" of students. N.J.S.A. 18A:26-2. Under N.J.S.A. 18A:6-38 and N.J.S.A. 18A:26-2.7, the Board promulgated regulations for the required certification of persons employed in a public school district. Under those regulations, the Board issues three categories of educational certificates: instructional, administrative, and educational services. N.J.A.C. 6A:9-5.2(a). Endorsements for an educational services certificate include staff members such as a school psychologist or a school social worker. See N.J.A.C. 6A:9B-14.5, -14.9. These endorsements "coincide with the educational subjects or positions that share common

attributes and thus are grouped under a particular certificate." Dennery v. Bd. of Educ., 131 N.J. 626, 633 (1993). Accordingly, a person can work in the particular field based upon the endorsement(s) enumerated on the certificate.

N.J.A.C. 6A:9B-14.13 states:

> (a) The reading specialist endorsement authorizes the holder to serve as a reading specialist in preschool through grade 12. A reading specialist conducts in-service training of teachers and administrators; coordinates instruction for students or groups of students having difficulty learning to read; diagnoses the nature and cause of a student's difficulty in learning to read; plans developmental programs in reading for all students; recommends methods and materials to be used in the school district reading program; and contributes to the evaluation of the reading achievement of students.
>
> (b) A candidate for this endorsement shall have completed a master's degree from a regionally accredited college or university, two years of successful teaching experience, and one of the following:

1. A Department-approved graduate-degree program in reading; or
2. A program of graduate studies of 30 semester-hour credits consisting of the following:

    i. Reading foundations;

    ii. Diagnosis of reading problems;

    iii. Correction of reading problems;

    iv. Supervised practicum in reading; and

    v. Study in at least three of the following areas: children's or adolescent literature; measurement; organization of reading programs; psychology; staff supervision; linguistics; special education; research; and foundations of education.

> (c) An emergency certificate may be issued to a candidate who has obtained the following:

1. A master's degree from a regionally accredited college or university;
2. Two years of successful teaching experience; and
3. Completion of 12 graduate credits in the areas listed in (b)2 above.

While the Board cannot waive the requirements, it can consider alternative education or experience if Petitioner demonstrates, by a preponderance of the credible evidence, that the alternative education or experience is the one-to-one equivalent with the statutory requirements. Hutchinson v. New Jersey State Board of Examiners, EDU16373-12, Initial Decision (April 5, 2013), aff'd, Commissioner (May 15, 2013).

The Board determined that Petitioner satisfied the requirements for RSC, except for six of the thirty semester hours, including study in reading foundations and supervised practicum in reading. Petitioner requested the Board consider alternate education and/or experience equivalent to the deficiency noted herein. Upon review of what Petitioner supplied, the Board found Petitioner satisfied the required study in the area of reading foundations. It did not find that Petitioner satisfied the requirement of supervised reading practicum. Accordingly, the Board denied the application as to the three remaining credits in a supervised practicum in ready.

The standard to apply in this matter is whether the Board's decision is consistent with the applicable statutory and regulatory provisions. See Jessica Walder v. St. Bd. of Exam'rs, Commissioner's Decision No. 503-14, dated December 29, 2014.

The burden of proof is upon the petitioner to establish the Board's decision did not comport with the applicable statutory and regulatory provisions. McQuilken v. St. Bd. of Exam'rs, OAL Dkt. No. EDU 8375-11, Initial Decision (Dec. 13, 2011), http://njlaw.rutgers.edu/collection/oal, adopted Comm'r (January 27, 2012) (citing Farrar v. St. Bd. of Exam'rs, OAL Dkt. No. EDU 13768-08, Initial Decision (Sept. 9, 2009), adopted Comm'r (July 26, 2010). http//njlaw.rutgers.edu/collections/oal).

Petitioner presented the Board with the course she took, SPED 609, which contained a supervised reading practicum. The Board, in its decision, determined that this course did not meet the requirement as set forth in N.J.A.C. 6A:9B-14.13. However, N.J.A.C. 6A:9B-14.13 does not define what the supervised reading practicum should encompass. Nothing, apparently, defines what this encompasses. The Board

set forth what it believes the supervised reading practicum should be. However, nowhere is that defined in the regulation.

The Board is duly authorized to make rules regarding matters over which it has jurisdiction. N.J.S.A. 18A:4-15 states: The state board shall make and enforce, and may alter and repeal, rules for its own government and for implementing and carrying out the school laws of this state under which it has jurisdiction. In adopting N.J.A.C. 6A:9B-14.13 it failed to define "supervised reading practicum". Its decision, which does define "supervised reading practicum" is not the governing rule in the matter at hand. Accordingly, the Board's decision is not consistent with the applicable statutory and regulatory provisions, as the Board expanded "supervised reading practicum" from what is stated in the governing rule. In effect, the Board made a rule expanding on the requirement without resort to the rule making procedure set forth in the Administrative Procedures Act. N.J.S.A. 52:14B-1 et seq.

I **CONCLUDE** that Petitioner has shouldered her burden of proof and that the Board of Examiners' decision is not supported by credible evidence, nor consistent with the applicable statutory and regulatory provisions.

Therefore, I **CONCLUDE** that the Board's denial of the RSC, as set forth in its Decision dated April 7, 2022, should be **REVERSED**.

ORDER

It is hereby **ORDERED** that the Board's denial of the RSC, as set forth in its Decision dated April 7, 2022, is **REVERSED**; and,

It is further **ORDERED** that the Board issue Reading Specialist Certificate (RSC) to Petitioner.

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.

November 15, 2023
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

List of Witnesses

For Petitioner:

Stephanie Florio, Petitioner

Rani Singh

For Respondent:

Rani Singh

List of Exhibits

Joint Exhibits[1]

J-1 Respondent's Answers to Petitioner's Interrogatories

J-2 Respondent's Response to Petitioner's Request for Production of Documents

J-3 New Jersey Commissioner of Education's Final Decision

J-4 Synopsis of New Jersey Commissioner of Education Final Decision

J-5 Graduate Bulletin for the 2014-2015

J-6 Response to Petitioners' OPRA request

J-7 April 7, 2022 Decision by New Jersey Dept. of Ed. State Board of Examiners

J-8 Petitioner's Transcripts from TCNJ

[1] The only documents presented were Petitioner's Exhibits 1 through 8. Exhibit 1 was marked J-1 and Exhibit 2 was marked J-2, Were the only exhibits marked during the hearing. However, the undersigned has admitted all documents contained in Petitioner's exhibits a joint exhibits. They are all relevant to the matter at hand.

67-24

New Jersey Commissioner of Education

Final Decision

Salvatore Piarulli,

Petitioner,

v.

Board of Education of the Borough of Garwood, Union County,

Respondent.

Synopsis

In this case filed June 6, 2023, petitioner – a member of the Garwood Board of Education (Garwood or Garwood BOE) – sought indemnification from respondent for attorney fees and costs which he incurred in relation to a contested case, Board of Education of the Borough of Garwood, Union County v. Salvatore Piarulli, EDU 01176-23, filed February 7, 2023, wherein Garwood sought a ruling that petitioner was disqualified from serving on the Garwood BOE because he had filed a Notice of Tort Claim against Garwood and thereby incurred a conflict of interest. The tort claim followed a vote by Garwood to remove petitioner as its Sending District Representative (SDR) to the Clark Board of Education and included a demand for $10 million dollars in damages based on an allegation that he was slandered and libeled as the result of his removal as SDR. In the instant matter, petitioner sought legal fees and costs of $22,874.60 as indemnity pursuant to *N.J.S.A.* 18A:12-20, as well as interest and additional costs and fees as permitted by law, all related to his tort claim against the Garwood BOE. Garwood filed a motion to dismiss, contending that the petition failed to advance a cause of action that demonstrated entitlement to indemnification under *N.J.S.A.* 18A:12-20.

The ALJ found, *inter alia*, that: petitioner's position that he is entitled to indemnification pursuant to *N.J.S.A.* 18A:12-20 for expenditure of money for his attorney fees and costs because he was primarily acting in the public interest when he filed his Notice of Tort Claim and when he was "defending" himself in the course of executing his Board duties when Garwood filed suit to disqualify him as a member is without merit; *N.J.S.A.* 18A:12-20 only obligates a board of education to defray costs incurred by a member when he or she is defending against a lawsuit or action brought by others for an act or omission undertaken in the course of performing his or her official duties as a Board member; petitioner's filing of his tort claim initiated an action against the Garwood BOE; and petitioner's tort claim advanced a cause of action for his own monetary benefit, which was in conflict with his duties as a Board member. The ALJ concluded that petitioner is not entitled to be indemnified for his attorneys' fees and costs based on *N.J.S.A.* 18A:12-20 or on any other basis. Accordingly, the ALJ dismissed the petition with prejudice.

Upon review, the Commissioner concurred with the ALJ that petitioner is not entitled to indemnification from the Garwood BOE. Accordingly, the Initial Decision was adopted as the final decision in this matter, and the petition was dismissed with prejudice.

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.

67-24
OAL Dkt. No. EDU 05656-23
Agency Dkt. No. 158-6/23

New Jersey Commissioner of Education

Final Decision

Salvatore Piarulli,

Petitioner,

v.

Board of Education of the Borough of Garwood, Union County,

Respondent.

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 that petitioner is not entitled to indemnification from the Garwood Board of Education.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 25, 2024

[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 05656-23
AGENCY REF. NO.:158-6/23

SALVATORE PIARULLI,
Petitioner,
vs.
GARWOOD BOARD OF EDUCATION, UNION COUNTY,
Respondent.

Ronald A. Berutti, Esq., for petitioner (Murray-Nolan, Berutti, LLC, attorneys)

Robert E. Levy, Esq. for respondent (Scarinci & Hollenbeck, attorneys)

Record Closed: September 14, 2023 Decided: December 21, 2023

BEFORE: **JOHN P. SCOLLO**, ALJ:

STATEMENT OF THE CASE

In EDU 05656-23, the parties are the Garwood Board of Education (hereinafter, "Garwood", the "BOE", or "Garwood BOE") and Salvatore Piarulli (hereinafter "Piarulli"), a member. In his Petition, filed on June 6, 2023 with the Commissioner of Education, Piarulli seeks indemnification from Garwood BOE for attorneys' fees and costs, which he incurred in the matter of EDU 01176-23. On June 23, 2023, Garwood BOE filed it Motion to Dismiss this Petition. On June 26, 2023, the Commissioner transmitted this matter to the Office of Administrative Law, where it was filed on June 26, 2023 as a

contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to 13 and assigned Docket Number EDU 05656-23.

Piarulli's June 6, 2023 Petition is in one count (Indemnification) specifically seeking the following relief: (1) legal fees and costs of $22,874.60 as indemnity, pursuant to N.J.S.A. 18A:12-20; (2) interest as allowed by law; (3) reasonable legal fees and cost for this Petition; and (4) such other further and reasonable relief as may be permitted by law. In its June 23, 2023 Motion to Dismiss, the BOE seeks: (1) an Order Dismissing the June 6, 2023 Petition with Prejudice, arguing that Piarulli's Petition fails to advance a cause of action demonstrating entitlement to indemnification under N.J.S.A. 18A:12-20; (2) reasonable attorney fees and costs of suit; and (3) such other relief as may be appropriate.

PROCEDURAL HISTORY

History of EDU 01176-23

The Department of Education's Office of Controversies and Disputes, on February 7, 2023 transmitted a matter filed by Garwood BOE to the Office of Administrative Law. It was filed on February 7, 2023 as a contested case. It was captioned Board of Education of the Borough of Garwood, Union County v. Salvatore Piarulli and it was given OAL Docket Number EDU 01176-23. In EDU 01176-23, Garwood BOE sought a ruling that Piarulli was disqualified from serving on the BOE because he filed a Notice of Tort Claim against the BOE on January 11, 2023 and thereby incurred a conflict of interest. On February 9, 2023, EDU 01176-23 was assigned to John P. Scollo, ALJ. During a teleconference held before Judge Scollo on February 13, 2023, the parties mutually agreed as follows: Piarulli withdrew his January 11, 2023 Notice of Tort Claim in exchange for the BOE withdrawing its February 7, 2023 petition in EDU 01176-23. As a result of the February 13, 2023 teleconference, Judge Scollo issued a February 14, 2023 Letter Order.

History of EDU 01274-23

On January 24, 2023, Piarulli filed a Petition to the Commissioner of Education seeking to reverse Garwood BOE's October 18, 2022 vote to remove him as Garwood's Sending District Representative and seeking other relief. On February 8, 2023, the Commissioner transmitted this Petition to the Office of Administrative Law where it was filed on February 8, 2023 and given OAL Docket Number EDU 01274-23. On February 9, 2023, EDU 01274-23 was assigned to Judge Scollo. On February 10, 2023, Garwood BOE filed a Motion to Dismiss Piarulli's January 21, 2023 Petition.

As noted above, on February 9, 2023 EDU 01176-23 and EDU 01274-23 were both assigned to John P. Scollo, ALJ. As noted above, during the February 13, 2023 teleconference, EDU 01176-23 and Piarulli's January 11, 2023 Notice of Tort Claim were mutually withdrawn.

In EDU 01274-23, Judge Scollo granted the BOE's Motion to Dismiss, ruling that the Petition which Piarulli filed with the Commissioner of Education on January 24, 2023 was filed beyond the 90-day time limit allowed by N.J.A.C. 6A:3-1.3 and therefore was time-barred. Judge Scollo also ruled that Garwood BOE had the authority to appoint or to remove any board member to / from the position of Sending District Representative, and therefore its vote on October 18, 2022 to replace Piarulli as SDR was done within its authority under N.J.S.A. 18A:11-1(d).

The History of EDU 05656-23

The matter presently before the Tribunal is EDU 05656-23. On June 6, 2023, Piarulli filed a Petition with the Commissioner of Education seeking to be indemnified by Garwood BOE for attorneys' fees and costs, which he incurred in the matter of EDU 01176-23. Garwood BOE filed a Motion to Dismiss on June 23, 2023. The Commissioner transmitted the matter to the Office of Administrative Law, where it was filed on June 26, 2023. The matter was captioned Salvatore Piarulli v. Board of Education of the Borough of Garwood, Union County and given OAL Docket Number EDU 05656-23.

This writing is Judge Scollo's Initial Decision on Piarulli's claim for indemnification and for other claims presented in EDU 05656-23.

ANALYSIS OF THE PARTIES' ARGUMENTS

Piarulli's Position

It is Piarulli's position that he is entitled to indemnification from Garwood BOE pursuant to N.J.S.A. 18A:12-20 for the expenditure of money for his attorneys' fees and costs because he was primarily acting in the public interest when he filed his Notice of Tort Claim on January 11, 2023 and when he was "defending" himself in the course of executing his Board duties when the BOE filed EDU 01176-23.

Piarulli urges us to read Judge Ciarrocca's February 2, 2023 Order. Judge Ciarrocca's February 2, 2023 Order dissolved the temporary restraints put in place by Judge Walsh's January 20, 2023 Order and dismissed Garwood's Complaint without prejudice in order for the Commissioner of Education to administratively decide the merits of the matter. Piarulli argues that Judge Ciarrocca's February 2, 2023 Order means that he was a prevailing party and thus is entitled to an award of attorneys' fees and costs pursuant to N.J.S.A. 18A:12-20.

Piarulli also argues that the mutual dismissal entered into by the parties on February 13, 2023 during the teleconference with Judge Scollo should be considered as "concluded in Mr. Piarulli's favor", this entitling him to recover attorneys' fees and costs pursuant to N.J.S.A. 18A:12-20.

Garwood BOE's Position

The essence of Garwood BOE's argument is that Piarulli, under N.J.S.A.18A:12-20, is not entitled to indemnification for bringing a personal causation against the Board on which he serves. Rather, a Board member is only entitled to seek indemnification in circumstances where he is defending himself against a lawsuit or other action which

arises out of his actions performed or omissions made while in the course of the performance of his duties as a Board member.

Aside from the explicit wording of N.J.S.A.18A:12-20, Garwood BOE reasons that the purpose of N.J.S.A. 18A:12-20's indemnification provisions is found in the statement accompanying the initial adoption of the statute. Garwood quotes from the statement as follows:

> "The purpose of this bill is the give *protection* to every person holding office, position or employment under the jurisdiction of the board of education from financial loss arising from alleged negligence or other act or happening in the discharge of his duties and within the scope of his employment."

Garwood argues that in the above-quoted section, the word "protection" clearly refers to indemnification for the *defense* of an action brought against a Board member. Garwood argues that the word "protection" clearly does not refer to not indemnification being afforded to a Board member brought for *initiating an action against his own Board.*

Garwood also argues that indemnification is only available, under N.J.S.A.18A:12-20, when a Board member has been sued or otherwise brought into an action when the actions for which he has been sued arise out of or in the course of the performance of his duties as a member of the Board. Garwood BOE argues that the filing of a Notice of Tort Claim in which Piarulli sought money damages was not an action that could in any way be classified as something that arose out of and in the course of the performance of his duties as a member of the Board. That is to say, he was not acting in his official capacity as a member of the Board. Quite to the contrary, by filing the Notice of Claim, he created a conflict of interest under N.J.S.A.18A:12-2 by becoming interested in a claim for money damages against the Board. Moreover, his contesting of the BOE's Petition (EDU 01176-23) was in furtherance of his own claim for money damages and not in furtherance of his duties as a Board member.

FACTUAL DISCUSSION

Issues of Fact

The factual analysis of the parties' positions in this matter requires an exposition (in the form of questions) of the factual issues presented. Some of the factual questions presented in this matter are as follows:

(1) Is there a fee-shifting statute available to Piarulli, which (a) permits an award of attorneys' fees and costs for Piarulli's filing of a Notice of Tort Claim against Garwood BOE; (b) which permits an award of attorneys' fees and costs for defending against Garwood BOE's Petition filed under EDU 01176-23; and, (c) which permits an award of attorneys' fees and costs for bringing this present action filed under EDU 05656-23 against Garwood BOE?

(2) Is there a court rule available to Pirulli, which permits an award of attorneys' fees and costs for the same set of questions presented in sections (a), (b) and (c) of Question One?

(3) Is there a Common Law exception involving a fiduciary's breach of his fiduciary duties available to Piarulli, which permits an award of attorneys' fees and costs for the same set of questions presented in sections (a), (b) and (c) of Question One?

(4) Is there a contract between Piarulli and Garwood BOE, which permits an award of attorneys' fees and costs for the same set of questions presented in sections (a), (b) and (c) of Question One?

The answers to these and other questions are set forth below in the Tribunal's FINDINGS OF FACT.

Chronology of Background Information

The chronology set forth below is taken from Judge Scollo's Initial Decision dated July 24, 2023 in the matter of EDU 01274-23. It is not a verbatim account, but it sets forth events, which the Tribunal deemed particularly significant. The Tribunal included this chronology herein to help the reader understand the background of this matter.

November, 2021 and January, 2022

Piarulli was elected to the Garwood BOE in the November, 2021 election. He was sworn-in in January, 2022. At the BOE's reorganization meeting, the BOE appointed him as Garwood's Sending District Representative to the BOE of Clark pursuant to N.J.S.A. 18A:38-8.1 and 8.2. Clark is where Garwood sends its high school students. Garwood will be referred to as a "sending district" and Clark will be referred to as a "receiving district".

October 18, 2022

On October 18, 2022, Garwood BOE voted in favor of a resolution to replace Piarulli as its SDR to the Clark BOE with another board member. Piarulli contends that this was the result of defamatory statements and retaliation by the BOE's president, whom he claims is a "political rival".

It should be noted that N.J.A.C.. 6A:3-1.3 (i) sets forth a 90-day time limit for the filing of a Petition with the Office of the Commissioner of Education, wherein a Petitioner seeks relief from an action taken by a board of education. Thus, if Piarulli wanted to contest the BOE's October 18, 2022 action that removed him from the position of SDR, the 90-day limit for filing a Petition, as measured from October 18, 2022, would expire on January 16, 2023.

January 11, 2023

On January 11, 2023, Piarulli filed a Notice of Tort Claim in which he sought monetary and non-monetary relief from Garwood BOE.

January 16, 2023, January 20, 2023 and January 24, 2023

January 16, 2023 marked ninety days from the date (October 18, 2022) that the Garwood BOE voted to replace Piarulli as the SDR to the Clark BOE.

On January 20, 2023, the Garwood BOE filed a Verified Complaint and Order to Show Cause in the Superior Court seeking to prevent Piarulli from serving on the Garwood BOE in any capacity, i.e., to remove Piarulli from membership on the Garwood BOE. The BOE's reason for filing these papers was that Piarulli's filing of the Notice of Tort Claim on January 11, 2023 put him into a conflict of interest with his BOE obligations and thus mandated either his resignation from the BOE or his removal from the BOE pursuant to N.J.S.A. 18A:12-2. N.J.S.A. 18A:12-2 is entitled "Inconsistent Interests or Office Prohibited". It encompasses situations where a board member may have a conflict of interest. Garwood BOE contends that it was required by N.J.S.A. 18A:12-2 to take immediate action. Both sides agree that the text of N.J.S.A. 18A:12-2 states that no member of a Board of Education may serve or continue to serve on a BOE if he has a direct or indirect interest in a claim against the BOE. Thus, Garwood BOE contends that Piarulli refused to resign and that its filing of the January 20, 2023 Verified Complaint and Order to Show Cause was a necessity required by the law and was not a tortious act.

On January 20, 2023, Judge Thomas Walsh granted the BOE's application for relief, issuing a Temporary Restraining Order against Piarulli, with the provision that Piarulli could move to vacate the restraints on two days' notice.

On January 24, 2023, Piarulli filed his Petition with the Commissioner in which he sought to overturn the resolution of October 18, 2022. January 24th was eight days beyond January 16th. This was later transmitted to the OAL and assigned Docket Number EDU 01274-23.

Piarulli admitted that he filed the Notice of Tort Claim on January 11, 2023 in which he sought non-monetary relief and money damages from the BOE. While Piarulli admitted that his $10,000,000 claim does indeed say that he seeks monetary compensation from Garwood BOE, he claimed that the $10,000,000 figure was a mere placeholder on a form and that his primary reason for filing the Notice of Claim was to protect the public's interest in having its duly-elected BOE member continue to serve in a capacity to which he was appointed by the BOE (i.e., serving as the BOE's SDR).

January 24, 2023

On January 24, 2023, Piarulli, in addition to filing a Petition with the Commissioner of Education, undertook another action. Responding to Garwood BOE's Verified Complaint and Order to Show Cause, Piarulli filed his own Verified Complaint and Order to Show Cause in Superior Court, Union County, Chancery Division alleging that the BOE's actions were illegal; seeking to vacate the January 20, 2023 Temporary Restraining Order issued by Judge Walsh; and seeking a dismissal of Garwood's Verified Complaint.

February 2, 2023

On February 2, 2023, Mark P. Ciarrocca,, P.J. Cv., Union County Superior Court, observing that neither N.J.S.A. 18A:6-9 nor N.J.S.A. 18A:12-2 state that the Commissioner of Education has the exclusive jurisdiction [to decide the controversy], decided that an administrative remedy was nevertheless available. Judge Ciarrocca therefore dissolved the temporary restraints set forth in Judge Walsh's January 20, 2023 Order and dismissed Garwood BOE's Verified Complaint without prejudice, so that the Commissioner of Education would review and decide the matter pursuant to N.J.S.A. 18A-6-9.

As noted above, the matter (EDU 01274-23) was transmitted to the OAL and was ultimately decided in Judge Scollo's Initial Decision dated July 24, 2023.

The above-stated timeline of events and the recitation of certain facts is consistent with the parties' prior submissions.

FINDINGS OF FACT

Having considered the arguments of the parties, set forth above, as well as the background of this matter, I hereby make the following **FINDINGS OF FACT**.

From a plain reading of Judge Ciarrocca's February 2, 2023 Order, I **FIND** that he merely dissolved the temporary restraints contained in Judge Walsh's January 20,

2023 Order, and I **FIND** that he merely dismissed Garwood's Complaint *without prejudice* so that the merits of the Complaint could be decided administratively by the Commissioner of Education. I **FIND** that the rulings contained in Judge Ciarocca's February 2, 2023 Order do not state that the matter has been "concluded in Piarulli's favor". I **FIND** that the rulings do not declare Piarulli to be "the prevailing party", nor do they characterize Piarulli as "winning" or "prevailing" in the matter.

I **FIND** that that during the February 13, 2023 teleconference the parties mutually agreed that in exchange for Piarulli's withdrawal of his January 11, 2023 Notice of Tort Claim, Garwood BOE dismissed its February 7, 2023 Petition filed under OAL Docket Number EDU 01176-23. I **FIND** that during the February 13, 2023 teleconference, neither Piarulli nor Garwood BOE made any reservation of rights to continue to seek attorneys' fees and / or costs from each other. I **FIND** that the parties' mutual exchange, Piarulli's withdrawal of his Notice of Tort Claim in exchange for the BOE's dismissal of EDU 01176-23, was the parties' complete and final expression of their desire to end all issues related to the filing of the Notice of Tort Claim and the filing of EDU 01176-23.

From a reading of the applicable statute, I **FIND** that N.J.S.A.18A:12-20 only obligates a Board of Education to defray all costs incurred by a member when he is *defending himself* against a lawsuit or action brought against him by others for an act he does or for an omission he makes while he is in the course of the performance of his duties as a Board member. I **FIND** that when Piarulli filed his Notice of Tort Claim he initiated an action that was against the BOE. I further **FIND** that Piarulli's filing of a Notice of Tort Claim was not an action undertaken in his own defense as a member of the Board who was acting in furtherance of the performance of his duties as a Board member. I further **FIND** that when Piarulli filed his Notice of Tort Claim, he was advancing a cause of action for his own monetary benefit, which, under N.J.S.A.18A:12-2 was in conflict with his duties as a Board member. I further **FIND** that when Piarulli contested Garwood BOE's Petition (filed under Docket Number EDU 01176-23), he was not *defending* against an action initiated by others against him as a member of the Board acting in the course of the performance of his duties, but instead was acting in furtherance of his own claim against Garwood BOE.

Having considered the above-stated Questions One through Four, I make the following Findings of Fact. I have found that since Piarulli was not defending an action initiated by others against him as a board member acting in the furtherance of the performance of his duties as a Board member, N.J.S.A 18A:12-20 does not afford Piarulli a right to seek indemnification from Garwood BOE in this matter. I **FIND** that there was no fee-shifting statute applicable under the circumstances presented. I **FIND** that the filing of a Notice of Tort Claim does not give rise to an enforceable claim for an award of attorney fees by virtue of any Court Rule. I **FIND** that there was no breach of any fiduciary duty under the circumstances presented for which attorneys' fees and / or costs could be sought. I **FIND** that there was no contract between Piarulli and Garwood BOE that provided for the recovery of attorney fees for breach thereof.

APPLICABLE LAW

Indemnity of Members of Boards of Education Against Cost of Defense of Civil and Criminal Action

N.J.S.A. 18A:12-20 governs the indemnification of board of education members against the expenses and costs of their defense when lawsuits or other legal proceedings are brought against them in their capacity as board members acting in the course of their duties.

N.J.S.A. 18A:12-20 states:

> Whenever a civil, administrative, criminal, or quasi-criminal action or other legal proceeding has been or shall be brought against any person for any act or omission arising out of and in the course of the performance of his duties as a member of a board of education, and in the case or a criminal or quasi-criminal action such action results in final disposition in favor of such person, the board of education 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. 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.A.** 59:10-4. Any board of education may arrange for

> and maintain appropriate insurance to cover all such damages, losses and expenses.

The Law of Compromise and Settlement

The settlement of lawsuits, as a policy matter, ranks high. Nolan v. Lee Ho, 120 N.J. 465, 472 (1990). Generally, a settlement agreement is governed by principles of contract law. Thompson v. City of Atlantic City, 190 N.J. 359 (2007). Purported ambiguities in in a settlement agreement must be construed against the party that drafted the agreement. Linan-Faye Construction Co., Inc. v. Housing Authority of the City of Camden, 995 F. Supp. 520 (U.S. District Court of New Jersey, 1998).

In ascertaining the meaning and scope of a settlement agreement, it is appropriate for a court to consider that courts do not rewrite contracts in order to provide a better bargain for the parties than that which was contained in their writing. Grow Company, Inc. v. Chokshi, 403 N.J. Super. 443 (App. Div. 2008), citing Christfano v. N.J. Mfgrs. Ins. Co., 361 N.J. Super. 228, 237 (App. Div. 2003).

An agreement to settle a lawsuit, voluntarily entered, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing. Green v. John H. Lewis & Co., 436 F. 2d 389 (U.S. Court of Appeals, Third Circuit, 1970).

An oral agreement between counsel, to settle a personal injury case for $10,000, was enforceable, where the parties and their counsel did not think that agreeing to an amount was merely an intermediate step which had no legal efficacy until settlement papers were executed. Williams v. Vito, 365 N.J. Super. 225 (Law Div. 2003).

Regardless of a party's subjective intent, his outward manifestation of his intent to be bound by signing a settlement agreement could not be undone, in the absence of fraud, mistake, duress, or some other contract defense. Nevets C.M., Inc. v. Nissho Iwai American Corp., 726 F. Supp. 525, Affirmed, Appeal of Nevets, C.M. , Inc. 899 F.2d 1218.

Where the parties agree upon the essential terms of a settlement, so that the mechanics can be "fleshed out" in writing to be thereafter executed, the settlement will be enforced notwithstanding the fact that the writing does not materialize due to a party's later reneging. Lahue v. Pio Costa, 263 N.J. Super. 575 (App. Div. 1993); certification denied 134 N.J. 477 (1993).

Courts will not ordinarily inquire into the adequacy or inadequacy of the consideration underlying a compromise settlement which was fairly and deliberately made. And only where the inadequacy of the consideration is grossly shocking to the conscience of the court will the court interfere with a settlement agreement which was voluntarily executed by the parties. Pascarella v. Bruck, 190 N.J. Super. 118 (App. Div. 1983); certification denied, 94 N.J. 600 (1983).

There is a clear public policy in New Jersey favoring settlement of litigation, and only where there is fraud, or other compelling circumstances will a court refuse to honor a settlement agreement. Herrera v. Township of South Orange Village, 270 N.J. Super. 417 (App. Div. 1993); certification denied, 136 N.J. 28 (1993). A settlement agreement can be set aside if it was achieved through coercion, deception, fraud, undue pressure, or unseemly conduct, or if one party was not competent to voluntarily consent thereto. Peskin v. Peskin, 271 N.J. Super. 261 (App. Div. 1994); certification denied, 137 N.J. 165 (1994). A party seeking to vacate a settlement based on fraud must prove the following: (1) that there was a material misrepresentation, (2) which was made with knowledge of the falsity and with the intent that the misrepresentation be relied on, and (3) that there was actual reliance upon the misrepresentation to the party's detriment.

The Law Governing Recoupment of Attorney Fees

Under the "American Rule", which is followed in New Jersey, litigants must bear the cost of their own attorneys' fees. Counsel fee awards, as exceptions to the American Rule, fall under four general categories:

(1) those granted pursuant to a fee-shifting statute;

(2) those allowed by court rule;

(3) a tightly circumscribed common law exception in settings involving breaches of fiduciary duties; and

(4) those granted through a contractual agreement.

In Gannett Satellite Information, LLC v. Township of Neptune, A-63 September Term 2021, 085719, the New Jersey Supreme Court declared, "[T]he American Rule remains in force."

LEGAL ANALYSIS AND CONCLUSIONS

I **CONCLUDE** that when Piarulli filed his Notice of Claim he was not protecting any of the public's rights. I **CONCLUDE** that when Piarulli filed his Notice of Claim he asserted a monetary claim for his own benefit.

Having found that during the February 13, 2023 teleconference the parties mutually agreed that in exchange for Piarulli's withdrawal of his January 11, 2023 Notice of Tort Claim, Garwood BOE dismissed its February 7, 2023 Petition filed under OAL Docket Number EDU 01176-23; and having found that during the February 13, 2023 teleconference, neither Piarulli nor Garwood BOE made any reservation of rights to continue to seek attorneys' fees and / or costs from each other; and having found that the parties' mutual exchange (Piarulli's withdrawal of his Notice of Tort Claim in exchange for the BOE's dismissal of EDU 01176-23) was the parties' complete and final expression of their desire to end all issues related to the filing of the Notice of Tort Claim and the filing of EDU 01176-23, I **CONCLUDE** that the parties there and then mutually relinquished their rights to seek attorneys' fees and / or costs from each other.

I have found that Judge Ciarrocca's February 2, 2023 Order, merely dissolved the temporary restraints contained in Judge Walsh's January 20, 2023 Order, and merely dismissed Garwood's Complaint without prejudice so that the merits of the Complaint could be decided administratively by the Commissioner of Education. I have found that the rulings contained in Judge Ciarrocca's February 2, 2023 Order do not declare Piarulli as "winning" or "prevailing" in the matter. I have found that Piarulli is not entitled to seek attorneys' fees and / or costs under N.J.S.A. 18A:12-20. I have found

that Piarulli is not entitled to seek attorneys' fees and / or costs based on a fee-shifting statute. I have found that Piarulli is not entitled to seek attorneys' fees and / or costs based on any court rule. I have found that Piarulli is not entitled to seek attorneys' fees and / or costs due to the breach of a fiduciary's duty. I have found that Piarulli is not entitled to seek attorneys' fees and / or costs based on a contract. I therefore **CONCLUDE** that since none of the above-referenced exceptions to the American Rule apply in this matter, the American Rule will not allow Piarulli to recover attorneys' fees (and / or costs of suit) in this matter.

Having found that N.J.S.A.18A:12-20 only obligates a Board of Education to defray costs incurred by a member when he is defending himself against a lawsuit or action brought against him by others for an act he does or for an omission he makes while he was in the course of the performance of his duties as a Board member, and having found that Piarulli's filing of his Notice of Tort Claim and subsequent contesting of Garwood BOE's Petition (EDU 01176-23) were not actions that were done in the course of the performance of Piarulli's duties as a Board member, I **CONCLUDE** that Piarulli is not entitled to be indemnified for his attorneys' fees and / or costs based on N.J.S.A. 18A:12-20 or on any other basis.

ORDER

Pursuant to the foregoing conclusions, it is hereby **ORDERED** that the Petition filed by Piarulli on June 6, 2023 is hereby **DISMISSED** with prejudice; and it is further

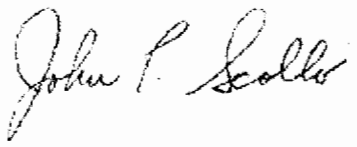
ORDERED that this **ORDER** shall be served upon the parties via email and said parties shall acknowledge receipt of said **ORDER** within seven (7) days.

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.



December 21, 2023
DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:
db

68-24

New Jersey Commissioner of Education

Final Decision

P.P.P., on behalf of minor child, E.E.P.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that his minor child, E.E.P., was not entitled to a free public education in Elizabeth schools during the period between May 5, 2023 and June 5, 2023, contending that he and E.E.P. resided at an apartment on Fulton Street in Elizabeth. The Board contended that E.E.P. was domiciled in Hillside, New Jersey during this period. The Board sought tuition reimbursement for the period of E.E.P.'s alleged ineligible attendance in Elizabeth schools.

The ALJ found, *inter alia*, that: E.E.P. was disenrolled from the Elizabeth School District (Elizabeth) in June 2023; P.P.P. failed to appear at a prehearing conference in October 2023; during a second prehearing conference in November 2023, petitioner disconnected from the call prior to conclusion of the conference; petitioner then failed to appear at the hearing in December 2023; the respondent Board has shown by a preponderance of evidence that neither E.E.P.'s mother, R.V., nor his father, P.P.P., reside in Elizabeth; and petitioner failed to provide any evidence to the contrary; and *N.J.S.A.* 18A38-1(b)(1) provides that when the evidence does not support a claim of residency, the resident shall be assessed tuition for the period of ineligible attendance. The ALJ concluded that petitioner owes the Board tuition reimbursement in the amount of $1,997.40, representing twenty days of ineligible attendance by E.E.P. in Elizabeth schools.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter and dismissed the petition. Petitioner was ordered to reimburse the Board in the amount of $1,997.40.

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.

68-24
OAL Dkt. No. EDU 10056-23
Agency Dkt. No. 243-9/23

New Jersey Commissioner of Education

Final Decision

P.P.P., on behalf of minor child, E.E.P.,

Petitioner,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

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's (ALJ) finding that petitioner failed to sustain his burden of establishing that he and his minor child, E.E.P., were domiciled in Elizabeth (the District) between May 5, 2023 and June 5, 2023. The Commissioner further concurs with the ALJ's conclusion that E.E.P. was, therefore, not entitled to a free public education in the District during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioners for the time period during which E.E.P. was ineligible to attend school in the District. Therefore,

the Elizabeth Board of Education (Board) is entitled to tuition reimbursement in the amount of $1,997.40 for the period from May 5, 2023 through June 5, 2023. [1]

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of $1,997.40 for tuition costs incurred from May 5, 2023 through June 5, 2023 when E.E.P. was ineligible to attend school in the District. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

Angelica Allen-McMillan, J.d.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 25, 2024

[1] This amount is based on the per diem tuition rate of $99.87 listed in the District's Final Notice of Ineligibility (Exhibit R-4) and the District's 2022-2023 school calendar (Exhibit R-8), which reflects 20 days of school between May 5, 2023 and June 5, 2023.

[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
OAL DKT. NO. EDU 10056-23
AGENCY DKT NO. 243-9/23

P.P.P., ON BEHALF OF MINOR CHILD, E.E.P.,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF ELIZABETH, UNION COUNTY,
Respondent.

P.P.P., petitioner, pro se

Brian Kane, Esq., for respondent (LaCorte, Bundy, Varady & Kinsella, attorneys)

Record Closed: December 19, 2023 Decided: December 21, 2023

BEFORE **PATRICE E. HOBBS**, ALJ:

STATEMENT OF THE CASE

Petitioner, P.P.P. challenges the determination by the Board of Education of the City of Elizabeth, Union County (BOE or respondent) that the minor child E.E.P. does not reside in Elizabeth pursuant to N.J.S.A. 18A:38-1 and for reimbursement of tuition for E.E.P. Should public school be free to petitioner and his children in Elizabeth while they lived in Hillside? No. Under N.J.S.A. 18A:38-1(a), public school shall be free to a minor

who is domiciled within the school district, and petitioner and his family meet no exception to this law.

PROCEDURAL HISTORY

In June 2023, E.E.P. was disenrolled from the Elizabeth School District. On September 11, 2023, P.P.P. filed his appeal with the Commissioner of Education. On September 22, 2023, this matter was transmitted from the New Jersey State Department of Education to the Office of Administrative Law (OAL) for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to-13. A prehearing conference was held on October 16, 2023. P.P.P. did not appear. A second prehearing conference was held on November 8, 2023. Prior to conclusion of the prehearing conference, P.P.P. disconnected from the call. P.P.P. did not appear for the hearing. The hearing took place on December 19, 2023. The record closed on December 19, 2023.

FINDINGS OF FACT

Based on the credible testimonial and documentary evidence, I **FIND** the following uncontroverted **FACTS:**

1. R.V. is the mother of E.E.P. and she enrolled E.E.P. at JVJ STEM Academy in Elizabeth, New Jersey. (R-1.)
2. R.V. is also the mother of A.P. (year of birth 2013). A.P. is not enrolled in any Elizabeth Public School.
3. P.P.P. was not listed on the school demographic profile. (R-1.)
4. During the 2022-2023 school year, E.E.P. had 400 absences from his class. (R-2.)
5. As a result of the unusually large number of absences, the BOE requested that R.V. provide the BOE with proof of domiciliary within the district. (R-3.)
6. There was no response from R.V.

7. The BOE engaged Mr. Buteau, an investigator, who went to the Cross Avenue address. Mr. Buteau spoke with the landlord who stated she did not know R.V. or E.E.P.
8. Since the BOE had no proof of residency, the BOE notified R.V. that E.E.P. was ineligible for school within the district. (R-4.)
9. Mr. Buteau spoke with R.V. who confirmed that she resided in Hillside, New Jersey.
10. Mr. Buteau verified that R.V. resides in Hillside, New Jersey through a background check that includes public and private records.
11. R.V. provided no explanation for the numerous absences from school.
12. The BOE formally disenrolled E.E.P. from the school district on June 5, 2023.
13. On September 11, 2023, P.P.P. filed an appeal of the residency determination, and included a certified letter from Mr. Franco, an Anchor Benefit Application, and an Elizabeth Public Library card as proof that P.P.P. resides at Fulton Street in Elizabeth. (R-7.)
14. The certified letter from Mr. Franco states that he rents a Fulton Street apartment to P.P.P.
15. The BOE Residency Verification Form lists multiple documents that would be acceptable as proof of residency and requires a showing of only five documents. P.P.P. not only failed to provide five items for proof of residency as required by the BOE, but also failed to provide any of the items listed on the Residency Verification Form. (R-7.)
16. Mr. Buteau went to the Fulton Street address and spoke with the tenants at that address who had no knowledge of P.P.P. or E.E.P.
17. Mr. Buteau verified that the owner of the Fulton Street address is Ms. Virgina Scott.
18. E.E.P. was ineligible for education at the Elizabeth BOE from May 5, 2023, through June 5, 2023, or twenty school days.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

At issue in this case is whether E.E.P resides within the Elizabeth Board of Education School District. Any child between the ages of five and twenty years old is entitled to free public education in the district in which he is a resident. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). A student is a resident of a school district if his parent or guardian has a permanent home in the district such that "the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere." N.J.A.C. 6A:22-3.1(a)(1). A student may attend school in a district in which he is a non-resident, with or without payment of tuition, at the discretion of the school district. N.J.S.A. 18A:38-3(a); N.J.A.C. 6A:22-2.2.

Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is that of his or her parent, custodian, or guardian. P.B.K. o/b/o minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001).

Where a local board determines that a child is not properly domiciled in its district, N.J.S.A. 18A:38-1(b)(2) provides a right of appeal to the parents as follows:

> The parent or guardian may contest the Board's decision before the Commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the Commissioner and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this section.

N.J.S.A. 18A:38-1(b)(2). In the case at hand, P.P.P. contested the BOE's decision that E.E.P. was not properly domiciled in the School District. The BOE has shown by a preponderance of the evidence that neither R.V. nor P.P.P. reside in Elizabeth. P.P.P. did not provide any evidence to the contrary.

Based on the facts above, I **CONCLUDE** that the petitioner and the minor child, E.E.P. were not domiciled in the Elizabeth Board of Education School District in the 2022-2023 school year.

N.J.S.A. 18A:38-1(b)(1) provides that when the evidence does not support the claim of the resident, the resident shall be assessed tuition:

> Tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the commissioner are enforced.

N.J.S.A. 18A:38-1(b)(1). Since the evidence does not support the claims of the petitioner, the BOE is therefore authorized to assess tuition upon the petitioner as required under the law. The BOE has provided the per student daily rate as $99.87 and the number of days of ineligible attendance for E.E.P. as twenty. The total amount of tuition reimbursement owed to the BOE is $1997.40. Based on the above facts and legal principles cited above, I **CONCLUDE** that the petitioner owes the respondent the tuition for out-of-district students for the entire 2022-23 school year.

ORDER

Based upon the foregoing, it is **ORDERED** that the petitioner owes the respondent the cost of tuition for out-of-district student, E.E.P. for his attendance at the JVJ Stem Academy in the amount of $1997.40.

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.

Patrice E. Hobbs

December 21, 2023
DATE

PATRICE E. HOBBS, ALJ

Date Received at Agency: December 21, 2023

Date Mailed to Parties: December 21, 2023

lsr

APPENDIX

WITNESSES

For Petitioner:

P.P.P., petitioner

For Respondent:

William Buteau

EXHIBITS

For Petitioner:

None

For Respondent:

R-1 Elizabeth Board of Education Demographic Information for E.E.P.

R-2 Elizabeth Board of Education Attendance Records for E.E.P.

R-3 Notice of Initial Determination of Ineligibility for E.E.P.

R-4 Notice of Final Ineligibility for E.E.P.

R-5 Elizabeth Board of Education Transfer Records for E.E.P.

R-6 Investigation Notices on Pichardo Matter and Documents

R-7 Documentation received from P.P.P.

R-8 2022-2023 School Calendar

69-24SEC
SEC Dkt. No. T03-23
Agency Dkt. No. 350-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Marquis Garnett,
Chesilhurst Board of Education,
Camden County.

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner, noting that respondent was previously the subject of an Order to Show Cause and received a suspension for failing to timely complete the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is removed from the Board for violating the School Ethics Act.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 24, 2024

[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.

Before the School Ethics Commission
Docket No.: T03-23
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Marquis Garnett,
Chesilhurst Board of Education, Camden County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on November 28, 2023, directing Marquis Garnett (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on November 28, 2023, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Chesilhurst Board of Education, located in Camden County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 2 training program by December 31, 2022.

On or about September 19, 2023, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2022, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on March 17, 2023, and May 8, 2023, as well as postings in *School Board Notes* on 12 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated October 19, 2023, and November 15, 2023, advising Respondent that the Commission required completion of the training by November 17, 2023, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its meeting on November 28, 2023.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2022, and did not complete the training prior to the Commission's final deadline of November 17, 2023, and therefore, the Commission issued an OTSC at its meeting on November 28, 2023. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, he failed to complete training as required. Additionally, the Commission notes Respondent was previously issued a suspension for failing to complete his mandatory training requirement in a timely fashion (T16-21).

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons forth above, and given that Respondent was previously the subject of an OTSC in which he received a suspension for failing to complete his mandatory training requirement in a timely fashion, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon adoption by the Commissioner of Education.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: December 19, 2023

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T03-23

Whereas, Marquis Garnett (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2022; and

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, Respondent was previously issued a suspension for failing to complete his mandatory training in a timely fashion; and

Whereas, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education; and

Whereas, at its meeting on December 19, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on December 19, 2023.

Brigid C. Martens

Brigid C. Martens, Director
School Ethics Commission

70-24SEC
SEC Dkt. No. T06-23
Agency Dkt. No. 352-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Taylor Klenk,
Somerdale Park Board of Education,
Camden County.

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. To date, respondent has not notified the SEC that she has completed the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is removed from the Board for violating the School Ethics Act.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 24, 2024

[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.

Before the School Ethics Commission
Docket No.: T06-23
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Taylor Klenk,
Somerdale Park Board of Education, Camden County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on November 28, 2023, directing Taylor Klenk (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Somerdale Park Board of Education, located in Camden County. As a result of her position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 2 training program by December 31, 2022.

On or about September 19, 2023, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2022, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on March 17, 2023, and May 8, 2023, as well as postings in *School Board Notes* on 12 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated October 19, 2023, and November 15, 2023, advising her that the Commission required completion of the training by November 17, 2023 to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this

correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its meeting on November 28, 2023.

To date, there is no dispute that Respondent did not complete her required training by December 31, 2022, and did not complete the training prior to the Commission's final deadline of November 17, 2023, and therefore, the Commission issued an OTSC at its meeting on November 28, 2023. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of her training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the

Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: December 19, 2023

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T06-23

Whereas, Taylor Klenk (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete her training program by December 31, 2022; and

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why she failed to complete her mandatory training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement she was obligated to complete; and

Whereas, at its meeting on December 19, 2023, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on December 19, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on December 19, 2023.

Brigid C. Martens, Director
School Ethics Commission

71-4SEC
SEC Dkt. No. T07-23
Agency Dkt. No. 353-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Lori Perloff,
West Wildwood Board of Education,
Cape May County.

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a sixty-day suspension, noting that respondent was previously the subject of an Order to Show Cause for failing to timely complete the required training. The SEC advises that respondent did complete the required training on December 24, 2023. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law.

Accordingly, respondent is suspended from the Board for sixty days for violating the School Ethics Act.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 24, 2024

[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.

Before the School Ethics Commission
Docket No.: T07-23
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Lori Perloff,
West Wildwood Board of Education, Cape May County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on November 28, 2023, directing Lori Perloff (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on November 28, 2023, the Commission notified Respondent that she had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the West Wildwood Board of Education, located in Cape May County. As a result of her position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 4 training program by December 31, 2022.

On or about September 19, 2023, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2022, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on March 17, 2023, and May 8, 2023, as well as postings in *School Board Notes* on 12 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated October 19, 2023, and November 15, 2023, advising her that the Commission required completion of the training by November 17, 2023, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this

correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its meeting on November 28, 2023.

To date, there is no dispute that Respondent did not complete her required training by December 31, 2022, and did not complete the training prior to the Commission's final deadline of November 17, 2023, and therefore, the Commission issued an OTSC at its meeting on November 28, 2023. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of her training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required. Additionally, the Commission notes Respondent was previously issued a reprimand for failing to complete her mandatory training requirement in a timely fashion (T29-16).

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, given that Respondent was previously the subject of an OTSC in which she received a reprimand, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **sixty (60) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: December 19, 2023

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T07-23

Whereas, Lori Perloff (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete her training program by December 31, 2022; and

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why she failed to complete her mandatory training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, Respondent was previously issued a reprimand for failing to complete her mandatory training in a timely fashion; and

Whereas, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement she was obligated to complete; and

Whereas, at its meeting on December 19, 2023, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, given that Respondent was previously the subject of an OTSC in which she received a reprimand, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a sixty (60) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on December 19, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on December 19, 2023.

Brigid C. Martens, Director
School Ethics Commission

72-24
SEC Dkt. No. T09-23
Agency Dkt. No. 354-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Douglas Walker,
Alexandria Township Board of Education,
Hunterdon County.

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a penalty of censure. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is censured for violating the School Ethics Act.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 24, 2024

[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.

Before the School Ethics Commission
Docket No.: T09-23
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Douglas Walker,
Alexandria Township Board of Education, Hunterdon County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on November 28, 2023, directing Douglas Walker (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on November 28, 2023, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Alexandria Township Board of Education, located in Hunterdon County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 4 training program by December 31, 2022.

On or about September 19, 2023, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2022, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on March 17, 2023, and May 8, 2023, as well as postings in *School Board Notes* on 12 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated October 24, 2023, and November 15, 2023, advising him that the Commission required completion of the training by November 17, 2023, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its meeting on November 28, 2023.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2022, and did not complete the training prior to the Commission's final deadline of November 17, 2023, and therefore, the Commission issued an OTSC at its meeting on November 28, 2023. After having been served with the OTSC, Respondent completed his training requirement on December 6, 2023, but did not respond to the Commission's OTSC as to why he did not complete training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the issuance of an Order to Show Cause, but before the Commission issues its decision, receives a censure." *N.J.A.C.* 6A:28-4.3(b). For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **censure**.

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **censure**.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to

(ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: December 19, 2023

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T09-23

Whereas, Douglas Walker (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2022; and

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent completed his training requirement, but did not respond to the Commission's OTSC as to why he did not complete training by December 31, 2022; as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on December 19, 2023, the Commission recommended that the Commissioner of Education impose a penalty of censure on Respondent; and

Whereas, at its meeting on December 19, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on December 19, 2023.

Brigid C. Martens, Director
School Ethics Commission

73-24SEC
SEC Dkt. No. T13-23
Agency Dkt. No. 356-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Christopher Murray,
Fair Haven Borough Board of Education,
Monmouth County.

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. To date, respondent has not notified the SEC that he has completed the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is removed from the Board for violating the School Ethics Act.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 24, 2024

[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.

Before the School Ethics Commission
Docket No.: T13-23
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Christopher Murray,
Fair Haven Borough Board of Education, Monmouth County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on November 28, 2023, directing Christopher Murray (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on November 28, 2023, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Fair Haven Borough Board of Education, located in Monmouth County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 2 training program by December 31, 2022.

On or about September 19, 2023, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2022, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on March 17, 2023, and May 8, 2023, as well as postings in *School Board Notes* on 12 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated October 24, 2023, and November 15, 2023, advising Respondent that the Commission required completion of the training by

November 17, 2023, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its meeting on November 28, 2023.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2022, and did not complete the training prior to the Commission's final deadline of November 17, 2023, and therefore, the Commission issued an OTSC at its meeting on November 28, 2023. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's

decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: December 19, 2023

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T13-23

Whereas, Christopher Murray (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2022; and

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on December 19, 2023, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on December 19, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on December 19, 2023.

Brigid C. Martens, Director
School Ethics Commission

74-24SEC
SEC Dkt. No. T19-23
Agency Dkt. No. 358-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Jill Ireland, High Point Regional School District Board of Education, Sussex County.

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. The SEC advises that respondent completed the required training on December 29, 2023. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is suspended from the Board for 30 days for violating the School Ethics Act.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 24, 2024

[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.

Before the School Ethics Commission
Docket No.: T19-23
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Jill Ireland,
High Point Regional School District Board of Education, Sussex County

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I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on November 28, 2023, directing Jill Ireland (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on November 28, 2023, the Commission notified Respondent that she had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the High Point Regional School District Board of Education, located in Sussex County. As a result of her position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 1 training program by December 31, 2022.

On or about September 19, 2023, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2022, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on March 17, 2023, and May 8, 2023, as well as postings in *School Board Notes* on 12 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated October 24, 2023, and November 15, 2023, advising Respondent that the Commission required completion of the training by

November 17, 2023, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its meeting on November 28, 2023.

To date, there is no dispute that Respondent did not complete her required training by December 31, 2022, and did not complete the training prior to the Commission's final deadline of November 17, 2023, and therefore, the Commission issued an OTSC at its meeting on November 28, 2023. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T19-23

Whereas, Jill Ireland (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete her training program by December 31, 2022; and

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why she failed to complete his mandatory training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement she was obligated to complete; and

Whereas, at its meeting on December 19, 2023, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on December 19, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on December 19, 2023.

Brigid C. Martens, Director
School Ethics Commission

75-24SEC
SEC Dkt. No. T20-23
Agency Dkt. No. 359-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Joseph Conforth, High Point Regional School District Board of Education, Sussex County.

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. The SEC advises that respondent completed the required training on January 10, 2024. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is suspended from the Board for 30 days for violating the School Ethics Act.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 24, 2024

[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.

Before the School Ethics Commission
Docket No.: T20-23
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Joseph Conforth,
High Point Regional School District Board of Education, Sussex County

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I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on November 28, 2023, directing Joseph Conforth (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on November 28, 2023, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the High Point Regional School District Board of Education, located in Sussex County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 1 training program by December 31, 2022.

On or about September 19, 2023, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2022, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on March 17, 2023, and May 8, 2023, as well as postings in *School Board Notes* on 12 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated October 24, 2023, and November 15, 2023, advising Respondent that the Commission required completion of the training by

November 17, 2023, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its meeting on November 28, 2023.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2022, and did not complete the training prior to the Commission's final deadline of November 17, 2023, and therefore, the Commission issued an OTSC at its meeting on November 28, 2023. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's

decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: December 19, 2023

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T20-23

Whereas, Joseph Conforth (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2022; and

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on December 19, 2023, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on December 19, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on December 19, 2023.

Brigid C. Martens, Director
School Ethics Commission

76-24SEC
SEC Dkt. No. T21-23
Agency Dkt. No. 360-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Michael Bohr, Lenape Valley Regional High School District Board of Education, Sussex County.

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. To date, respondent has not notified the SEC that he has completed the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.* However, subsequent to the issuance of its decision, the SEC advised the Commissioner that respondent is no longer a member of the Lenape Valley Regional High School District Board of Education (Board).

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. However,

as respondent is no longer a member of the Board, respondent is hereby censured for violating the School Ethics Act.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 24, 2024

[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.

Before the School Ethics Commission
Docket No.: T21-23
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Michael Bohr,
Lenape Valley Regional High School District Board of Education, Sussex County

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I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on November 28, 2023, directing Michael Bohr (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on November 28, 2023, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Lenape Valley Regional High School District Board of Education, located in Sussex County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 1 training program by December 31, 2022.

On or about September 19, 2023, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2022, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on March 17, 2023, and May 8, 2023, as well as postings in *School Board Notes* on 12 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated October 24, 2023, and November 15, 2023, advising Respondent that the Commission required completion of the training by

November 17, 2023, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its meeting on November 28, 2023.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2022, and did not complete the training prior to the Commission's final deadline of November 17, 2023, and therefore, the Commission issued an OTSC at its meeting on November 28, 2023. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

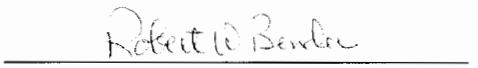
For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's

decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.



Robert W. Bender, Chairperson

Mailing Date: December 19, 2023

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T21-23

Whereas, Michael Bohr (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2022; and

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on December 19, 2023, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on December 19, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on December 19, 2023.

Brigid C. Martens, Director
School Ethics Commission

77-24SEC
SEC Dkt. No. T22-23
Agency Dkt. No. 361-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Courtney Malefyt,
Sussex Wantage Regional School District
Board of Education, Sussex County.

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. To date, respondent has not notified the SEC that she has completed the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is removed from the Board for violating the School Ethics Act.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 24, 2024

[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.

Before the School Ethics Commission
Docket No.: T22-23
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Courtney Malefyt,
Sussex Wantage Regional School District Board of Education, Sussex County

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I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on November 28, 2023, directing Courtney Malefyt (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on November 28, 2023, the Commission notified Respondent that she had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Sussex Wantage Regional School District Board of Education, located in Sussex County. As a result of her position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 2 training program by December 31, 2022.

On or about September 19, 2023, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2022, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on March 17, 2023, and May 8, 2023, as well as postings in *School Board Notes* on 12 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated October 24, 2023, and November 15, 2023, advising Respondent that the Commission required completion of the training by

November 17, 2023, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its meeting on November 28, 2023.

To date, there is no dispute that Respondent did not complete her required training by December 31, 2022, and did not complete the training prior to the Commission's final deadline of November 17, 2023, and therefore, the Commission issued an OTSC at its meeting on November 28, 2023. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

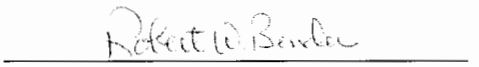
For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's

decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.



Robert W. Bender, Chairperson

Mailing Date: December 19, 2023

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T22-23

Whereas, Courtney Malefyt (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete her training program by December 31, 2022; and

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why she failed to complete his mandatory training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement she was obligated to complete; and

Whereas, at its meeting on December 19, 2023, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on December 19, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on December 19, 2023.

Brigid C. Martens, Director
School Ethics Commission

78-24SEC
SEC Dkt. No. T04-23
Agency Dkt. No. 362-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of Dajshia Gibson,
Lawnside Board of Education,
Camden County.

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. To date, respondent has not notified the SEC that she has completed the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is removed from the Board for violating the School Ethics Act.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.d.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 24, 2024

[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.

Before the School Ethics Commission
Docket No.: T04-23
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Dajshia Gibson,
Lawnside Board of Education, Camden County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on November 28, 2023, directing Dajshia Gibson (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on November 28, 2023, the Commission notified Respondent that she had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Lawnside Board of Education, located in Camden County. As a result of her position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 2 training program by December 31, 2022.

On or about September 19, 2023, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2022, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on March 17, 2023, and May 8, 2023, as well as postings in *School Board Notes* on 12 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated October 19, 2023, and November 15, 2023, advising Respondent that the Commission required completion of the training by

November 17, 2023, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its meeting on November 28, 2023.

To date, there is no dispute that Respondent did not complete her required training by December 31, 2022, and did not complete the training prior to the Commission's final deadline of November 17, 2023, and therefore, the Commission issued an OTSC at its meeting on November 28, 2023. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of her training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's

decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: December 19, 2023

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T04-23

Whereas, Dajshia Gibson (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete her training program by December 31, 2022; and

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why she failed to complete her mandatory training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2022, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement she was obligated to complete; and

Whereas, at its meeting on December 19, 2023, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on December 19, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on December 19, 2023.

Brigid C. Martens, Director
School Ethics Commission

80-24
OAL Dkt. No. EDU 00306-21
Agency Dkt. No. 2-1/21

New Jersey Commissioner of Education

Final Decision

A.T., on behalf of minor children,
K.T. and P.T,

Petitioner,

v.

Board of Education of the Township of
Sparta, Sussex County,

Respondent.

On October 28, 2021, a final agency decision was rendered in this matter, wherein the Commissioner found petitioner A.T. liable for tuition in the amount of $35,363.44 for the time during the 2019-2020 school year during which petitioner's minor children were ineligible to attend school in the Sparta Township school district. The Sparta Township Board of Education (Board) subsequently requested that the Commissioner seek entry of the assessment on the judgment docket of the Superior Court pursuant to *N.J.S.A.* 2A:58-10.

Petitioner objected to the request, arguing that the minor children are "handicapped and their handicap was not accommodated," stating that "a civil action will be filed on behalf" of the children, and requesting that a judgment not be entered at this time. However, there is no indication that an action is currently pending. Moreover, the Commissioner's decision assessing tuition has been upheld by the Appellate Division and the New Jersey Supreme Court,

such that there is no question that petitioners owe tuition to the Board. *A.T., on behalf of minor children K.T. and P.T. v. Bd. of Educ. of the Twp. of Sparta, Sussex Co.*, 2023 *N.J Super. Unpub.* LEXIS 437 (App. Div. Mar. 24, 2023), *cert. denied* Nov. 14, 2023. Furthermore, pursuant to *N.J.A.C.* 3A:11.1(b)(1), objections to a request for a judgment to be recorded "may not dispute the fact that monies are owed or the amount of such monies as reflected in the final order of assessment, but shall be limited to claims of error in the amount of judgment sought, for example, because payments have been made that the letter of request does not reflect." Petitioner does not contend that she has paid the Board any portion of the amount assessed against her.

Accordingly, pursuant to *N.J.S.A.* 2A:58-10, Annette Tarnawski is now subject to entry of a judgment by the court in the amount of $35,363.44, which represents the payment ordered by the Commissioner, with interest to accrue as provided by law.

IT IS SO ORDERED.

Angelina Allen McMillan, J.d.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2024
Date of Mailing: January 31, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. EDU 00306-21
AGENCY DKT. NO. 2-1/21

A.T. ON BEHALF OF K.T. AND P.T.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF SPARTA, SUSSEX COUNTY,
Respondent.

George T. Daggett, Esq., for petitioner A.T. o/b/o K.T. and P.T. (Law Offices of George T. Daggett, attorneys)

Marc H. Zitomer, Esq., for respondent Board of Education of the Township of Sparta (Schenck, Price Smith & King, attorneys)

Record Closed: July 23, 2021 Decided: August 5, 2021

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE

Petitioner A.T. filed and perfected a Petition of Appeal with the Department of Education on or about January 6, 2021, from the determination of the Board of Education

("District" or "Board") of the Township of Sparta ("Sparta") dated November 20, 2020, that she and her family are not domiciled in the Sparta and that her children cannot continue to attend its schools. The Board answered the petition and filed a counterclaim demanding tuition repayment for the period since January 3, 2020. On or about January 11, 2021, petitioner filed a Request for Emergent Relief.

PROCEDURAL HISTORY

The Department of Education Office of Controversies and Disputes transmitted the Petition and a Request for Emergent Relief to the Office of Administrative Law (OAL) on or about January 12, 2021. The matter was assigned to the undersigned for oral argument on the emergency request, which was held through Zoom technology, consistent with the OAL Covid-19 Emergency provisions, on January 15, 2021. A determination on the emergent application was filed on January 19, 2021, wherein I concluded that the emergent relief must be granted but subject to the potential continued accrual of tuition reimbursement.

The plenary hearing was held through Zoom technology, consistent with the OAL Covid-19 Emergency provisions, on June 25, 2021. Post-hearing submissions were permitted and the record closed on July 23, 2021, with their receipt.

JOINT STIPULATION OF FACTS

The parties submitted a Joint Stipulation of Facts setting forth:

1. The Sparta Township Board of Education ("Board" or "District") is a pre-K to 12 school district located in Sussex County, New Jersey.

2. A.T. ("petitioner") is the parent of two children who are pertinent to this matter, K.T. and P.T. (collectively, "children").

3. K.T. is in the first grade and is a child entitled to special education as diagnosed on the autism spectrum.

4. P.T. is in preschool. He has a heart condition, but he has not been designated as a child in need of special education.[1]

5. From 2017 until June of 2019, petitioner, her spouse, and her children lived at [xx] Main Street in Garfield, New Jersey. E.K. is the owner of the home and is petitioner's mother.

6. On or about June 28, 2018, Paul Lanaris of N.J. Best HOME INSPECTIONS conducted an inspection of the residence at [xxx] West Mountain Road in Sparta Township, New Jersey ("Sparta Home") for petitioner's spouse, K.T. ("spouse"). Inspector Lanaris noted material defects in the home. See Exhibit A for a copy of the inspection report.

7. On or about August 27, 2018, petitioner's spouse purchased the Sparta Home. See Exhibit B, August 27, 2018 Deed of Sale.

8. On September 18, 2019, petitioner e-mailed the District's Superintendent of Schools at the time, Dr. Michael Rossi, to inquire as to whether her children could attend the District's schools free of charge until construction was completed at the Sparta Home. Petitioner stated that, "construction [would] be done by January and [petitioner's family would] no longer be staying [with their] family but in [their] home by then." See Exhibit C, September 18, 2019 e-mail.

9. On September 19, 2019, Dr. Rossi transmitted two nearly identical letters to petitioner in response to her correspondence, wherein he notified her that the children were granted permission to attend the District's schools free of charge, but that if the family did not move into Sparta Township by January 3, 2020, tuition would be charged, per Board policy. Dr. Rossi's letters stated the following, in pertinent parts:

> I am pleased to inform you that permission is granted with the understanding that you will provide transportation until you actually move into Sparta. [...]

[1] This stipulation is herein revised to correct the identification of the proper student, as addressed at the hearing.

> In the event you are not able to move by January 3, 2020, tuition will be charged. According to our current Board Policy, children are eligible to attend Sparta Schools if there is a signed contract to buy, build, or rent a residence within our district for a period not to exceed 120 days previous to the anticipated date of residency without tuition charges. If the Sparta residence is not established by the end of the period of free attendance, tuition shall be required for the remainder of the time until residency is established. Since your son will start school while not residing in Sparta on September 3, 2019, tuition would commence on January 3, 2020 and continue until the time you move.
>
> [See Exhibit D, September 19, 2019 letters.]

10. The Board Policy that Dr. Rossi referred to was Policy 5111, "Eligibility of Resident/Nonresident Students (M)", which states, in pertinent part:

> A nonresident student otherwise eligible for attendance whose parent or guardian anticipates school district residency and has entered a contract to buy, build, or rent a residence in this school district may be enrolled 120 days without payment of tuition for a period of time not greater than 120 days prior to the anticipated date of residency. If any such student does not become a resident of the school district within 120 days after admission to school, tuition will be charged for attendance commencing the beginning of the 121st day and until such time as the student becomes a resident or withdraws from school.
>
> [See Exhibit E, Board Policy 5111.]

11. From July of 2019 to October of 2020, petitioner, her spouse, and her children lived at [xx] Main Street in Garfield, New Jersey.

12. On November 3, 2020, the District Acting Superintendent of Schools at the time, Patrick McQueeney, wrote to petitioner and her spouse to inquire as to where they were domiciled at that time. He stated as follows:

> As you know, Superintendent Rossi granted your children permission to continue attending school in the Sparta School District on a tuition-free basis until January 3, 2020 conditioned on you moving into the home at [xxx] West Mountain Road, Sparta, New Jersey. It has come to my attention that you are still not domiciled at that address. Upon

> receipt of this letter, please provide proof of your family's current domicile status. I await your timely response.
>
> [See Exhibit F, November 3, 2020 letter.]

13. Petitioner did not respond to Mr. McQueeney's November 3, 2020 letter.

14. The District's Director of District Operations, Michael Gregory, conducted a residency investigation to investigate whether the family was living at the Sparta Home. Mr. Gregory determined that no one was living at the Sparta Home. He concluded as follows in his November 13, 2020 investigation report, which included various photographs of the home:

> I went to the residence on Friday, November 13, 2020 and found no one at the residence. The front door was boarded up, the in-ground pool appeared to not have been utilized this past season, and construction materials limiting access to the back porch. Photos of this visit are attached.
>
> [See Exhibit G, November 13, 2020 Investigation Report with attached photographs.]

15. On or about November 13, 2020, Board Counsel transmitted a letter to petitioner and her spouse to notify them that the Board would be holding a residency hearing to determine her children's enrollment status on November 19, 2020, and that she was permitted to present a statement or other evidence. See Exhibit H, November 13, 2020 letter.

16. Petitioner elected not to attend, but rather, chose to submit a position statement through her Counsel on or about November 16, 2020. See Exhibit I, Position Statement.

17. At the November 19, 2020 Board residency hearing, the Board found that the children were not domiciled within the District during the 2019-2020 and 2020-2021 school years and assessed them tuition for the period of January 3, 2020 to the present. Board Counsel transmitted a letter to petitioner and her spouse the following day, November 20, 2020, to inform them of the Board's decision. See Exhibit J, November 20, 2020 correspondence with tuition spreadsheet and Resolution for the residence

hearing.

18. On January 3, 2021, petitioner e-mailed District Attendance Secretary Jennifer Sullivan to withdraw P.T. from the District for the remainder of the school year. Petitioner stated that P.T. would be receiving home instruction, and she attached an executed student withdrawal form to her e-mail. See Exhibit K, January 3, 2021 e-mail and attached student withdrawal form.

19. Petitioner filed a Petition of Appeal with the Office of Controversies and Disputes on January 6, 2021, and perfected same on January 8, 2021, appealing the Board's decision.

20. Petitioner filed an Application for Emergent Relief on January 11, 2021.

21. On January 19, 2021, the Honorable Gail M. Cookson, ALJ, granted petitioner's request for emergent relief, but with conditions. Judge Cookson concluded the Emergent Relief Order by stating "that petitioner's application for emergent relief must be granted, but conditioned upon the continued accrual of non-residential per diem charges pending the hearing on the merits." See Exhibit L, January 19, 2021 Emergent Relief Order.

22. In or around March of 2021, petitioner claimed, for the first time, that she and her children were homeless.

23. On or about March 22, 2021, the District's Homeless Liaison, Laura Trent, met with petitioner to discuss petitioner's homelessness claim.

24. On or about March 23, 2021, Ms. Trent made her determination that petitioner and her children were not homeless. She advised petitioner that she was permitted to enroll her children in the District, but per Judge Cookson's Emergent Relief Order, petitioner would be responsible for back-tuition should the Court find that she was not domiciled in Sparta Township. In a letter to petitioner, Ms. Trent stated as follows, in pertinent part:

> It is our position that you are not homeless in Sparta, N.J. As you stated, you have chosen to live with friends and family in

> Oak Ridge while the renovations are being completed on your Sparta home. This does not render you homeless. Importantly, the Administrative Law Judge concluded in your application for emergent relief application that you are not currently domiciled in Sparta and, by the admission of your attorney during oral argument, you have never occupied the Sparta home. Notwithstanding, you may enroll them in the Sparta School District, per the Judge's Order, but you will be responsible for back-tuition should the Judge conclude that you are not domiciled in Sparta.
>
> [See Exhibit M, Laura Trent's March 23, 2021 letter.]

25. Upon learning of petitioner's disagreement with her determination, Ms. Trent wrote to the Sussex County Executive County Superintendent of Schools, Gayle Carrick, Ed.D., on or about April 1, 2021, to notify Dr. Carrick of the issue. Counsel for both the Board and for petitioner sent follow-up letters to Dr. Carrick regarding same on or about April 5, 2021. See Exhibit N, Ms. Trent's April 1, 2021 letter (without attached exhibits).

26. On or about April 20, 2021, Dr. Carrick acknowledged receipt of the issue and directed the parties to Judge Cookson's Emergent Relief Order, via a letter that she transmitted to Board Counsel with a copy to petitioner's Counsel:

> I am acknowledging receipt of your correspondence dated April 5, 2021 regarding the T[.]/Sparta dispute and a determination of homeless. I direct you to the Order of Emergent Relief issued by ALJ Gail M. Cookson in this matter. Have a good day.
>
> [See Exhibit O, April 20, 2021 letter.

27. From April of 2021 until present, petitioner, her spouse, and her children have been living at [xx] Main Street in Garfield, New Jersey.

28. The children are not currently enrolled in the District.

It is also undisputed that prior to their residency application in Sparta but during the period both before and after purchase of the house in Sparta, the children attended

preschool in Garfield, with the older son attending there during both the 2017-2018 and 2018-2019 school years. [Exhibit R-1, ¶¶ 118-119.]

FACTUAL DISCUSSION

Based upon the testimony of the witnesses and the documentary evidence presented, and with the opportunity to assess the credibility of the witnesses, I **FIND** the following:

A.T. testified that she and her family lived with her parents in Garfield prior to the purchase of the Sparta home. Her parents had a single-family house but it had a mother-daughter layout such that there was a separate kitchen etc. Petitioner stated that they moved into the Sparta home from June 22, 2019, through July 13, 2019, and intended to stay thereafter. She notified the Superintendent that she wanted to register the children in the Sparta schools. The office of the Superintendent forwarded the District's residency policy and explained that the family would be allowed to obtain a free public education in Sparta for the children for 120 days as the maximum allowed for a period of renovation. Petitioner questioned why the family was not entitled to regular residency attendance if they were living with family during just kitchen renovations. [P-1.] Her spouse was going to do the repairs himself for which they had obtained a permit. At that time, petitioner found the municipal offices to be very friendly and was actually able to procure a part-time job for herself in the building department.

Petitioner described the setting inside the house and the utilities they relied upon, such as hot spots rather than internet service. They all stayed in one bedroom to be able to comfort and supervise over the young children. P.T., who is autistic, has trouble sleeping and wanders, as well as places objects in his mouth. Petitioner became concerned with the potential hazards to him in the kitchen. In addition, it was determined that there was a rat infestation in the insulation, with other renovation issues much worse than they anticipated. As a result of these factors, they felt they had to leave the house while more extensive work was undertaken.

The family returned to petitioner's parents' home in Garfield but by then, her brother, who paid the real estate taxes for their parents, had moved into the self-contained apartment. Petitioner explained at the hearing that that meant that she, her spouse and the children shared just a regular bedroom. Because the house was crowded and her parents were getting too old to handle all of them living there, petitioner moved her family to a friend's home in Oak Ridge sometime in the fall of 2020 until April 2021, when they moved back to Garfield.

By January 2021, petitioner had dis-enrolled the children from Sparta because of the potential tuition claim. It appears that P.T. was in a private home-based ABA program for children on the autism spectrum. It was then that she was advised to consult the homeless liaison for Sparta.

Petitioner was questioned on cross-examination as to the discrepancy in the dates of their occupancy of the Sparta home in various documents. [R-4.] She also described more fully the furniture they moved in to include a bed, couches, boxes placed in the basement. They did not move in a dining room table but used a table left by the sellers. The District queried her extensively on the Inspection Report they procured prior to the closing (R-2), with emphasis on the numerous safety concerns that seemed to have been highlighted therein. Petitioner said her husband, who is an electrician for a public utility company, made some changes and also considered the panel old but functional.

Petitioner admitted that there was no functioning air conditioning when they were there for those weeks in late June and early July. Notwithstanding that her younger son has a congenital heart condition, she insisted that this was not a problem because they spent time outside and in the pool. She did confirm that there were roof and gutter leaks and no railings on the stairs, although the walls provided support. Petitioner asserted that they anticipate being able to move back into the home this summer, with an architect meeting with them the week following this hearing. On these stipulated facts and the petitioner's own testimony, following the purchase of the house, it was not made habitable, and I so **FIND**.

Patrick McQueeney testified for the Board. He is the Assistant Superintendent and explained briefly how the tuition calculations were made. [R-5.]

With the exception of the controverted three weeks in July 2019, it has been stipulated that petitioner's family lived in Garfield from 2017 through October 2020, and from April 2021 to the present. There is no dispute that they were living in neither Sparta nor Garfield between October 2020 and April 2021. Accordingly, the only possible period of physical occupation in the Sparta home is the summer of 2019. It is also not disputed that petitioner's family did not seek to enroll their young children into Sparta schools until a year after the purchase of the house, which interval was simply because of their ages. Further, during the period both before and after purchase of the house in Sparta, the children attended preschool in Garfield, with the older son attending there during both the 2017-2018 and 2018-2019 school years. [Exhibit R-1, ¶¶ 118-119.]

With respect to the three weeks referenced herein,[2] I must make credibility determinations with regard to these potentially material facts. A credibility determination requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Daiichi Pharm. Co. v. Apotex, Inc., 441 F. Supp. 2d 672 (D.N.J. 2006). After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I am convinced that petitioner's testimony was not credible.

Petitioner's testimony did not hang together or make sense in light of many factors, not the least of which were her son's heart condition, the lack of any air conditioning, the minimal amount of the utility bills during and after the alleged period of occupation, and the absence of supporting testimony from other members of her family. To the extent that there are undated photos of the family purportedly at the house only demonstrates some short visit, and I so **FIND**. In addition, I noted on the emergent application that the pleadings did not assert that petitioner had ever lived in her Sparta house and counsel conceded as

[2] These three weeks were alternately referred to as simply "July" or more specifically as between June 22 and July 13, 2019. I do not find that distinction to be material to the issues herein.

much during that oral argument. To the extent that the family slept in the house for some unknown but likely only a few nights, I **FIND** that it was a contrived and manipulated setting in an attempt to buttress the residency application they were then engaged in making to the District.

As set forth above, there was testimony that the family lived in Garfield with petitioner's parents from 2017 through at least June 2019 in the lower-level apartment. That is to say, they lived there both before and after purchasing the Sparta house in August 2018, and the children attended preschool in that district. There was no testimony that they moved there out of necessity, nor is there any evidence in the record as to where they lived prior thereto. Based upon all these facts, I further **FIND** that the Sparta house cannot be a factual predicate for having to live with petitioner's parents.

These findings are further supported by the lack of the usual documentary indicia of residence and occupancy, such as utility bills, pay stubs, insurance, construction invoices. I concur with the District that the lack of production of this common evidence by the petitioner generates, at the very least, a rebuttable presumption that their production would not have helped her case.[3] Petitioner carries the burden of proving her domicile in Sparta for eligibility for free public education there and her lack of documentary or buttressing testimonial proof weighs against her case. See State by Comm'r of Transp. v. Council in Div. of Res. Dev., etc., 60 N.J. 199, 202 (1972)(litigant's failure to produce may be inferred to have been prompted by a conscious appreciation that the evidence would or might be hurtful to his position), citing Interchemical Corp. v. Uncas Printing & Fishing Co., 39 N.J. Super. 318, 328 (App. Div. 1956).

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

The District claims that petitioner cannot establish domicile in Sparta because the family has never lived in the still-uninhabitable house, had not established it as their

[3] Insofar as there has been no demonstration of bad faith or destruction, nor is this a jury trial, a formal sanction of an "adverse inference" is not appropriate, nor has it been sought. See, e.g., Bozic v. City of Wash., 912 F. Supp. 2d 257 (W.D. Pa. 2012).

residence or domicile prior to registration of her children, and certainly was not living there as of January 3, 2020, when the 120-day grace period expired. It further argues that granting petitioner residency on this record would turn residency regulations on their head, to the effect that such a ruling would mean that anyone could purchase an uninhabitable home in a school district and thereafter assert residency and/or homelessness without ever having truly living in the district. The District also contested any claim of homelessness herein.

Petitioner argues that she and the family established their domicile in Sparta prior to registering the children in the District and that they intend to return to the home once renovations are completed. As such, and because they had to move from that residence, petitioner argues that they are currently homeless and that Sparta is the district of origin that must provide a free public education to their children under the homelessness regulations.[4]

The right to a thorough and free education in the district of one's New Jersey domicile is well settled. A.M.S. ex rel. A.D.S. v. Bd. of Educ. of City of Margate, 409 N.J. Super. 149, 160-61 (App. Div. 2009). Therein, the court stated:

> N.J.A.C. 6A:22-2.1(b) requires school districts to adopt written policies and procedures related to student residency and to incorporate Department of Education (DOE) regulations pertaining to student residency into each district's policies and procedures. Moreover, in doing so, "a district board of education shall construe the provisions" of DOE regulations governing student residency "liberally so as to effectuate the right of students to a free public education." Ibid.

The Legislature has provided that local boards of education are responsible for the education of school-age children who are domiciled within their respective district. N.J.S.A. 18A:38-1. Narrow exceptions to the domicile rule are also provided when, among other things, the parent or guardian is a temporary resident of a district, N.J.S.A.

[4] Initially, petitioner was pro se when she appealed to the Department. After counsel entered his appearance and after the emergency hearing, he asserted the claim of homelessness; although petitioner also testified that she received that advice from a private party as well. In light of my determination herein, I need not reach the issue of whether this was timely asserted.

18A-38-1(d), or a parent moves between districts as a result of homelessness. N.J.S.A. 18A-38-1(f). In any event, a child's district of residence is generally determined based upon the district of residence of the child's parent or guardian. See, e.g., N.J.S.A. 18A:7B-12; N.J.S.A. 18A-38-1.

Generally, eligibility under the education laws and regulations is framed as, in relevant part:

> A student is eligible to attend a school district if he or she is domiciled within the school district. . . A student is domiciled in the school district when his or her parent or guardian resides within the school district on an all-year-round basis for one year or more, notwithstanding the existence of a domicile elsewhere.
>
> [N.J.A.C. 6A:22-3.1(a)(4) (as amended 2013)(emphasis added).]

It should be noted that the regulations had provided at the time of earlier decisions, e.g., K.L. v. Bd. of Educ., No. A-5671-07T1, 2010 N.J. Super. Unpub. LEXIS 11, at *9 (Super. Ct. App. Div. Jan. 4, 2010):

> A student is domiciled in the school district when he or she is living with a parent . . . whose permanent home is located within the school district. A home is permanent when the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.
>
> [N.J.A.C. 6A:22-3.1(a)(1).]

Petitioner has asserted that she and her family intend to return to this home and had no intent to move from it but did so out of necessity. Yet, as we see, this regulation as amended no longer encompasses the concept of "intent." 45 N.J.R. 1209(a) (May 20, 2013). Moreover, the concept of "returning" to a home one never truly lived in, as supported by the findings of fact above, I **CONCLUDE** negates petitioner's assertion of intent.

According to N.J.S.A. 18A:7B-12(c), "[t]he district of residence for children whose parent . . . temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent . . . last resided prior to becoming homeless." The district of residence shall be responsible for the education of a homeless child for as long as the parent remains homeless. N.J.A.C. 6A:17-2.4(a) and (c). In addition, "[e]nrollment in the school district of [residence] . . . shall continue for the duration of homelessness, including . . . for the remainder of the academic year if the homeless child becomes permanently housed during the academic year." N.J.A.C. 6A:17-2.6(h).

Before we can even reach the issue of whether Sparta is the district of domicile of the children, sometimes referred to as the "district of origin,"[5] we must examine whether the facts even support a finding of "homelessness."

> (a) A district board of education shall determine that a child is homeless for purposes of this subchapter when he or she resides in any of the following:
>
> * * *
>
> 3. The residence of relatives or friends with whom the homeless child is temporarily residing out of necessity because the family lacks a regular or permanent residence of its own; or
>
> [N.J.A.C. 6A:17-2.3 (emphasis added).]

It is clear that the determination of "necessity" here is fact sensitive, on which issue petitioner has the burden of proof. Hawthorne BOE v. Prospect Park BOE and Dept. of Educ., OAL DKT. NO. EDU 16270-13, Final Agency Decision (May 12, 2014) http://njlaw.rutgers.edu/collections/oal/>. In Hawthorne, the Department held:

> Upon full consideration, the Commissioner concurs with the ALJ's determination that the A. family was not homeless within the meaning of N.J.S.A. 18A:7B-12c and N.J.A.C. 6A:17-2.3. The Commissioner explicitly rejects respondents' assertion that the impetus for the A. family's departure from the Hawthorne apartment is immaterial. To the contrary, the

[5] "District of residence" is also referred to as "district of origin." See N.J.A.C. 6A:17-2.2.

> Commissioner finds that an inquiry into the circumstances surrounding the A. family's move is essential to the homelessness determination.
>
> A "homeless child" is one who lacks a fixed, regular and adequate residence. N.J.A.C. 6A:17-2.2. Not every child residing temporarily with a relative is "homeless." Rather, pursuant to N.J.A.C. 6A:17-2.3(a)3, such a child is homeless when he or she resides in "[t]he residence of relatives or friends with whom the homeless child is temporarily residing out of necessity because the family lacks a regular or permanent residence of its own." An examination of the conditions that precipitated the family's relocation is critical to ascertaining whether the living arrangement arose "out of necessity," and whether the family is without access to a "regular or permanent residence of its own."
>
> In the instant matter, the ALJ specifically found that the A. family was not forced out of their Hawthorne apartment, that N.A. was up to date on her rent, and that there was no evidence that she was unable to pay rent going forward. The ALJ further found that N.A. voluntarily abandoned her Hawthorne home and temporarily relocated the A. family to her parent's home in Prospect Park as part of fulfilling her plan to move to Florida.

As was true in Hawthorne, there is no evidence that petitioner's family was a victim of an abrupt change of circumstances. They chose to purchase a home in need of major repairs and renovations while they were already living in Garfield with her parents. Further, they did not move into the home after purchasing it. There was no crisis of immediacy. This situation is not that of a homeless family. See, e.g., J.G. and D.G. v. Bd. of Educ. of Point Pleasant, EDU 4688-10, Initial Decision (September 23, 2010), adopted, Comm'r (December 27, 2010), http://njlaw.rutgers.edu/collections/oal/>. The family's circumstances here are clearly distinguishable from cases where a family becomes transient due to an emergency. See, e.g., S.J. o/b/o V.J. v. Bd. of Educ. of S. Orange-Maplewood, EDU 5656-07, Initial Decision (January 22, 2008), adopted, Comm'r (March 3, 2008), http://njlaw.rutgers.edu/collections/oal/> (family evicted from apartment and then drifted around while living in a beauty salon, with a friend, and with child's grandmother in an attic); A.B. v. W. Orange Bd. of Educ., EDU13330-09, Initial Decision (January 25, 2010), adopted, Comm'r (April 13, 2010),

http://njlaw.rutgers.edu/collections/oal/> (single mother evicted after losing full-time job and thereafter alternated between apartments of several friends).

In combination with my factual findings on the uninhabitability of the Sparta house, I **CONCLUDE** that their purchase of said house during the period of domicile in Garfield cannot be used to bootstrap either a temporary relocation away from Sparta or homelessness. The home construction has apparently continued, on but mostly off, without completion, for the three years since it was purchased by petitioner and her husband. In fact, only after the hearing was petitioner meeting with an architect to draw up the needed structural renovations. This is not the case of temporary relocation away from one's abode due to fire, storms or other natural disasters; rather, petitioner and her spouse purchased an unsafe and largely uninhabitable house, as evidenced by the fact that they did not live in after the closing in August 2018 and until they were trying to register their children in school.

Except for some unknown and unverifiable number of days in the summer of 2019, and a few months with a friend in Oak Ridge, petitioner, spouse and children have clearly been domiciled in Garfield from 2017 to the present. On the basis of the above-referenced facts and legal authority, I **CONCLUDE** that petitioner has never been domiciled in Sparta and is not now homeless, from Sparta or, for that matter, anywhere else. When and if petitioner establishes that the family is genuinely living in the Sparta house, with a Certificate of Occupancy, they shall then and only then be entitled to register their children in the Sparta school district.

ORDER

Accordingly, it is **ORDERED** that petitioner's appeal from the Sparta Township Board of Education residency determination is and the same is hereby **DENIED** and the determination of the Sparta Township Board of Education on residency and homelessness is **UPHELD**.

It is further **ORDERED** that the counterclaim of the Sparta Township Board of Education for tuition reimbursement in the amount of $35,363.44 is **GRANTED** to the extent of only the days when the children attended its schools after January 3, 2020, or the period of ineligibility.

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.

Gail M. Cookson

August 5, 2021
DATE

GAIL M. COOKSON, ALJ

Date Received at Agency 8/5/21

Date Mailed to Parties: 8/5/21

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

A.T.

For Respondent:

Patrick McQueeney

LIST OF EXHIBITS IN EVIDENCE

Joint Exhibits

J-1 Joint Stipulation of Facts

Petitioner's Exhibits

P-1 E-Mail exchange between Petitioner and District, dated September 19, 2019
P-2 Photo of Inground Pool
P-3 Photo of Children Eating Pizza
P-4 Photo of Child Playing Pool
P-5 Photo of Inground Pool (2)
P-6 Photo of Laundry Room
P-7 Photo of Bathroom
P-8 Photo of Bedroom Shared By Entire Family
P-9 Photo of Kitchen Pre-Renovation

Respondent's Exhibits

R-1 Petitioner's Answers to Board's Interrogatories and Demand for Production of Documents
R-2 Petitioner's Documents Provided in Response to Board's Interrogatories and Demand for Production of Documents

R-3 Petitioner's Supplemental Answers to Board's Interrogatories and Demand for Production of Documents, dated June 16, 2021

R-4 Student Residency Form, dated March 21, 2021

R-5 Tuition Cost Spreadsheet

81-24
OAL Dkt. No. EDU 04579-23
Agency Dkt. No. 81-3/23

New Jersey Commissioner of Education

Final Decision

S.B., on behalf of minor child, E.B.,

Petitioner,

v.

Board of Trustees of the Kipp Cooper Norcross Academy, Camden County,

Respondent.

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.

The petitioner filed a *pro se* appeal challenging the discipline imposed by the respondent Board of Trustees upon his minor child in regard to an incident that occurred in January 2023 at Kipp Cooper Norcross Academy. The matter was transmitted to the OAL for a hearing in May 2023. The Administrative Law Judge (ALJ) scheduled three pre-conference hearings in this case, none of which were attended by the petitioner despite having received appropriate notice of each hearing date. Subsequently, petitioner communicated to the ALJ's assistant that he wanted no further involvement in his child's affairs. Accordingly, the ALJ concluded that the matter must be dismissed with prejudice, pursuant to *N.J.A.C.* 1:1-14.4, for petitioner's failure to appear three times for a court proceeding without explanation.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed. Accordingly, the Initial Decision is adopted as the final decision in this matter. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2024
Date of Mailing: January 31, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
FAILURE TO APPEAR
OAL DKT. NO. EDU 04579-23
AGENCY DKT. NO. 81-3/23

S.B. ON BEHALF OF MINOR CHILD, E.B.,
Petitioner,
v.
KIPP COOPER NORCROSS ACADEMY
BOARD OF TRUSTEES, CAMDEN COUNTY,
Respondent.

S.B. on behalf of his minor child, pro se

Thomas O. Johnston, Esq., for respondent (Johnston Law Firm, LLC, attorneys)

Record Closed: September 21, 2023 Decided: January 12, 2024

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

Petitioner S.B., on behalf of his minor child, E.B., challenged the discipline imposed by the KIPP Cooper Norcross Academy (KIPP or respondent).

PROCEDURAL HISTORY AND FACTUAL DISCUSSION

On May 22, 2023, this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A prehearing conference call was scheduled for August 15, 2023. Notice was sent out to all the parties, however, no one appeared for the conference call. Counsel for the respondent notified the undersigned by email on August 15, 2023, stating that he did not have the conference call on his calendar and requesting a new date and time.

Another conference call was scheduled for September 21, 2023. Notice of that conference call was sent to the petitioner and respondent on August 22, 2023. However, the petitioner failed to appear. A third conference call was scheduled for January 4, 2024, with notice of the conference call sent on October 18, 2023. However, the petitioner failed to appear for the scheduled conference call. Respondent's counsel attempted to contact the petitioner during the scheduled conference call, however, no one answered the phone. The petitioner told the undersigned's judicial assistant that he did not want any further involvement in his daughter's affairs.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to N.J.A.C. 1:1-14.4(a),

> If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall . . . direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

This matter was scheduled for three telephone conferences. Petitioner and the respondent were given notice of all telephone conferences. All telephone status conference notices contained the following language:

> Failure to dial in for the telephone conference, will result in the file being returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.

The petitioner did not participate in the August 15, 2023, September 21, 2023, or January 4, 2024, telephone status conferences and did not contact the OAL to explain why he was unable to do so.

CONCLUSION

To date, the petitioner has not provided a request for an adjournment of the January 4, 2024, telephone conference or an explanation for his nonappearance for the same. Neither has this office received notice of legal representation on behalf of the petitioner. Therefore, I **CONCLUDE** that petitioner has failed to appear and abandoned his appeal.

For the above reasons, I **CONCLUDE** that the petitioner has abandoned his request for a hearing in this matter and has forfeited his right to further contest the actions complained of. Accordingly, this matter should be dismissed with prejudice for lack of prosecution and failure to appear.

ORDER

It is **ORDERED** that the petitioner's appeal be **DISMISSED WITH PREJUDICE** pursuant to N.J.A.C. 1:1-14.4, and I **DIRECT** the Clerk to return the matter to the agency for appropriate disposition.

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 12, 2024
DATE

Kim C. Belin
KIM C. BELIN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

82-24
OAL Dkt. No. EDU 07430-23
Agency Dkt. No. 173-6/23

New Jersey Commissioner of Education

Final Decision

R.C., on behalf of minor child, M.D.,

Petitioner,

v.

Board of Education of the Township of Springfield, Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL), granting the respondent Board's motion to dismiss, have been reviewed and considered. The parties did not file exceptions.

The petitioner filed a *pro se* appeal challenging the Board's determination that her minor child, M.D., was not the victim of harassment, intimidation, and bullying (HIB). The matter was transmitted to the OAL for a hearing regarding the merits of the Board's HIB decision. The Administrative Law Judge (ALJ) scheduled three pre-conference hearings in this case, none of which were attended by the petitioner despite having received appropriate notice of each hearing date. Accordingly, the ALJ concluded that the matter must be dismissed with prejudice, pursuant to *N.J.A.C.* 1:1-14.4, for petitioner's failure to appear three times for a court proceeding without any explanation and for failure to provide the required written reply to the Board's motion to dismiss.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed. Accordingly, the Initial Decision is adopted as the final decision in this matter. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2024
Date of Mailing: January 31, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING MOTION FOR DISMISSAL WITH PREJUDICE
OAL DKT. NO. EDU 07430-23
AGENCY DKT. NO.173-6/23

R.C. o/b/o MINOR CHILD, M.D.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF SPRINGFIELD, UNION COUNTY,
Respondent.

R.C. on behalf of **M.D.**, petitioner pro se

Jaclyn M. Morgese, Esq. (Cornell, Merlino, McKeever & Osborne, attorneys, for respondent)

Record Closed: January 8, 2024 Decided: January 8, 2024

BEFORE **ERNEST M. BONGIOVANNI,** ALJ:

STATEMENT OF THE CASE

Petitioner R.C. (Petitioner) appealed a finding by respondent that an act or acts of HIP toward M.D. did not occur. According to the initial HIN 338 HIB reporting form filed

by petitioner, on February 17, 2020, an accusation was made about M.D. that she "to carry a gun at the school, writing threating (sic) message on the message board of the school. Student report on Instagram, snapshot and text messages that my daughter has a list of people she wants to kill," that classmates always made fun of the way she was dressed and "give her names 'prostitute'". On April 25, 2023, respondent notified R.C. that the Springfield Board of Education (BOE) affirmed the Superintendent's decision that an act of HIB did not occur. On June 23, 2023, R.C. on behalf of M.D. filed a pro se Petition of Appeal of said decision with the New Jersey Commissioner of Education. On August 14, 2023, the matter was transmitted to the Office of Administrative Law (OAL for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14f 1 to 13. On December 20, 2023, respondent filed a Notice of Motion, with a certification of mailing to petitioner, with supporting affidavit, exhibits and legal brief, to Dismiss the Appeal alleging R.C.'s nonparticipation in the proceedings since the matter was filed, leading up to and culminating with R.C.'s failure to appear for a telephone Prehearing Conference December 14, 2023. For the reasons which follow, I grant the respondent's Motion to Dismiss.

FACTS

All of the following facts are supported by respondent's unopposed motion certification and exhibits. Respondent's Answer to the Petition of Appeal and affirmative Defenses, dated July 27, 2023 (Exhibit C) note that petitioner's appeal did not make specific allegations but was a general appeal, and thus the Answer was also general. On August 22, 2023, in order to quickly learn more of the case, petitioner and respondent were notified via email that the undersigned (me/the court) would like to hold a prehearing conference via telephone on any one of five specified dates and times between August 29, 2023, and September 22, 2023. Counsel for respondent replied the same day that she was available on all of those five dates and times for the prehearing. (Exhibit E) However, no reply was made by R.C. or anyone on her behalf. Accordingly, my assistant asked again on September 14, 2023, that, the other proposed times for the conference having passed, or having become unavailable that the September 22, 2023, date was still available for a conference and to respond "ASAP" (Exhibit F).

Instead of responding to my assistant, on September 20, 2023, Rumana Hussain (R. Hussain), an assistant for Attorney Paul Fernandez, advised respondent's attorney that he represented R.C. and M.D. that Mr. Fernandez wanted to prepare for the September 22 conferenced and asked respondent's attorney what the case was about (Exhibit G). On the same date, the petitioner's counsel (Ms. Morgese) advised my assistant of Mr. Fernandez's involvement. On the following date, September 21, 2023, at 8:56 a.m., my assistant wrote to R, Hussain, who had been communicating for him with Ms. Morgese, and asked that counsel for R.C. send to her a letter of representation in this OAL matter, and to confirm their presence at the conference the next day. However, neither Ms. Hussain nor anyone else from Mr. Fernandez's involvement replied. Accordingly, the Prehearing had to be cancelled/adjourned. On September 28, 2023, my assistant again wrote to R. Hussain, again asking his office to send a letter of representation and confirm a new date for a prehearing conference. (Exhibit H)

On October 10, 2023, Mr. Fernandez's office was again advised by my assistant that I wanted to hold the prehearing conference at specific times on either October 17 or October 20, 2023, and to please reply. While Ms. Morgese replied that she was available on both dates and times, no reply was received by Mr. Fernandez. (Exhibit I). Morgese Certification, paragraph 22.

On November 28, 2023, Ms. Morgese wrote to the Court to inquire as to reschedule the prehearing conference as the respondent was interested in moving the case. On December 7, 2023, having noted the previous attempts to schedule R.C., through her attorney Mr. Fernandez, my assistant wrote to him noting the previous lack of response and asking for an immediate reply by confirming his representation in this matter and his availability for a prehearing conference. Mr. Fernandez replied the same day: "My apologies. My firm declined to take the matter and [R.C.] was advised to attend all hearings." (Exhibit K) On December 7, 2023, at 3:38 p.m., my assistant wrote to R.C. quoting my words:

> Ms. [R.C.] has been unresponsive to prior attempts by the Court to schedule a Prehearing, on September 22, 2023, October 11, and other dates in which we insured of her availability of that of a chosen attorney. We learned for certain

> today that an attorney for [R.C.] was never retained. Please be advised that a prehearing will be held by telephone on December 14 at 10:30 a.m. If [R.C.] is not responsive and/or does not attend with no good explanation provided before that time. her Due Process request will be dismissed.
> (Exhibit L).

On the same day, my assistant sent by regular mail a notice of the conference to R.C. including the conference call in information (Court 's Exhibit A).

On December 14, 2023, at approximately 10:30 a.m. the Prehearing conference was set to begin with, at that time only myself and Ms. Morgese on the line. With Ms. Morgese listening on the conference line, I called R.C. at the phone number provided in the Service list given to the OAL in the transmittal by the Commissioner. When a person answered the phone, I identified myself what I was calling about, and asked for R.C. In response, this individual hung up the phone. Morgese Certification, paragraphs 33-36.

LAW

If "after appropriate notice," neither a party or representative of that party should fail to appear "at any proceeding scheduled by the Clerk or judge" and after one day having received no explanation for the nonappearance, the Court may return the matter to the agency for appropriate disposition. N.J.A.C. 1:1-14.4. Additionally, "a. For unreasonable failure to comply with any order of a judge or requirements of this chapter, the judge May 1. Dismiss or grant the motion or application" N.J.A.C. 1:1-14.14

Here, respondent has filed with correct Notice and in compliance with the OAL's regulations a motion to dismiss with prejudice the petitioner's appeal. Respondent's motion was filed December 20, 2023. Pursuant to N.J.A.C. 1:1-12.2 (b), the Petitioner had ten days to file a response. Accordingly, the petitioner's response was due December 30, 2023. Not surprisingly, given R.C.'s palpable lack of interest, there has been no reply and so the motion is unopposed. Out of an abundance of caution, I have chosen to hold my decision until ten business days after the filing of the motion. Again, unsurprisingly, there has been no response from this petitioner, who brazenly has not only missed three court appearances, never retained a representative for her, never

communicated in any manner with the court nor had a representative do so over nearly half a year, and who the evidence suggests, after failing to call in to the conference call, actually hung up the phone on a judge who, in one final effort to get her to cooperate on the third scheduled conference date attempted to call her. Even if the motion were not unopposed, I can hardly imagine what can be said to justify this conduct worthy of strong sanction. There is no question that the matter should be dismissed and with prejudice.

ORDER

Based upon all of the foregoing, I **FIND** that this matter should be and is hereby **DISMISSED WITH PREJUDICE**, for petitioner's willful noncompliance with the requirements of the Rules of the OAL, specifically for three times failing to appear for a court proceeding without any explanation, and for failure to provide the required written reply to a motion to dismiss.

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.

Ernest M. Bongiovanni

January 8, 2024
DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency: January 8, 2024

Date Mailed to Parties: January 8, 2024

id

83-24

New Jersey Commissioner of Education

Final Decision

L.M., on behalf of minor child, B.M.,

Petitioner,

v.

Board of Education of the Passaic County Manchester Regional High School District, Passaic County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that he and his minor child, B.M., were not domiciled in the respondent Board's school district (District) and that B.M. was therefore not entitled to a free public education in the District during the 2023-2024 school year. The Board contended that no residency verification was ever received from B.M.'s family to show that he was entitled to attend school in the District, despite multiple requests to B.M.'s mother to provide necessary documentation over the course of the 2022-2023 school year. The within petition was filed by B.M.'s father in August 2023, prior to the start of the 2023-2024 school year. Petitioner subsequently failed to appear for two pre-hearing telephone conferences and also failed to appear at the hearing in this matter.

The ALJ found, *inter alia*, that: petitioner has abandoned his appeal by failure to appear at all scheduled conferences and the hearing; petitioner failed to demonstrate that he and B.M. were domiciled in the respondent Board's school district as of September 7, 2023; a student who is domiciled in the District may attend Manchester Regional but may also attend Passaic County Technical Institute ("PCTI"); if the student attends PCTI, the Board must pay the student's tuition; petitioner's son, B.M., was such a student; as petitioner has offered no proof of residency in the District, tuition reimbursement for B.M's attendance at PCTI is owed to the Board. Accordingly, the ALJ awarded the Board tuition in the amount of $5,250.45, based on eighty-seven school days of ineligible attendance between September 7, 2023 and the date of the Initial Decision on January 8, 2024, at a daily tuition rate of $60.35. The petition was dismissed with prejudice.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter but corrected an error in the number of school days for which tuition reimbursement is due to the Board. Accordingly, the petitioner was directed to reimburse the Board in the amount of $4,646.95 for the period from September 7, 2023 through January 8, 2023, plus $60.35 for each school day from January 9, 2024 through the date of the within final decision. Further, the Commissioner ordered B.M. to be disenrolled from the District and ordered that the Board is no longer obligated to pay B.M.'s tuition for PCTI. The petition of appeal was dismissed.

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.

83-24
OAL Dkt. No. EDU 08009-23
Agency Dkt. No. 213-8/23

New Jersey Commissioner of Education

Final Decision

L.M., on behalf of minor child, B.M.,

Petitioner,

v.

Board of Education of the Passaic County Manchester Regional High School District, Passaic County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the Passaic County Manchester Regional High School District Board of Education (Board) pursuant to *N.J.A.C.* 1:1-18.4 have been reviewed and considered. Petitioner did not file exceptions or a reply to the Board's exceptions.

This matter arises from the Board's determination that petitioner and his minor child, B.M., were not domiciled in the Passaic County Manchester Regional High School District (District) and that B.M. was, therefore, not entitled to a free public education in the District. Following petitioner's failure to appear for two telephone conferences and a hearing, the Administrative Law Judge (ALJ) found that petitioner had abandoned his appeal. The ALJ further found that petitioner had not demonstrated that he and B.M. were domiciled in the District as of September 7, 2023. Accordingly, the ALJ awarded the Board tuition

reimbursement in the amount of $5,250.45, based on eighty-seven school days of ineligible attendance between September 7, 2023 and the date of the decision on January 8, 2024,[1] at a daily tuition rate of $60.35.[2]

In its exceptions, the Board requested that the Commissioner modify the tuition reimbursement calculation to include the period between the Initial Decision and the Commissioner's final decision. The Board further requested that the Commissioner determine that B.M. has been disenrolled and that the Board no longer has the obligation to pay for B.M. to attend Passaic County Technical Institute (PCTI) after his disenrollment.

Upon review, the Commissioner concurs with the ALJ that petitioner abandoned his appeal and failed to sustain his burden of establishing that he and B.M. were domiciled in the District as of September 7, 2023. The Commissioner concludes that B.M. was, therefore, not entitled to a free public education in the District during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioners for the time period during which B.M. was ineligible to attend school in the District. Although the ALJ indicated that there were eighty-seven school days between September 7, 2023 and January 8, 2024, an independent review of the District's 2023-2024 calendar demonstrates that there have only been seventy-seven school days during that period.[3] Therefore, the Board is entitled to tuition reimbursement in the amount of $4,646.95 for the period from

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[1] It appears that the ALJ may have determined the number of days of ineligible attendance based on testimony; however, a transcript was not provided to the Commissioner. The record does not contain a copy of the school's calendar.

[2] The daily tuition rate is calculated as 1/180th of the annual tuition rate of $10,864.00 reflected in the Board's contract with PCTI (Exhibit R-13).

[3] https://4.files.edl.io/ae08/05/24/23/174121-0b937d8f-426d-45ba-b362-be20ff8867fb.pdf, last visited January17, 2024. The calculation is 17 (September) + 21 (October) + 18 (November) + 16 (December) + 5 (January) = 77 days.

September 7, 2023 through January 8, 2024, as well as $60.35 for each school day from January 9, 2024 through the date of the Commissioner's final decision.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, as modified herein. Petitioner is directed to reimburse the Board in the amount of $4,646.95 for the period from September 7, 2023 through January 8, 2023, plus $60.35 for each school day from January 9, 2024 through the date of the Commissioner's final decision. B.M. is hereby disenrolled from the District, and the Board no longer has an obligation to pay B.M.'s tuition for PCTI. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[4]

Angelica Allen-McMillan, J.d.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2024
Date of Mailing: January 31, 2024

[4] 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 08009-23
AGENCY DKT. NO. 213-8/23

L.M. ON BEHALF OF B.M.,
Petitioner,
v.
PASSAIC COUNTY MANCHESTER REGIONAL HIGH SCHOOL DISTRICT BOARD OF EDUCATION, PASSAIC COUNTY,
Respondent.

No appearance by L.M., petitioner, pro se

Rodney T. Hara, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: December 11, 2023 Decided: January 8, 2024

BEFORE **DANIEL J. BROWN,** ALJ:

STATEMENT OF THE CASE

Petitioner, parent of minor child B.M., challenges respondent's residency determination. In its counterclaim, respondent seeks reimbursement of tuition from petitioner, asserting that petitioner did not establish that B.M. was domiciled within the

school district during the 2023–2024 school year. In a residency appeal, the parent has the burden of proof to show by a preponderance of the evidence that the parent's minor child was domiciled in the school district. N.J.S.A. 18A:38-1(b)(2). Has petitioner shown by a preponderance of the evidence that B.M was domiciled in the school district? No. Petitioner has provided no testimony or documentary evidence to show that B.M. was domiciled in the school district.

PROCEDURAL HISTORY

On July 13, 2023, respondent determined that petitioner did not demonstrate that his child, B.M., was domiciled in the district. On July 20, 2023, petitioner filed a residency appeal on behalf of his child and, on /august 18, 2023, respondent filed an answer. On August 21, 2023, the New Jersey State Department of Education transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

Petitioner failed to participate in scheduled telephone conferences which were held on September 22, 2023, and October 18, 2023 despite being notified of those telephone conferences by email and regular mail. On October 19, 2023, the parties were notified by email and regular mail that a peremptory hearing date was scheduled for December 11, 2023. As the petitioner did not appear for the hearing, an ex parte hearing took place at the OAL in Newark, New Jersey on that date. Respondent presented testimony and exhibits, and the record was closed on December 11, 2023.

FINDINGS OF FACT

Having reviewed and considered the testimony and, the documentary evidence presented at the hearing, I **FIND** the following **FACTS** in this matter:

Petitioner did not appear for the hearing despite being afforded proper notice of the hearing date by email and regular mail. There is no indication that petitioner did not receive notice of the hearing. Petitioner never called or wrote to the OAL explaining his

failure to appear for the hearing or to request an adjournment. I therefore **FIND** that petitioner has abandoned his appeal.

Respondent is a regional public school district consisting of one high school, Manchester Regional High School, which serves students from Haledon, North Haledon and Prospect Park. A student who is domiciled in respondent's school district may attend Manchester Regional but may also attend Passaic County Technical Institute ("PCTI"). If the student attends PCTI, respondent must pay the student's tuition. The board of education for the school district passed a resolution requiring annual verification of residency for high school students who were determined to be eligible to attend Manchester High School but attended PCTI instead. Petitioner's son was such a student.

On September 26, 2022, Gary Lubisco, Jr., the superintendent of Manchester Regional High School, sent B.M.'s mother a letter requesting residency verification for B.M. to be provided no later than September 30, 2022. There was no response by B.M.'s mother to that request. On November 16, 2022, Mr. Lubisco sent a second request to B.M.'s mother seeking verification of B.M.'s residency. Again, there was no response by B.M.'s mother to that request. On January 30, 2023, Mr. Lubisco sent a letter to B.M.'s mother seeking to obtain verification of B.M.'s residency. Again, B.M.'s mother failed to provide any residency information or respond in any way to Mr. Lubisco. On February 1, 2023, Mr. Lubisco sent another letter to B.M.'s mother seeking verification of B.M.'s residency. Again, B.M.'s mother failed to respond to that request. On March 28, 2023, Mr. Lubisco sent a letter to B.M.'s mother informing her that B.M. was not eligible to have respondent continue to pay his tuition at PCTI based upon the lack of verification of B.M.'s address. The letter gave B.M.'s mother until April 21, 2023, to provide verification of B.M.'s residency. The letter also informed B.M.'s mother that there would be a hearing regarding B.M.'s residency before respondent on April 27, 2023. Because B.M.'s mother failed to provide the requested information, Mr. Lubisco resent his March 28th letter to B.M.'s mother on April 5, 2023 and April 18, 2023. B.M.'s mother failed to respond to Mr. Lubisco's April 5th or April 18th letters. On April 24, 2023, respondent sent B.M.'s mother a letter entitled "Summary for Board Hearing". That letter stated that B.M. was not eligible to have respondent continue to pay his tuition at PCTI based upon his mother's failure to provide verification of B.M.'s residency. Respondent's letter also informed B.M.'s mother

that there would be a hearing before the respondent on April 27, 2023 and that proof of residency for B.M. could be provided prior to or at the hearing.

At the hearing, respondent determined that it was not established that B.M. lived in the district. At the next Board meeting, on July 13, 2023, respondent voted to disenroll B.M. from the district based on the failure of B.M.'s mother to provide the requested verification of B.M's residency. On July 14, 2023, the Board's secretary sent B.M.'s mother a letter advising that B.M. was not entitled to a tuition-free education in the district or at PCTI since it was not established at the hearing that B.M. was domiciled in the district. B.M.'s mother was also informed that tuition would be assessed upon her for each day that B.M. attended Manchester Regional or PCTI when he was ineligible for a tuition-free education in the district. The letter further advised that the estimated annual cost of tuition was $10,864 and that respondent would continue to pay B.M.'s tuition while any appeal of the respondent's decision was pending.

Petitioner filed the instant appeal challenging the Board's decision. B.M. continues to attend PCTI during this school year and respondent has continued to pay his tuition during the pendency of his appeal. Petitioner has failed to present any evidence that his son was ever domiciled in any of the towns within the regional school district despite being given notice and an opportunity to do so. As no evidence has been presented that B.M. was domiciled in the school district during this school year, respondent seeks tuition reimbursement for B.M's attendance at PCTI for this school year. Respondent's school year started on September 7, 2023. Respondent's daily tuition rate is $60.35. Eighty-seven school days, excluding holidays, have elapsed from the start of the school year to the date of issuance of this decision. The amount of tuition due to the respondent as of the date of this decision is $5,250.45.

LEGAL ANALYSIS AND CONCLUSIONS

Any child between the ages of five and twenty years old is entitled to a free public education in the district in which he is a resident. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). A student is a resident of a school district if his parent or guardian has a permanent home in the district such that "the parent or guardian intends to return to it when absent

and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere." N.J.A.C. 6A:22-3.1(a)(1).

Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is that of his or her parent, custodian or guardian. P.B.K. o/b/o minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super 419, 427 (App. Div. 2001). Where the local board determines that a child is not properly domiciled in its district, N.J.S.A. 18A:38-1(b)(2) provides a right of appeal to the parents.

N.J.A.C. 6A:22-6.2(a) authorizes the Commissioner of Education to assess tuition for non-resident students. It states:

> If in the judgement of the Commissioner the evidence does not support the claim of the resident, he shall assess the resident tuition for the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the Commissioner are enforced.

On appeal, the petitioner has the burden of proof to show by a preponderance of the evidence that their minor child was domiciled in the school district. N.J.S.A. 18A:38-1(b)(2). Here, the petitioner has failed to appear for the scheduled hearing, without explanation, and as a result, I **CONCLUDE** that the petitioner has abandoned his appeal and the petition should be dismissed.

Based upon the facts adduced at the hearing and the exhibits introduced by respondent, I **CONCLUDE** that petitioner has not demonstrated that B.M. is domiciled in the school district. I also **CONCLUDE** that respondent is entitled to tuition reimbursement in the amount of $5,250.45.

ORDER

I **ORDER** that the petitioner's residency appeal is **DISMISSED** with prejudice. I further **ORDER** that respondent's counterclaim seeking tuition reimbursement in the amount of $5,250.45 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 8, 2024 — Daniel J. Brown

DATE — **DANIEL J. BROWN**, ALJ

Date Received at Agency: January 8, 2024

Date Mailed to Parties: January 8, 2024

dr

APPENDIX

Witnesses

For Petitioner:

None

For Respondent:

Gary Lubisco, Jr

Exhibits

For Petitioner:

None

For Respondent:

R-1 Annual Residency Verification resolution, dated November 4, 2022

R-2 Notice of Residency Verification, dated July 7, 2022

R-3 Second Notice of Residency Verification, dated November 16, 2022

R-4 Third Notice of Residency Verification, dated January 30, 2023

R-5 Third Notice of Residency Verification, dated February 1, 2023

R-6 Notice of Initial Determination of Ineligibility, dated March 28, 2023

R-7 Notice of Initial Determination of Ineligibility, dated April 5, 2023

R-8 Notice of Initial Determination of Ineligibility, dated April 18, 2023

R-9 Summary for Board Hearing, dated April 24, 2023

R-10 Notice of Unsuccessful Residency Verification, dated April 27, 2023

R-11 Disenrollment Resolution, dated July 27, 2023

R-12 Disenrollment Letter, dated July 14, 2023

R-13 Tuition Contract for County Vocational School, 2023-2024 School Year

84-24

New Jersey Commissioner of Education

Final Decision

D.S., on behalf of minor children, E.K.-S. and S.K.-S.,

Petitioner,

v.

Board of Education of the Township of Westampton, Burlington County,

Respondent.

Synopsis

Petitioner alleged a violation of the McKinney-Vento Act (Act) after the respondent Board denied her request to provide busing for her two children after the family became homeless. The family lives in transitional housing located within two miles of the children's school. Under district policy, no busing is required or provided for families living within a two-mile radius of the school. The petitioner filed an appeal and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed for hearing as a contested case on October 18, 2023, pursuant to *N.J.S.A.* 52:14B-1 to -15 and *N.J.S.A.* 52:14F-1 to 3. The Board filed a motion to dismiss pursuant to *N.J.A.C.* 6A:3-1.10.

The ALJ found, *inter alia*, that: petitioner and her children are homeless and reside in transitional housing located less than two miles from Holly Hills School, where the children are enrolled; petitioner contends that the transitional housing is "remote" but does not allege that it is further than two miles from the school or that the route to school is dangerous; there is no allegation that other students in the same geographic area are provided busing, nor are there are any other grounds entitling the children to services that are not provided to other similarly situated students in the district; petitioner cites the Act which requires the district to provide the same services for non-homeless children, but there is no allegation that any non-homeless children who reside within two miles of the school are receiving bus services. The ALJ concluded that petitioner does not have a right to busing under the McKinney-Vento Act; accordingly, the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that petitioner's children are not entitled to receive bus transportation to and from school. Accordingly, the Board's motion to dismiss was granted, and the petition of appeal was dismissed.

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.

84-24
OAL Dkt. No. 11041-23
Agency Dkt. No. 256-9/23

New Jersey Commissioner of Education

Final Decision

D.S., on behalf of minor children, E.K.-S and S.K.-S.,

Petitioner,

v.

Board of Education of the Township of Westampton, Burlington County,

Respondent.

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 that petitioner's children are not entitled to receive bus transportation to and from school.

Accordingly, the Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2024
Date of Mailing: January 31, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 11041-23
AGENCY DKT. NO. 256-9/23

D.S. ON BEHALF OF MINOR CHILDREN
E.K.-S. AND S.K.-S.,
Petitioner,
v.
BOARD OF EDUCATION OF THE
TOWNSHIP OF WESTHAMPTON,
BURLINGTON COUNTY,
Respondent.

Manali Arora, Esq., for petitioner (Swartz Swidler, LLC, attorneys)

Alicia D'Anella, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: November 28, 2023 Decided: December 5, 2023

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE

Petitioner, D.S. on behalf of her minor children, E.K-S. and S.K.-S. brings this action against the respondent, Westampton Township Board of Education (Board or

District) alleging a violation of the McKinney-Vento Act by failing to provide busing for her children after the family became homeless. It is undisputed that the family lives within two miles of the designated school for the children, and thus, under district policy no bussing is required or provided. The petitioner filed a due process complaint and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed for hearing as a contested case on October 18, 2023, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to 3. The Board filed a motion to dismiss pursuant to N.J.A.C. 6A:3-1.10 on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true. Opposition was filed by the petitioner and a reply filed by the Board, and the record closed on November 28, 2023.

FACTUAL DISCUSSION AND FINDINGS

Based on the documents and certifications filed in this matter, I **FIND** the following as **FACTS**:

1. The petitioner and her children are homeless.
2. The petitioner and her children, ages five and seven, reside in transitional housing in Westhampton Township.
3. The children attend Holly Hills School, which is less than two miles from the transitional housing.
4. The petitioner seeks transportation on the grounds that the transitional housing is "remote."
5. There are no allegations that the housing is not within two miles or that the route to school is dangerous.
6. There is no allegation that other children in this same geographic area are provided bussing.

LEGAL ANALYSIS AND CONCLUSIONS

The respondent seeks dismissal on the basis that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true. Pursuant to N.J.A.C. 6A:3-1.10. It is undisputed that the petitioner resides within two

miles of the school and there is no allegation that the route is dangerous or there are any other grounds entitling the children to services that are not provided to other similarly situated students in the district.

Under the McKinney-Vento Homeless Education Assistance Improvement Act of 2001, 42 U.S.C. § 11431 et seq., state educational agencies must ensure that each homeless child and youth has equal access to the same public education as every other child and youth. The protections offered to homeless students and their parents under the federal McKinney-Vento Act and New Jersey's corresponding State law represent an exception to otherwise applicable residency rules. In contrast to the basic premise that students must change schools when they leave a school district, the laws protecting homeless students generally allow parents the choice to keep their children enrolled in their original school district if the parents relocate to another school district as the result of being homeless. N.J.S.A. 18A:38-1(f); N.J.A.C. 6A:22-3.2(d). The district of residence for children whose parents temporarily move from one school district to another as the result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless. N.J.S.A. 18A:7B-12(c).

In this case, the children have remained in their home district in transitional housing that is within two miles of the school. The petitioner states that the location is remote, but does not allege the route is dangerous. No further elaboration or argument is provided by the petitioner's in support of their due process petition seeking busing to school. The petitioner cites the Act which requires the district to provide the same services for non-homeless children. However, there is no allegation that any non-homeless children who reside within two miles of the school are receiving bus services. The goal of the McKinney-Vento Act is to remove barriers inherent in homelessness and the district is required, consistent with that goal, to provide comparable services offered to other students in the district. The children in this case live within two miles of the school, and no children living in this area or others within two miles of the school are provided bussing.

Accordingly, I **CONCLUDE** that the petitioner does not have a right to bussing under the McKinney-Vento Act, and the petition is hereby **DISMISSED**.

ORDER

For the foregoing reasons, I **ORDER** that the motion of respondent Westhampton Township Board of Education is **GRANTED**, and the 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 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.

December 5, 2023
DATE

Sarah G. Crowley
SARAH G. CROWLEY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

SGC/kl/mph

85-24

New Jersey Commissioner of Education

Final Decision

S.G., on behalf of B.H.,

Petitioner,

v.

Board of Education of the Township of Montville, Morris County,

Respondent.

Synopsis

Pro se petitioner S.G. challenged the determination of the respondent, Board of Education of the Township of Montville (Board), regarding a Harassment, Intimidation and Bullying (HIB) complaint filed on behalf of her daughter, B.H., who had been a member of the Montville High School cheerleading team during the 2022-2023 school year. The petition expressed general complaints about supposed misconduct by other team members and their parents and made allegations that B.H. was excluded by team members during a trip to a cheer competition; further, the petition requested that the cheerleading coach be fired for allowing such behavior. The Board determined that petitioner's allegations did not constitute HIB. As B.H. had turned eighteen and was no longer a minor when petitioner appealed the Board's decision, the petition of appeal form included a signed statement from B.H. that she gave petitioner full authorization to represent her in this matter. The Board filed a motion to dismiss.

The ALJ found, *inter alia*, that: the handwritten note on the appeal form was not dated or notarized; the note was not sufficient to transfer B.H.'s rights to her mother; even if an adjournment had been permitted to allow B.H. to provide additional documentation regarding her authorization, the petition did not show that the cheerleading coach committed an act of HIB against B.H. as none of the allegations met the legal standards of the HIB statute; for a finding of HIB, the alleged behavior must reasonably be perceived as being motivated by an actual or perceived distinguishing characteristic, and must have substantially disrupted or interfered with the orderly operation of the school or the rights of students; further, one of the three criteria regarding the effect of the conduct, as enumerated in the Act, must also be satisfied. The ALJ concluded that the factual allegations in the petition were insufficient to support a claim upon which relief could be granted. Accordingly, the ALJ granted the Board's motion to dismiss the petition.

Upon review, the Commissioner concurred with the ALJ that the petition must be dismissed. In so determining, the Commissioner found, *inter alia*, that in the absence of any distinguishing characteristic, any conduct by the coach did not meet the definition of HIB, and therefore the Board's decision was not arbitrary, capricious, or unreasonable. Accordingly, Board's motion to dismiss was granted. The petition was dismissed.

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.

85-24
OAL Dkt. No. 12591-23
Agency Dkt. No. 286-10/23

New Jersey Commissioner of Education

Final Decision

S.G., on behalf of B.H.,

Petitioner,

v.

Board of Education of the Township of Montville, Morris County,

Respondent.

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 the reply thereto by the Montville Township Board of Education (Board), have been reviewed and considered.

Petitioner's daughter, B.H., was a member of the Montville Township High School cheerleading team when she was a senior during the 2022-2023 school year. In June of 2023, petitioner filed a harassment, intimidation, and bullying (HIB) complaint alleging – in addition to general complaints about alleged misconduct by other team members and their parents – that B.H. was excluded by team members during a trip to a competition and requesting that the cheerleading coach be fired for allowing such behavior. The Board determined that there was no act of HIB committed against B.H. When petitioner appealed, because B.H. was eighteen years old and no longer a minor, the petition of appeal form included a signed statement from B.H. that she gave petitioner full authorization to represent her in this matter.

Following the Board's motion to dismiss, the Administrative Law Judge concluded that the handwritten note on the petition was not sufficient to transfer B.H.'s rights to S.G. Additionally, the ALJ found that even if an adjournment had been permitted to allow B.H. to provide additional documentation regarding her authorization, the petition does not show that the cheerleading coach committed an act of HIB against B.H. The ALJ found that the petition did not allege that the coach's actions: would reasonably be perceived as being motivated by an actual or perceived distinguishing characteristic; substantially disrupted or interfered with the orderly operation of the school or the rights of students; had the effect of physically or emotionally harming a student or damaging the student's property; had the effect of insulting or demeaning any student or group of students; or created a hostile education environment.

In her exceptions, petitioner repeats the allegations in her petition that the coach engaged in abusive behavior or condoned such behavior committed by the parents of other cheerleading team members. Petitioner also indicates that B.H. is willing to provide a notarized statement authorizing petitioner to proceed with the case, and that B.H. wants to be heard.

In reply, the Board argues that the Initial Decision was correct and should be adopted.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed. When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. W. Orange Bd. of Educ.*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]" and the Commissioner will

not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't. of Envtl. Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff'd*, 131 *N.J. Super.* 37 (App. Div. 1974).

The Act defines HIB as follows:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L. 2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
>
> *N.J.S.A.* 18A:37-14.

Therefore, a finding of HIB requires three elements. First, the conduct must be reasonably perceived as being motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic and, second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school.[1] The third condition requires that one of the three criteria enumerated in the Act, regarding the effect of the

[1] The conduct must also take place on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in *N.J.S.A.* 18A:37-15.3.

conduct, must also be satisfied. *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County*, Commissioner Decision No. 51-20 (decided February 4, 2020).

Petitioner does not identify any distinguishing characteristic of B.H. that she believes motivated, or could reasonably be perceived to have motivated, the cheerleading coach's actions. In the absence of any distinguishing characteristic, any conduct by the coach does not meet the definition of HIB, and therefore the Board's decision was not arbitrary, capricious, or unreasonable.[2]

Although the Commissioner concludes that dismissal is appropriate because petitioner has failed to demonstrate that an act of HIB occurred, in light of petitioner's exceptions, the Commissioner finds that clarification regarding the issue of standing is appropriate. Here, petitioner included a signed statement from B.H. on her petition of appeal, whereby B.H. authorized petitioner to represent her in this matter. This statement was sufficient for the Office of Controversies and Disputes to accept the petition for filing and to transmit the matter to the OAL. However, such a determination does not preclude the ALJ from finding that a petitioner lacks standing to pursue the matter further, as occurred here.

Additionally, the Commissioner notes that there are circumstances under which a parent may pursue a petition of appeal on behalf of an adult child even though the parent lacks standing to pursue the matter on their own behalf. For example, in *I.C.W., on behalf of minor child, J.W. v. Bd. of Educ. of the Borough of Mountain Lakes, Morris County*, Commissioner Decision No. 432-11 (decided Oct. 14, 2011), the petitioner, I.C.W., submitted a signed

[2] Additionally, to the extent that petitioner's allegations relate to a meeting that occurred in June 2022, any claims related to that incident are untimely pursuant to *N.J.A.C.* 6A:3-1.3(i), which requires petitions to be filed no later than 90 days from the order, ruling, or other action that is the subject of the requested contested case hearing.

statement from his adult child, J.W., similar to the one at issue here. The ALJ afforded J.W. the option of filing a Certificate of Substitution or appearing before the ALJ to demonstrate that J.W. wished to have his parent proceed on his behalf. However, J.W. did not exercise either option, and the matter was dismissed. Here, petitioner requested an adjournment to allow B.H. to provide additional documentation regarding her authorization. The ALJ correctly concluded that an adjournment was unnecessary because even if B.H. provided the proper document to allow petitioner to proceed on her behalf, there was no evidence of an act of HIB, for the reasons described above.

Accordingly, the Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[3]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2024
Date of Mailing: January 31, 2024

[3] 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 12591-23
AGENCY DKT. NO. 286-10/23

S.G. ON BEHALF OF B.H.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF MONTVILLE, MORRIS COUNTY,
Respondent.

S.G., petitioner, pro se

Stephen J. Edelstein, Esq. for respondent (Weiner Law Group, LLP)

Record Closed: December 1, 2023 Decided: December 8, 2023

BEFORE **KIMBERLY A. MOSS**, ALJ:

On November 7, 2023 the Board of Education of the Township of Montville (Board or respondent) filed a Motion to Dismiss in lieu of its answer to the petition filed by petitioner S.G. on behalf of her daughter B.H. On November 14, 2023, the matter was transmitted to the Office of Administrative Law. On November 16, 2023, an email was sent to the parties stating that pursuant to the rule, petitioner's response was due

on November 17, 2023, however, additional time would be allowed for petitioner to respond.

Petitioner filed opposition to the motion on December 1, 2023. Petitioner, S.G. requested the motion be adjourned to allow her daughter, B.H., to sign a consent transferring B.H. rights to proceed in this matter to her. I have declined to grant the adjournment.

FACTUAL DISCUSSION

B.H. is over the age of eighteen. On the appeal form is a note written by B.H, which states that she authorizes her mother to represent her. This note is signed but not dated or notarized. When B.H. was in Montville High School, she was a member of the cheer team. S.G. states that in June 2022, she and four other senior mothers of the cheer team met. This meeting was arranged by the Coach Gentile and held in front of the cheer team. During the meeting while they were discussing a fund raiser, three of the senior mothers yelled at S.G. that no one wanted to fundraise, and they were not going to listen to her. According to S.G., these three mothers also began to lie. After this meeting these mothers continued to scream at S.G. B.H. came home crying and had an anxiety attack.

S.G was given the Code of Conduct from R.B. and told that if the conduct between S.G. and three other mothers continues, they would not be allowed to watch the students perform at the high school games.

The cheer team was going to the Nationals competition in Florida. Initially S.G. did not sign the permission slip. Gentile told some of the other mothers this. Gentile told B.H. in her office that S.G. had not signed the permission slip. S.G. told the coach that since the three other senior mothers destroyed the fundraiser, those mothers could pay for B.H. to go to the Nationals, then she would sign the permission slip. Apparently, this matter was resolved and B.H. went to the Nationals with the cheer team.

One of the mothers who had previously screamed at S.G. was preparing the event. Once they were on the plane, three senior members of the cheer program sat together and B.H. sat with the juniors and sophomores in the back of the plane. Gentile did not require B.H. to sit with the other seniors. While at the Nationals, one of the senior mothers attacked S.G. on social media.

S.G. asked coach Gentile to act against the other senior mothers. Coach Gentile did not act.

On May 22, 2023, S.G. met with the school to discuss bullying and abuse on the cheer team. On May 23, 2023, S.G requested a harassment, intimidation and bullying (HIB) investigation into the cheer coach and staff. The investigator wanted to meet with B.H. but S.G. stated they could only meet with B.H. if she was present. The meeting took place on June 6, 2023. B.H. stated that she felt excluded by not sitting with the other seniors on the flight to the Nationals in Florida. She also stated that Gentile did not do anything to make her feel uncomfortable. The Board found that the allegations in the investigation report did not constitute an HIB violation.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 6A:3-1.5(g) provides:

> Nothing in this section precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on such motions shall be in the manner and within the time fixed by the Commissioner, or by the ALJ if the motion is to be briefed following transmittal to the OAL.

N.J.A.C. 6a:3-1.10 provides:

> At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.

On a motion made pursuant to R. 4:6-2(e) "the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." P. & J. Auto Body v. Miller, 72 N.J. Super. 207, 211 (App.Div.1962). The court may not consider anything other than whether the complaint states a cognizable cause of action. Ibid. For this purpose, "all facts alleged in the complaint and legitimate inferences drawn therefrom are deemed admitted." Smith v. City of Newark, 136 N.J. Super. 107, 112 (App.Div.1975). See also Heavner v. Uniroyal, Inc., 63 N.J. 130, 133 (1973); Polk v. Schwartz, 166 N.J. Super. 292, 299 (App.Div.1979). A complaint should not be dismissed under this rule where a cause of action is suggested by the facts and a theory of actionability may be articulated by way of amendment. Muniz v. United Hsps. Med. Ctr. Pres. Hsp., 153 N.J. Super. 79, 82-83 (App.Div.1977). However, a dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted. Reider v. State Department of Transportation 221 N.J. Super. 547,522 (App. Div. 1987)

> A party must have standing to have the "ability or entitlement to maintain an action before the court." In re Baby T., 160 N.J. 332, 340 (N.J.,1999). Standing is "a threshold justiciability determination whether the litigant is entitled to initiate and maintain an action before a court or other tribunal." In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super 61, 85 (App. Div. 2004).

In this matter B.H. is an adult. A handwritten note written on a page of the appeal notice that is not dated or notarized is not enough to transfer from B.H.'s rights to S.G. in this matter.

N.J.S.A. 18A:37-14 defines harassment, intimidation or bullying as:

> "Harassment, intimidation or bullying" means any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
> b. has the effect of insulting or demeaning any student or group of students; or
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

Here, the petition did not allege that any action of Gentile would be reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic. There was no distinguishing characteristic of B.H. noted in the petition.

The petition did not allege that Gentile's actions substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property, has the effect of insulting or demeaning any student or group of students; or create a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

S.G. wanted Gentile to reprimand the three senior mothers that she had problems with. B.H. stated that Gentile never made her feel uncomfortable.

S.G. requested an adjournment for B.H. to sign an authorization for S.G. to proceed for her. I decline to grant the adjournment because even if B.H. signed the proper document to allow S.G. to proceed on her behalf, the petition does not show that an HIB was committed against B.H. by Gentile.

I **CONCLUDE** that the factual allegations of the complaint are palpably insufficient to support a claim upon which relief can be granted.

ORDER

Based on the foregoing, it is **ORDERED** that the request for the petition to be dismissed be and is hereby **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.

December 8, 2023

DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency: December 8, 2023

Date Mailed to Parties: December 8, 2023

ljb

96-24
OAL Dkt. No. EDU 06866-23
Agency Dkt. No. 279-10/22

New Jersey Commissioner of Education

Final Decision

Ingrid Fullerton,

Petitioner,

v.

Board of Education of the Borough of East Newark, Hudson County,

Respondent.

The record of this matter, the proposed Global Settlement Agreement and Mutual Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 5, 2024
Date of Mailing: February 7, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 06866-23
AGY REF NO. 279-10/22

INGRID FULLERTON,
Petitioner,
v.

BOARD OF EDUCATION OF THE BOROUGH OF EAST NEWARK, HUDSON COUNTY,
Respondent.

Ingrid Fullerton, petitioner, pro se

Frances Febres, Esq., for respondent (Cleary, Giacobbe, Alfieri & Jacobs, attorneys for Respondent

Record closed: January 23, 2024 Decided: January 23, 2024

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Ingrid Fullerton filed a pro se Petition of Appeal, dated October 18, 2022, challenging her termination of employment with the Respondent District, and seeking Emergent Relief. The Office of Controversies and Disputes in the New Jersey Department of Education (DOE) transferred the matter to the Office of Administrative

Law (OAL), where it was filed on October 19, 2022, bearing docket number EDU 09468-22.

Respondent filed a motion to dismiss as the petition did not address any New Jersey School laws. Accordingly, the Commissioner lacked jurisdiction and the matter was dismissed by the undersigned by Initial Decision dated January 5, 2023.

The matter was remanded by the Acting Commissioner of the New Jersey Department of Education pursuant to a Decision dated March 30, 2023, wherein the Acting Commissioner stated "Upon review, the Commissioner agrees with the Administrative Law Judge that the petition did not reference any New Jersey school laws, and the Commissioner therefore lacks jurisdiction over the claims alleged in the petition. Nevertheless, affording latitude to the petitioner as a *pro se* litigant, the Commissioner found the matter should be remanded for consideration of petitioner's argument under N.J.S.A. 18A:6-30.1."

The remanded matter was filed at the OAL on August 1, 2023, under docket number EDU 06866-23.

The parties advised via email that they would be filing cross motions for summary decision. Accordingly, a briefing schedule was set.

Petitioner filed her motion on September 2, 2023. Respondent filed their motion on September 14, 2023. Respondent filed a reply brief on October 5, 2023, and a sur reply brief on October 13, 2023. Petitioner filed a reply brief on October 6, 2023.

Thereafter, the parties agreed to a settlement and have prepared a Settlement Agreement and Release outlining the terms of the settlement, which is attached hereto and fully incorporated herein.

I have reviewed the record and terms of the settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.S.A. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

January 23, 2024
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:
db

APPENDIX

List of Exhibits

Settlement Agreement

Board Resolution

CLEARY GIACOBBE ALFIERI & JACOBS, LLC
169 Ramapo Valley Road
Upper Level, Suite 105
Oakland, New Jersey 07436
Telephone: 973-845-6700
Facsimile: 201-644-7601
Attorneys for Respondent

INGRID FULLERTON. Petitioner, v. Board of Education of the Borough of East Newark, Hudson County, Respondent.	STATE OF NEW JERSEY OFFICE OF CONTROVERSIES & DISPUTES OAL Dkt. No: EDU 06866-23 Agency Dkt. No. 279-10/22 **GLOBAL SETTLEMENT AGREEMENT & MUTUAL RELEASE**

This Global Settlement Agreement and Mutual Release ("Agreement") is entered into by and between Ingrid Fullerton ("Petitioner") and the East Newark Board of Education ("Board" or "Respondent"), having principal offices at 501 North Third Street, East Newark, NJ 07029 (the Board and Petitioner are collectively referred to as the "Parties").

WHEREAS, Petitioner was employed as a Teacher for the Board during the 2022-2023 school year; and

WHEREAS, Petitioner's last day of employment with the Board of Education was September 22, 2023; and

WHEREAS, Petitioner began employment with a different school district on or about November 1, 2022; and

WHEREAS, a dispute arose regarding the employment between Petitioner and the Board and the amount of notice that was required to sever the employment relationship between Petitioner and the Board of Education; and

WHEREAS, Petitioner filed a Petition of Appeal with the Commissioner of Education to resolve such dispute; and

WHEREAS, the Parties have conferred with each other and have reached an amicable resolution that each has determined is in their respective best interest, without the need to spend further time and resources in proceeding to an administrative hearing.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties now desire to memorialize the terms of their terms and conditions agreement in writing, subject to the approval of the Commissioner of Education, as follows:

1. The Board of Education will amend its resolution to reflect that Petitioner resigned effective September 23, 2022 and that the Board of Education accepted Petitioner's resignation on that effective date.
2. The Board of Education will pay Petitioner a settlement sum in the amount of Six Thousand Dollars ($6,000.00) within thirty (30) days of the Commissioner of Education's approval of this Agreement.
3. Petitioner's private email address will be accessible to the Board Secretary, current Board President and Superintendent/Principal so that she may communicate with respect to her employment records, as needed.
4. The Board of Education authorizes Petitioner to attend the 8th grade graduation ceremony for the class of 2024, contingent on the terms of this Agreement being upheld by all parties.
5. In consideration of the terms of this Agreement, Petitioner and the Board hereby waives, releases and indemnifies each other, including each other's respective agents,

representatives, members, employees and volunteers, from all possible claims, that have or may have accrued against the other and which arose out of and/or relate to the parties' employment relationship, status and/or cessation of the employment relationship. This Mutual Release includes, but is not limited to, claims arising under the New Jersey school laws, New Jersey Conscientious Employee Protection Act, New Jersey Law Against Discrimination, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the federal Age Discrimination in Employment Act of 1967 ("ADEA"), the Older Workers Benefit Protection Act ("OWBPA"), the federal Equal Pay Act, the New Jersey Wage & Hour Law, the United States Constitution, the New Jersey State Constitution, the federal Americans with Disabilities Act, the Families First Coronavirus Response Act, the Family and Medical Leave Act, New Jersey Family Leave Act, the New Jersey Earned Sick Leave Law, the Equal Pay Law, the Equal Rights Act, any other federal, state or local law or ordinances, and/or any common law claims under tort, contract (including any collective bargaining agreement she was subject to or part of) or any other theories now or hereafter recognized.

6. The Release recited in Paragraph 5 shall include any and all claims which Ms. Fullerton and the Board may have at the time of the execution of this Settlement Agreement and Mutual Release for any type of damages cognizable under any of the laws referenced herein, including, but not limited to, any and all claims for wages, compensatory damages, punitive damages, and/or attorneys' fees. Specifically excluded from the Release are Ms. Fullerton's rights, upon cessation of employment with the Board to obtain continued medical coverage at her own expense as authorized by the Consolidated Omnibus Reconciliation Act of 1986 (COBRA), unless specifically modified herein; any

rights she may have arising under the Teachers' Pension and Annuity Fund ("TPAF") and related statutes and regulations; any rights she may have for indemnification by the Board pursuant to N.J.S.A. 18A:16-6 and 6.1; and any rights she may have under the New Jersey Workers' Compensation Law, N.J.S.A. 34:15-1, et seq. Nothing in this Release or Indemnification set forth in Paragraph 5 shall be construed as a release or waiver of any claims between the Parties seeking to enforce any term or provision of this Agreement.

7. The Release does not preclude Ms. Fullerton or the Board from suing for enforcement or for a violation of this Settlement Agreement. With respect to any inquiries from the Department of Labor concerning Ms. Fullerton's reason for separation, the Board will respond truthfully that her resignation was in settlement of an issue related to her employment, the details of which shall remain confidential to the greatest extent permitted by law. The Board's Secretary or Superintendent shall clearly indicate that the employment separation was the result of mutual agreement for convenience. Should a subsequent employer or potential employer contact the Superintendent or Board Secretary regarding Ms. Fullerton's employment with the Board, solely the dates of her employment, position held, and, if inquired, the fact that she resigned will be provided.

8. Ms. Fullerton understands that nothing in this Agreement shall be construed to prohibit her from filing a charge with, or participating in any investigation or proceeding conducted by, the New Jersey Division on Civil Rights, the U.S. Equal Employment Opportunity Commission (EEOC), or with any other Federal, State or local court or agency. Notwithstanding the foregoing, Ms. Fullerton hereby waives any and all rights to recover any and all damages from the Board, which includes its officers, members, employees, volunteers and agents, including, but not limited to, monetary damages and

attorney's fees in any charge, complaint or lawsuit filed by her based on events occurring which arose or existed prior to and through September 23, 2023 as related to her employment with the Board.

9. Petitioner acknowledges that she has had the opportunity to review this Agreement in detail with an Attorney. Petitioner fully understand its requirements and limitations. Petitioner hereby states that she is signing this Agreement voluntarily, of her own free will, and not under duress or coercion of any kind.
10. This Agreement shall be construed fairly according to the plain language of its terms and not for or against any party hereto.
11. All parties are bound by this Agreement and each of its provisions. Anyone who succeeds their rights and responsibilities, such as their successors and assigns are also bound. This Agreement is made for the benefit of all parties hereto and all who succeed to their rights and responsibilities, and expressly includes their officials, representatives, employees, agents, attorneys, successors or assigns.
12. This Agreement is to be kept confidential by both parties to the maximum extent permitted by Law.
13. This Agreement represents the entire Agreement between the Parties and will not be modified in whole or in part except by a mutual subsequent written and signed agreement.
14. This Agreement is governed by the laws of the State of New Jersey. The Parties agree that the courts of the State or District Court of New Jersey shall be the sole forum in which any legal action concerning or relating to this Agreement shall be brought.

15. In the event that any provision of this Agreement is held to be void or unenforceable by any court or regulatory authority having jurisdiction thereof, such ruling will not affect the validity of this Agreement; the remaining provisions shall continue to be in full force and effect.

16. This Agreement may be executed in one or more original, emailed or telecopied counterparts, all of which together shall be one instrument, and all of which shall be considered duplicate originals.

17. **This Agreement is conditioned upon and subject to the review and approval of an Administrative Law Judge, Commissioner of Education and the East Newark Board of Education.**

The parties hereby acknowledge their agreement to the terms set forth above by signing below.

PETITIONER:

Ingrid Fullerton

INGRID FULLERTON

Date: 1/9/2023

FOR THE EAST NEWARK BOARD OF EDUCATION:

Carla Fernandes

Carla Fernandes
Board of Education President

Date: 1/19/24

Witness for Petitioner:

Emidio D'Andrea
Board Secretary

Dated: _____ ___, 2024

Date: 1/19/24

EXTRACT FROM THE MINUTES OF A MEETING OF THE BOARD OF EDUCATION OF THE BOROUGH OF EAST NEWARK, HUDSON COUNTY, NJ AS RECORDED IN THE OFFICIAL MINUTES BOOK

The Board of Education of the Borough of East Newark in the County of Hudson, NJ, convened in a Regular Public Meeting on January 16, 2024 at 7:00 p.m. in the East Newark School, 501 North Third Street, East Newark, NJ 07029.

The following members were present: Ms. Fernandes, Ms. Perez, Ms. Leone, Mr. Mancini, and Ms. Ditchkus.

The following resolutions were moved by Ms. Perez and second by Ms. Leone:

AYES: 5 NAYS: 0 ABSTENTIONS: 0

Be It Resolved, that the East Newark Board of Education approves the terms and conditions set forth in the Settlement Agreement with Employee # 58765488 and further authorizes the Board President to execute same on its behalf.

CERTIFICATION

I, Karen Rivadeneira, Pro-Tempore Secretary of the Board of Education of the Borough of East Newark in the County of Hudson, State of New Jersey, hereby certify that the foregoing extract from the minutes of the meeting of the Board of Education of said district duly called and held on January 16, 2024 has been compared by me with the original minutes as officially recorded in my office in the minute book of said East Newark Board of Education and is a true, complete copy thereof and of the whole of said original minutes so far as the same relate to the subject matter referred to in said extract, in witness I have hereunto set my hand and affixed the corporate seal of said Board of Education this 23rd Day of January 2024.

Karen Rivadeneira
Confidential School Secretary/
Pro-Tempore Board Secretary

97-24
OAL Dkt. No. EDU 00772-23
Agency Dkt. No. 287-10/22

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the
Teaching Certificates of Nakeisha Moore,
Team Academy Charter School, Essex County

The record of this matter, the proposed Settlement Agreement and General Release (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 1 of the Agreement references actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement. Further, with respect to paragraph 6 of the Agreement, the parties are reminded that the Board must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* in regard to information concerning this matter, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 5, 2024
Date of Mailing: February 7, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 00772-23
AGENCY DKT. NO.287-10/22

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATES OF NAKEISHA MOORE, TEAM ACADEMY CHARTER SCHOOL, ESSEX COUNTY.

Thomas Johnston, Esq., for petitioner (The Johnston Law Firm, LLC, attorneys) for Team Academy Charter School

Steven V. Schuster, Esq., for respondent Nakeisha Moore

Record Closed: January 16, 2024 Decided: January 22, 2024

BEFORE **JUDE-ANTHONY TISCORNIA,** ALJ:

On January 25, 2023, the matter was transmitted to the Office of Administrative Law for determination as a contested case.

The parties have agreed to an amicable resolution of the matter and submitted the attached Settlement Agreement via email on January 16, 2024.

Having reviewed the record and the settlement terms, I **FIND** as follows:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or the signatures of their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

Therefore, I **CONCLUDE** that the agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. Accordingly, it is **ORDERED** that the parties comply with the settlement terms, and it is **FURTHER ORDERED** that the proceedings in this matter be concluded.

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.

January 22, 2024

DATE

JUDE-ANTHONY TISCORNIA., ALJ

Date Received at Agency: January 24, 2024

Date Mailed to Parties: January 24, 2024

id

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This settlement agreement and general release ("Agreement") made by and between

TEAM Academy Charter School
(Hereinafter referred to as "TEAM")

AND

Nakeisha Moore
(Hereinafter referred to as "Moore")

WITNESSETH:

WHEREAS, TEAM is duly organized as a public charter school under the laws of the State of New Jersey, N.J.S.A. 18A:36A-1 *et seq.*; and

WHEREAS, the parties have previously agreed to an Employment Agreement for the position of teacher during 2022-2023 school year; and

WHEREAS, Moore concluded her duties as teacher on September 6, 2022; and

WHEREAS, TEAM filed a petition with the Department of Education pursuant to *N.J.S.A.* 18A:26-10 ("Petition"); and

WHEREAS, the parties desire to amicably resolve the Petition without further dispute between the parties.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties desire to enter into the within Settlement Agreement and General Release (the "Agreement") as follows:

1. **Payment and Benefits.** In consideration for the promises made by TEAM, Moore shall pay to TEAM ten thousand dollars ($10,000.00 USD) in equal installments of one thousand twenty-eight dollars and fifty-seven cents ($1,428.58 USD) over seven consecutive months on or before the 15th day of each month, commencing in December 2023. These monies

shall be deposited into her counsel Steven Schuster's attorney trust account, and TEAM's counsel, Thomas Johnston, shall be notified via email within five business days of each deposit. No other monies shall be due TEAM. TEAM agrees that to the extent that any federal, state or local taxes may be or become due or payable as a result of the above payments, TEAM shall be solely responsible for paying such taxes. If Moore fails to make any deposit within five business days of the 15th day of each month, she shall be in material breach of this Agreement and agrees to an immediate six-month suspension of her teacher certification issued by the New Jersey Department of Education, and monies already paid to the attorney escrow account shall be forfeited by Moore and transmitted to TEAM within fourteen (14) days. Moore further consents to the jurisdiction of the Commissioner of Education to enforce such suspension, as a dispute that arises under the New Jersey school laws.

2. **Mutual Release.** In consideration for the payments described in Section 1 above, and TEAM's voluntarily dismissal of the Petition, and other consideration herein, the parties release each other of obligations from or arising out of Moore's employment and any and all claims or causes of action they may have or claim to have against the other, known or unknown. Moore releases TEAM and any of its predecessors, successors, parents, affiliated or subsidiary entities, including KIPP New Jersey, Inc. and KIPP TEAM and Family, Inc., and its present or former officers, directors, agents, Board of Trustees members, representatives, employees, attorneys, committees, trustees, fiduciaries, trusts and their respective successors and assigns, heirs, executors and personal or legal representatives (hereinafter collectively referred to as the "Releasees") from any and all claims or causes of action she may have or claim to have, known or unknown, against the Releasees arising out of or related to her employment with TEAM or her separation therefrom. The claims released include, but are not limited to:

a. all statutory claims, including but not limited to claims arising under the New Jersey Law Against Discrimination (as amended), the New Jersey Civil Rights Act, the New Jersey Conscientious Employee Protection Act (as amended), the New Jersey Family Leave Act, Title VII of the Civil Rights Act of 1964 (as amended), Sections 1981 through 1988 of Title 42 of the United States Code (as amended), the Americans with Disabilities Act of 1990 (as amended), the Rehabilitation Act, the Employee Retirement Income Security Act of 1974 (as amended), the Fair Labor Standards Act (as amended), the Uniformed Services Employment and Reemployment Rights Act of 1994, the National Labor Relations Act (as amended), the Federal Warn Act (as amended), the New Jersey Millville Dallas Airmotive Plan Job Loss Notification Act (as amended), the Family and Medical Leave Act of 1993, the Occupational Safety and Health Act (as amended), the Equal Pay Act (as amended), the New Jersey Minimum Wage Law (as amended), the New Jersey Wage and Hour Law (as amended), Equal Pay Law for New Jersey (as amended), the New Jersey Worker Health and Safety Act (as amended), Charter School Program Act, N.J.S.A. 18A:36A-1 et seq., the New Jersey School Laws, N.J.S.A. 18A et seq., and the Labor Management Relations Act (as amended);

b. all claims arising under the United States or New Jersey Constitutions;

c. all claims arising under any Executive Order or derived from or based upon any state or federal regulations;

d. all common law claims, including but not limited to any and all rights to discovery, claims for wrongful discharge, constructive discharge, violation of public policy, breach of an express or implied contract, breach of an implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, defamation, conspiracy, tortious interference with contract or prospective economic advantage, promissory estoppel, equitable estoppel, fraud, misrepresentation, detrimental reliance, retaliation, and negligence;

e. all claims for any compensation including commissions, back wages, front pay, punitive damages, pay increases, bonuses or awards, fringe benefits, disability benefits, severance benefits, reinstatement, retroactive seniority, pension benefits, contributions to retirement plans, or any other form of economic loss;

f. all claims for personal injury, including physical injury, mental anguish, emotional distress, pain and suffering, embarrassment, humiliation, damage to name or reputation, interest, liquidated damages, and punitive damages; and

g. all claims for costs, interest, and attorneys' fees.

TEAM likewise releases any and all claims it may have against Moore, including, but not limited to, claims under the above laws, regulations, executor orders and rules, including claims under *N.J.S.A.* 18A:26-10.

3. **Non-Admission of Liability.** Nothing contained in Section 2 is intended by a party, nor shall be construed: (i) to waive or release any future claim against the other arising after the date this Agreement is signed by the parties; or (ii) to limit a party's right to enforce the terms of this Agreement. TEAM understands that Moore's offer of payments described in Section 1 above does not constitute an admission by Moore that she has violated any statute, regulation or ordinance or any other legal obligation that she may owe to TEAM with respect to any aspect of her employment with TEAM or her separation therefrom.

4. **Agreement Not to Sue.** Each party represents that they have not, agrees that they will not, file any lawsuit or claim against the Releasees or Moore based on any events, whether known or unknown, occurring prior to the date of the execution of this Agreement, including, but not limited to, any events related to, arising out of, or in connection with, Moore's employment with TEAM, or the separation therefrom, in any court, administrative agency or tribunal of the United States, New Jersey, or any other state, city, county, or locality. Moore also acknowledges and agrees that while this release does not preclude her from filing a charge with the National Labor Relations Board, the Equal Employment Opportunity Commission or a similar state or local agency, or from participating in any investigation or proceeding with such an agency, she will not personally recover monies, and expressly waives the right to recover such monies, for any complaint or charge filed against the Releasees with any federal, state or local board, agency or court.

5. **Confidential Information.** Any prior agreements between Moore and TEAM that impose confidentiality and/or nondisclosure obligations upon her shall remain in force and effect. In addition, from and after the Effective Date of this Agreement, Moore agrees not to divulge or use to the detriment of TEAM, her benefit, or the benefit of any other person, any confidential information related to TEAM ("Confidential Information"). Moore shall immediately deliver to TEAM all school memoranda, books, papers, letters and other data and all copies thereof, whether or not such materials contain Confidential Information, in her possession or control. Confidential Information does not include information which (i) has become publicly known and/or made generally available through no wrongful act of Moore, or (ii) has been rightfully received by Moore from a third party who is authorized to make such disclosure.

6. **Confidentiality of Agreement.** The parties agree to maintain in confidence and not to disclose the terms of this Agreement, except as mandated by law and as in furtherance of dismissal of the Petition. It shall not be considered a breach of the obligation of confidentiality for Moore to make disclosure of this Agreement to her immediate family (who shall first be expressly advised of and bound by the same requirement of confidentiality), or to make disclosure of this Agreement or the underlying events in order to obtain private and confidential legal, tax, or financial advice, or to respond to any inquiry from any governmental entity or agency regarding a tax filing. The parties represent that no unauthorized disclosures concerning the terms of this Agreement were made prior to signing the Agreement.

Any breach by Moore or TEAM of the obligations set forth in this Section and Section 5 of this Agreement shall be considered a material breach of this Agreement. Moore and TEAM both acknowledge and agree that, in the event of such a breach or threatened breach, TEAM and

Moore, in addition to any other rights and remedies they may have, including monetary damages, shall be entitled to obtain appropriate injunctive relief and shall further be entitled to recover their reasonable costs and attorneys' fees incurred in seeking relief for any such breach or threatened breach.

7. **Non-Disparagement.** The parties agree that they will not criticize, denigrate, or disparage each other as set forth herein. To that end, each party will not make any comments or statements to the press, TEAM's current or former employees, students, parents or any individual or entity with whom TEAM has a business relationship, or any other person if such comment or statement could be likely to adversely affect the conduct of the other party, or any of the plans, employment prospect, or reputation of the other party. To the extent the parties are legally required to disclose to a governmental entity or other third party the reason(s) for Moore's separation from TEAM, the parties shall provide only her dates of employment and positions held. Moore should direct any inquiries to the Executive Director of TEAM. By agreeing to this provision, TEAM is not accepting liability for statements made by current or former employees or trustees made outside the scope of employment or duties. If either Party breaches this provision, it shall be a material breach of this Agreement and this provision shall no longer apply to the non-breaching party.

8. **Attorney Review.** Moore agrees that she has had the opportunity to review this Agreement with an attorney, that TEAM recommends that she review this Agreement with an attorney, and that she fully understands the terms and conditions of this Agreement.

9. **Severability.** Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language set forth in Sections 2 and 4, such provision shall

immediately become null and void, leaving the remainder of this Agreement in full force and effect. If the general release language in Sections 2 and 4 is found to be illegal or unenforceable, Moore and TEAM agree to execute a binding replacement release.

10. **Jurisdiction.** This Agreement shall be governed by the laws of New Jersey, and the Superior Court of New Jersey shall have jurisdiction over, and be the proper venue for, any disputes arising out of this Agreement.

11. **Construction**. The parties and their counsel have participated fully in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

12. **Successors.** This Agreement shall inure to the benefit of the parties hereto, and their respective officers, directors, employees, attorneys, heirs, executors, administrators, successors and assigns.

13. **Amendment.** This Agreement may only be amended by a writing signed by all parties to this Agreement.

14. **Agreement Entered Voluntarily.** This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the parties hereto, with the full intent of releasing all claims. Moore acknowledges that:

a. She has read this Agreement and it has been explained to her in full;

b. She has not relied upon any representation or statement, written or oral, not set forth in this Agreement;

c. She has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of her own choice or that she has voluntarily declined to seek such counsel;

d. She understands the terms and consequences of this Agreement and of the releases it contains;

e. She is fully aware of the legal and binding effect of this Agreement;

f. She is completely satisfied that the Agreement is fair, reasonable, and acceptable; and

g. To the extent she has retained counsel, that she is satisfied with her respective counsel and believes her counsel has effectively represented her independent interests.

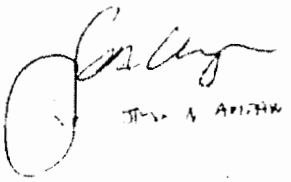
15. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and, except set forth in the first sentence of Section 5 of this Agreement, fully supersedes any and all prior contracts or agreements between the parties pertaining to compensation or severance, and it likewise fully supersedes any and all other conflicting agreements or understandings between the parties. Moore acknowledges that the only consideration she has received for signing this Agreement is that set forth herein. No other promise, inducement, threat, agreement or understanding of any kind or description has been made with her or to her to cause her to enter into this Agreement.

16. **Execution in Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes, and such counterparts together shall constitute but one and the same instrument.

17. **Notice.** Notice between the parties shall be in writing and directed as follows:

Executive Director
TEAM Academy Charter School, Inc.
85 Custer Avenue
Newark, New Jersey 07112

With a copy to:



98-24
OAL Dkt. No. EDU 04749-23
Agency Dkt. No. 96-4/23

New Jersey Commissioner of Education

Final Decision

A.G.F., on behalf of minor child, A.J.G.F.,

Petitioner,

v.

Board of Education of the Borough of Mountain Lakes, Morris County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL), granting the respondent Board's motion to dismiss, have been reviewed and considered.

The petitioner filed a *pro se* appeal challenging three separate Harassment, Intimidation and Bullying (HIB) determinations made by the respondent Board in regard to petitioner's minor child. The matter was transmitted to the OAL as a contested case in May 2023. Following several pre-hearing telephone conferences, a hearing was set for January 18, 2024. Thereafter, on October 20, 2023, the Board filed a motion to compel the petitioner to respond to interrogatories as she had not provided a written response to discovery requests and failed to file an opposition to the respondent's motion. On December 5, 2023, the Administrative Law Judge (ALJ) granted the Board's motion and ordered the petitioner to provide written responses to the interrogatories by December 11, 2023. After petitioner failed to respond to the discovery request, the Board filed a motion to dismiss the appeal.

The ALJ determined that, pursuant to *N.J.A.C.* 1:1-14.14, the petition must be dismissed, as the petitioner: failed to provide discovery in accordance with the December 5, 2023 Order; failed to oppose the motion to dismiss; failed to appear for a January 5, 2024 conference call; failed to comply with discovery rules; and failed to offer a reasonable explanation as to why she failed to provide discovery, respond to the motions, or appear for the scheduled conference call. Accordingly, the ALJ granted the Board's motion to dismiss.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 5, 2024
Date of Mailing: February 7, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. EDU 04749-23
AGENCY DKT. NO. 96-4/23

A.G.F. ON BEHALF OF MINOR CHILD A.J.G.F.,
Petitioner,
v.
BOROUGH OF MOUNTAIN LAKES BOARD OF EDUCATION,
Respondent.

A.G.F., petitioner, pro se

Sean Fogarty, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: January 5, 2024 Decided: January 17, 2024

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

This matter involves an appeal by the petitioner of three separate Harassment, Intimidation, and Bullying (HIB) determinations made by the Mountain Lakes Board of Education (Board). The Board filed a motion seeking the dismissal of this matter due to the petitioner's failure to provide discovery and to comply with a prior Order directing petitioner to provide discovery by a date certain.

PROCEDURAL HISTORY AND FINDINGS OF FACT

Petitioner filed a Petition of Appeal with the Commissioner of Education, and the Commissioner transmitted the matter to the Office of Administrative Law, where it was filed as a contested case on May 31, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

An initial prehearing conference was held on July 11, 2023, and the parties participated in several conference calls thereafter. A Prehearing Order was entered on October 17, 2023, scheduling a hearing for January 18, 2024.

On October 20, 2023, the Board filed a motion seeking an order compelling the petitioner to respond to interrogatories.[1] Petitioner had not provided a written response to the discovery requests, and did not file an opposition to the respondent's motion. On December 5, 2023, I granted the respondent's motion, and ordered that the petitioner provide written responses to the Request for Admissions by December 11, 2023.

The petitioner never responded to the respondent's discovery requests. On December 21, 2023, the Board filed a motion to dismiss the petitioner's appeal for failing to provide discovery and comply with the December 5, 2023 Order directing petitioner to provide discovery by December 11, 2023. Petitioner did not file an opposition by January 2, 2024, pursuant to N.J.A.C. 1:1-12.2. I subsequently scheduled a telephone conference for January 5, 2024 to address the motion and the outstanding discovery. Board counsel appeared for the conference, but the petitioner did not. I **FIND** that the petitioner failed to provide the Board with the requested discovery, failed to comply with the December 5, 2023 Order compelling discovery, and that the petitioner never filed an opposition to the

1 Respondent had served a first set of Interrogatories on petitioner on July 19, 2023, which were due by August 3, 2023. Respondent requested a conference to address discovery. A conference was held with the parties in August 2023, at which time the respondent agreed to revise and condense the Interrogatories, and petitioner was instructed to respond to these revised discovery requests within fifteen days of receipt. On or around September 12, 2023, respondent serviced revised Interrogatories together with a Request for Admissions. During a September 26, 2023 conference, I extended the time for petitioner to answer discovery. During an October 12, 2023 conference, petitioner acknowledged receiving the discovery requests but indicated that she would not be responding to the requests. Respondent subsequently filed the motion to compel discovery.

respondent's motion. Petitioner also never provided an explanation as to why she failed to appear for the January 5, 2024 telephone conference.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.A.C. 1:1-10.4(c) requires a party to provide requested discovery "[n]o later than 15 days from receipt of a notice requesting discovery." N.J.A.C. 1:1-10.4(e) also requires that all discovery should be completed no later than ten days before the hearing. Petitioner failed to respond in writing to the Board's discovery demands within fifteen days, and she failed to provide this discovery at least ten days prior to the hearing.

N.J.A.C. 1:1-14.14 authorizes a judge to dismiss a matter and take other appropriate action for an "unreasonable failure to comply with any order of a judge" or for failing to comply with the court rules. Petitioner unreasonably failed to comply with the discovery order and the court rules after being given extensions to provide the requested discovery, and after the Board simplified and streamlined its requests as directed.

Given that the petitioner failed to provide discovery in accordance with the December 5, 2023 Order; failed to oppose the motion to dismiss; failed to appear for the January 5, 2024 conference; failed to comply with the aforementioned discovery rules; and failed to offer a reasonable explanation as to why she has failed to provide discovery, respond to the motions, or appear for the scheduled conference call, I **CONCLUDE** that dismissal of the Petition is appropriate, and that the Board's motion should be granted.

ORDER

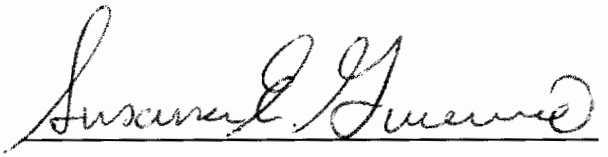
It is hereby **ORDERED** that the respondent's motion to dismiss is **GRANTED** and that the Petition be **DISMISSED**.

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 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 17, 2024
DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

99-24
OAL Dkt. No. EDU 05553-23
Agency Dkt. No. 122-5/23

New Jersey Commissioner of Education

Final Decision

A.F., on behalf of minor child, R.F.,

Petitioner,

v.

Board of Education of the Township of Washington, Gloucester County.

Respondent.

The record of this matter, the proposed Settlement Agreement and Release (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 2 of the Agreement references actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 5, 2024
Date of Mailing: February 7, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT

OAL DKT. NO. EDU 05553-2023
AGENCY DKT. NO. 122-5/23

A.F. ON BEHALF OF R.F.,

Petitioner,

v.

TOWNSHIP OF WASHINGTON BOARD OF EDUCATION, GLOUCESTER COUNTY

Respondent.

A.F., on behalf R.F., petitioner, pro se

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

Record Closed: December 29, 2023 Decided: January 10, 2024

BEFORE **ROBERT D. HERMAN,** ALJ:

The Commissioner of the New Jersey Department of Education (DOE) Controversies and Disputes transmitted petitioner's appeal to the Office of Administrative Law on June 20, 2023, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The parties have agreed to a settlement of this administrative action and have prepared a Settlement Agreement indicating the terms thereof, which is attached and fully incorporated herein. This Settlement Agreement resolves all disputes.

I have reviewed the record and the terms of settlement, and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures on the attached Settlement Agreement.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms. I **ORDER** that these proceedings be concluded.

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 10, 2024
DATE

ROBERT D. HERMAN, ALJ

Date Received at Agency: January 17, 2024

Date Mailed to Parties: January 17, 2024

RDH/tat

12/29/23

Rita F. Barone, Esq.
Attorney ID No. 038211995
FLANAGAN, BARONE & O'BRIEN
4 Essex Avenue – Suite 200
P.O. Box 259
Bernardsville, New Jersey 07924
Attorneys for Respondents, Board of Education of Washington Township, Gloucester County
Our File: (304) 28620 -RFB

A.F., Parent, obo R.F. Petitioner(s), v. Board of Education of the Township of Washington, Gloucester County Respondent(s).	BEFORE THE COMMISSIONER OF EDUCATION OF NEW JERSEY Agency # 122-5/22 EDU 05553-2023S **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and General Release, ("Agreement"), is entered into this 12th day of ~~November~~ December 2023 by and between the Petitioners, Amanda Fanelli obo R.F and Brian Fanelli. and Respondent, Washington Township Board of Education, et al. (hereinafter "Petitioner", "Brian Fanelli", "Respondent" and collectively "Parties"); and

WHEREAS, the Petitioners challenged a residency decision made by the Respondent; and

WHEREAS, the Parties have agreed to settle all of the claims in this matter in an amicable way, and therefore, after negotiations, have agreed to enter into this Settlement Agreement and Release in order to formalize their compromise, which will fully and finally resolve this matter; and

WHEREAS, the Respondent does not admit liability or any wrongdoing of any kind. but is entering into this Settlement Agreement and Release solely as a matter of business judgment. and

WHEREAS, having negotiated in good faith, the Parties enter into this Settlement Agreement and Release in order to reach a compromise to fully and finally resolve their dispute in this matter, and hereby agree as follows;

1. Release from All Claims:

The execution of this Agreement will constitute the full release by the Parties of all claims known and unknown that they ever had or may have against one another arising up to and including the date of the execution of this Agreement, including all claims that were alleged in the Petition of Appeal bearing Docket No. EDU 05553-2023S, any and all claims that could have been alleged in the Petition of Appeal concerning R.F.'s enrollment as a student within the Washington Township Board of Education School District as well as any and all claims for money damages in any form as well as any claim for attorneys' fees.

2. Consideration:

In consideration for this Settlement Agreement and Release, the Petitioners, Amanda Fanelli obo R.F. and Brian Fanelli will pay the Respondent $2,249.04 representing tuition for R.F.'s attendance at the Washington Township Board of Education schools from April 2023 - June of 2023. This payment shall be made monthly in the amount of $187.42. The first payment shall be made within thirty (30) days of Board Approval of this Agreement, which approval is expected on November 28, 2023. Monthly payments shall be made until such time as full payment of the total sum noted herein has been paid to the Respondent. Payment shall be made to the Washington Township Board of Education's business office by the 5th day of each month after the initial

payment is made within thirty (30) days of Board Approval of this Agreement. In the event that any payment is late, the Respondent's business office will send a letter within 20 days to Amanda Fanelli and Brian Fanelli via regular and certified mail. If the default in payment is not cured within ten (10) days thereafter, the Respondent shall immediately move to enforce the Settlement Agreement and seek Judgement as set forth in paragraph 14 below.

3. Full and Final Settlement:

This Settlement Agreement and Release represents a full and final settlement of the dispute between the Parties. The Parties expressly acknowledge and agree that the settlement payment is for all of the claimed damages, including, but not limited to, compensatory damages, attorneys' fees, litigation costs and/or expenses incurred by and/or on behalf of Respondent with respect to R.F.'s attendance at the Washington Township Board of Education School District, this litigation, and any and all other claims, cross-claims and/or counterclaims which Petitioners and Brian Fanelli or Respondent, asserted and/or could have asserted including those which are not specifically mentioned in this Settlement Agreement and Release, except for any such claims as may be necessary to seek enforcement of the terms of this Settlement Agreement and Release. This means that Petitioners, Brian Fanelli and Respondent release any and all claims they asserted and/or could have asserted against each other in this or any other forum arising out of the facts and circumstances set forth in the Petition of Appeal by executing this Settlement Agreement and Release.

4. General Release:

(a) Release of Claims by Petitioners, Amanda Fanelli obo R.F. and Brian Fanelli Against Respondent:

In consideration for the making of this Agreement and for R.F.'s enrollment and attendance at the Washington Township Board of Education Schools, and for other benefits realized by the Parties under this Agreement, Petitioner, Amanda Fanelli, Brian Fanelli, both individually, and on behalf of R.F., their heirs, administrators, beneficiaries, assigns, executors, and attorneys, knowingly, voluntarily and unconditionally releases and forever discharges the Respondent, its agents, officers, directors, board members, employees, representatives, parents, subsidiaries, subcontractors and contractors and assigns, both jointly and individually, in both their personal and official capacities of and from all manner of action(s), cause(s) of action, and suit(s), including but not limited to, any claims, debts, sums of money, accounts, reckonings, bonds, bills, claims for counsel fees, interest, expenses and costs, specialties, covenants, contracts, controversies, agreements, benefits, promises, variances, trespasses, damages, judgments, executions, claims and demands of any nature whatsoever, in law or in equity, civil or criminal, vested or contingent, which she has ever had, now has or assert, or which she or her relatives, heirs, executors, representatives, assigns or administrators hereafter can, shall or may have or may assert, for, upon or by reason of any matter, cause or thing whatsoever to the date hereof, it being the intention herein of Petitioners and Brian Fanelli to release Respondent from any and all claims of any and every nature, including attorneys' fees, up to the date of the Agreement, unrestricted in any way by the nature of the claim, including, though not by way of limitation, all matters which were asserted or could have been asserted in all actions or claims identified above or any matter arising out of R.F.'s enrollment in the Washington Township Board of Education Schools, and any other state or federal statutory, constitutional, or common law claims. This release includes, but is not limited to, any and all rights, causes of actions, claims or demands of any kind through the date of this release and further includes any alleged injuries or damages suffered at any time after the date

of this release by reason of the continued effects of any such acts which occurred on or before the date of this release including any claims to attorneys' fees.

(b) Release of Claims by the Respondent Against Petitioners and Brian Fanelli

It is hereby understood and agreed that the Respondent, for and in consideration of the payment of tuition by Petitioners and Brian Fanelli, and the release of all claims, and/or other consideration set forth herein, do hereby irrevocably and unconditionally release Petitioners and Brian Fanelli of and from all manner of action(s), cause(s) of action, and suit(s) which were or could have been brought in the present litigation or as a result of this litigation.

5. Voluntary Withdrawal of Petition of Appeal:

The Petitioners shall execute and file a letter with the Office of Administrative Law directed to the Honorable Robert Herman, J.S.C., dismissing this matter with Prejudice after Board Approval of this Settlement Agreement and Release.

6. Non-Assignment:

By executing this Settlement Agreement and Release, the Parties expressly certify, acknowledge, and represent that they have not assigned to any third party any right or claim that any party has, may have or believes that the party has or may have against each other. The Parties further certify that they have no other charges, claims and/or complaints of any kind pending against each other, and further covenant and certify that they will not file or cause to be filed any charge, claim or complaint of any kind against each other seeking civil and/or criminal sanctions, personal recovery and/or injunctive relief based upon any facts leading up to the date of the signing of this Settlement Agreement and Release. The Parties certify that they have not assigned any claims and will not file any claims based upon any facts leading up to the date of the signing of this Settlement Agreement and Release.

7. No Admission of Liability:

(a) Respondent expressly denies liability for any and all of the Petitioners and Brian Fanelli's claims, whether known or unknown, alleged in the Petition of Appeal. It is understood and agreed between the Petitioners, Brian Fanelli and Respondent that this Agreement will not be construed at any time or for any purpose as an admission by the Respondent of any act or omission alleged by Petitioners or Brian Fanelli or any acts or omissions that could have been alleged by Petitioners or Brian Fanelli, or any liability or responsibility for any wrongdoing of any kind;

(b) The Parties expressly agree that none of them shall be considered to be a "prevailing party" as a result of this Agreement; and

(c) The Parties further agree that this Agreement shall not be offered, used or considered as evidence in any proceeding of any type, except to the extent necessary to enforce the terms of this Agreement. The Parties further agree and understand that they shall not provide a copy of this Agreement to any person, other than their attorneys, except if compelled to do so by legal process.

8. Attorneys' Fees:

The Parties, and their counsel, expressly waive and release each other from any and all claims for attorneys' fees and costs, including, but not limited to, claims for attorneys' fees and costs allowed under any Federal, State and/or local law, statute, regulation and/or ordinance.

9. Binding Agreement:

This Settlement Agreement and Release shall be binding on the Petitioners and Brian Fanelli and any and all of her respective heirs, representatives, successors and assigns, and to

Respondent, their present or former departments, elected and appointed officials, officers, directors, agents, administrators, board members, attorneys, representatives, past and present employees, and any and all of its respective heirs, representatives, successors and assigns.

10. Covenant Not to Sue:

The Parties covenant that no other claim shall at any time hereinafter be filed against any party relating to any event or matter that was or could have been raised in the Petition of Appeal or a related lawsuit.

11. Confidentiality of Agreement:

The Parties agrees that, going forward, the amounts and fact of the payments described herein, any and all consideration provided herein, any and all discussions, communications and correspondence leading to this Agreement, which could give rise to an inference as to the Parties involved shall be kept confidential, to the extent permitted by law. It is the Parties' understanding, agreement and expectation that this confidentiality provision shall apply to the fullest extent permissible by law, and shall preclude the Petitioners and Brian Fanelli, their agents or representatives, from voluntarily or otherwise testifying at or participating in any proceeding, hearing, trial or preparation for hearing or trial, concerning the matters covered by this confidentiality provision, unless compelled to do so by law or by court order. The sole consideration for this confidentiality provision is the mutuality of the obligations of the Parties with respect thereto.

The Petitioners and Brian Fanelli also acknowledge that this settlement is being made with a public entity and is subject to disclosure, notwithstanding this confidentiality clause, in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et. seq.; Open Public Records

Act, N.J.S.A. 47:1A-1, et. seq.; any and all Federal or New Jersey statutes or regulations governing public entity meetings and disclosures including all case law interpreting same.

12. Language:

The language of this Settlement Agreement and Release has been negotiated and is a product of the draftsmanship of all of the Parties, and shall, in all cases, be construed as a whole according to its objective and fair meaning and shall not be interpreted in favor of or against any party. Not by way of limiting the foregoing, the interpretation of any provision (in part or in whole) of this Settlement Agreement and Release shall not, in any manner, be interpreted against the drafter.

13. Entire Agreement:

This Agreement constitutes the entire agreement between the Petitioners, Brian Fanelli and the Respondent with respect to the Petition of Appeal and supersedes all prior written or oral agreements, statements, offers or understandings between the Parties. The Parties acknowledge that they are not relying on any other representations, warranties, agreements or undertakings other than those expressly contained herein. This Agreement shall not be amended, modified or revised except by a written instrument duly signed by all of the Parties hereto, or their respective successors or assigns. No oral statement of any person shall in any manner or degree, modify the terms and provisions of this Agreement.

14. Controlling Law and Venue and In the Event of Default of Payment:

This Agreement shall be construed in accordance with and governed by the laws of the State of New Jersey. To the extent that Petitioners or Brian Fanelli defaults on any payment required by this Agreement to be made to Respondent, the Parties agree that the remaining moneys owed shall be converted to a Consent Judgement and that Respondent may seek to enforce the

provisions of this Agreement, and/or seek Collection of the Consent Judgement amount within the Superior Court of New Jersey, Camden County Vicinage, which Court shall retain jurisdiction to enforce the terms of this Agreement and/or over any proceedings pertaining to collection of Consent Judgement amount by Respondent from Petitioners and Brian Fanelli.

15. Severability:

If any provision of this Agreement is declared invalid or unenforceable by any court of competent jurisdiction, and if such provision cannot be modified to be enforceable to any extent or in any application, the remaining provisions of this Agreement shall nevertheless survive and continue in full force and effect.

16. Counterparts:

This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which will constitute one and the same.

17. Authority to Sign:

Respondent hereby represents and warrants that the individual signing this Agreement on its behalf has the full power and authority to enter into this Agreement on the respective Respondent's behalf. Respondent further warrants that it approved this Agreement in a manner permitted by law for approval of such documents.

BY SIGNING THIS SETTLEMENT AGREEMENT AND RELEASE THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT:

A. THEY HAVE READ IT;

B. THEY UNDERSTAND IT AND KNOW THAT THEY ARE GIVING UP IMPORTANT LEGAL RIGHTS;

C. THEY AGREE WITH EVERYTHING IN IT AND TO ABIDE BY THE TERMS OF THIS AGREEMENT;

D. **THEY HAD THE OPPORTUNITY TO CONSULT WITH AN ATTORNEY CONCERNING THIS AGREEMENT PRIOR TO EXECUTING THIS AGREEMENT;**

E. **THEY HAVE SIGNED THIS AGREEMENT KNOWINGLY AND VOLUNTARILY.**

DATED: _____
Amanda Fanelli

DATED: _____
Brian Fanelli

DATED: _____
Janice M. Wechter, Board Administrator

DATED: _____
~~Karen Graf~~, Board President
Carol Chila,

100-24
OAL Dkt. No. EDU 05923-23
Agency Dkt. No. 171-6/23

New Jersey Commissioner of Education

Final Decision

R.G., on behalf of minor child, F.G.,

Petitioner,

v.

Board of Education of the Township of Gloucester, Camden County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL), dismissing the petitioner's appeal for failure to appear at five scheduled appearance before the Administrative Law Judge (ALJ), have been reviewed and considered.

The petitioner filed a *pro se* appeal challenging the Board's determination that R.G. and her child were not domiciled within the respondent Board's school district, and that F.G. should accordingly be disenrolled and tuition assessed for the period of F.G.'s ineligible attendance in Gloucester Township schools. The matter was transmitted to the OAL and filed as a contested case on July 6, 2023. Petitioner failed to appear at five pre-hearing conferences despite having received appropriate notice of each conference date. Accordingly, the ALJ concluded that the matter must be dismissed pursuant to *N.J.A.C.* 1:1-14.4 for petitioner's failure to appear.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed. Accordingly, the Initial Decision is adopted as the final decision in this matter. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 5, 2024
Date of Mailing: February 7, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
DISMISSAL
OAL DKT. NO. EDU 05923-23
AGENCY DKT. NO. 171-6/23

R.G. ON BEHALF OF MINOR CHILD F.G.,
Petitioner,
v.
TOWNSHIP OF GLOUCESTER BOARD OF EDUCATION, CAMDEN COUNTY,
Respondent.

R.G., petitioner, pro se

Daniel H. Long, Esq., for respondent (Wade, Long, Wood & Long, LLC, attorneys)

Record Closed: January 9, 2024 Decided: January 22, 2024

BEFORE **NICOLE T. MINUTOLI**, ALJ:

STATEMENT OF THE CASE

Petitioner, R.G. on behalf of her minor child F.G., appeals the determination of the respondent, the Township of Gloucester Board of Education (Board or District), that F.G. is not domiciled in its district, should be disenrolled, and assessing all back tuition charges for the days of illegal attendance.

PROCEDURAL HISTORY

Petitioner filed an appeal with the Department of Education (Department) on June 21, 2023. The Board filed an answer on July 5, 2023. The matter was transmitted to the Office of Administrative Law (OAL), where on July 6, 2023, 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.

A prehearing telephone conference was scheduled for July 24, 2023, but R.G. failed to appear. She also failed to appear for a subsequent conference but appeared for the August 30, 2023, conference, during which the parties agreed that F.G. is now domiciled within the District. Respondent stated that it would not pursue tuition costs for the time period F.G. was not domiciled within the District and R.G. agreed to withdraw the appeal. The withdrawal was not received and R.G. failed to appear for the October 12, 2023, conference call.

On October 13, 2023, notice was sent to the parties of a telephone conference on November 29, 2023, through regular mail and email. A dial-in number was provided. The notice stated in bold and highlighted print:

> **If you do not participate in the prehearing conference, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.**

R.G. failed to appear for the November 29, 2023, telephone conference. R.G. failed to notify my office in advance or to request an adjournment. During the call, respondent stated that he continued to attempt to contact R.G. to obtain a letter of withdrawal, without response.

On November 30, 2023, notice was sent to the parties of a telephone conference on January 5, 2024, through regular mail and email. A dial-in number was provided. R.G. failed to appear for the January 5, 2024, telephone conference. R.G. failed to notify my office in advance or to request an adjournment. During the call, respondent stated that

F.G. is currently domiciled within the District and is therefore entitled to a free appropriate public education (FAPE) within the Gloucester Township School District. Respondent confirmed that it will not be pursuing tuition costs for the time period F.G. was not domiciled within the District.

APPLICABLE LAW

N.J.A.C. 1:1-14.4(a) provides that if, after appropriate notice, a party does not appear in any proceeding scheduled by a judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge may direct the Clerk to return the matter to the transmitting agency for appropriate disposition.[1]

CONCLUSION

Because the petitioner has failed to appear for five scheduled appearances before me without providing good cause for her failure to participate, I **CONCLUDE** that the appeal filed by the petitioner must be dismissed.

ORDER

Based upon the above, I **ORDER** that the petitioner's appeal 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 Commissioner of the Department of

[1] R.G. attended one scheduled conference call, where she stated, and the District confirmed, that F.G. is now domiciled within the District and is therefore entitled to a FAPE from the Gloucester Township School District; the residency appeal has been entirely resolved and is moot.

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 22, 2024
DATE

NICOLE T. MINUTOLI, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

NTM/dw

State of New Jersey
DEPARTMENT OF EDUCATION
PO BOX 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

CHRISTOPHER HUBER
Acting Commissioner

February 6, 2024

VIA EMAIL ONLY

Thomas O. Johnston
Johnston Law Firm LLC
151 Forest Street, Suite A
Montclair, NJ 07042

Matthew J. Tharney
Sattiraju & Tharney, LLP
50 Millstone Road
Building 300, Suite 202
East Windsor, NJ 08520

Re: *Friends of TEAM Charter Schools, Inc. v. Board of Education of the City of Newark, Essex County, Agency Dkt. No. 55-4/21, Commissioner Decision No. 357-23*

Dear Parties:

I have reviewed the materials filed in connection with petitioner's Motion for Reconsideration of the Commissioner's final decision issued December 5, 2023.

Pursuant to *N.J.A.C.* 6A:3-1.15(b)(2), a motion for reconsideration shall be considered based upon the following:

i. Claim(s) of mistake, provided, however, that disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute "mistake" for purposes of this section;

ii. Newly discovered evidence likely to alter the outcome of a matter, where such evidence could not have been previously discovered by due diligence;

iii. Newly ascertained misrepresentation or other misconduct of an adverse party, where such misrepresentation could not have been previously known; or

iv. Reversal of a prior judgment on which the present matter is based.

Upon review and consideration, I find that petitioner has failed to satisfy any of the factors set forth in *N.J.A.C.* 6A:3-1.15(b)(2).

Initially, petitioner's submission expresses disagreement with the outcome of one aspect of the decision and the analysis upon which it is based. Specifically, petitioner disagrees with the Commissioner's reliance upon a document in evidence to support the analysis, claiming that reliance upon same resulted in a mistaken factual finding that the Board intends to demolish the existing facility. Petitioner further claims that this mistaken factual finding led to an erroneous legal conclusion regarding the applicability of *N.J.A.C.* 6A:26-7.3(a).

Apart from the fact that the issue raised by petitioner is beyond the scope of the remand, petitioner's claim of mistake is undermined by the fact that petitioner's June 2, 2022 "Statement of Undisputed Facts" cites the document at issue—which petitioner supplied to the ALJ as Exhibit M in support of its motion for summary decision—and confirms that the document described the "Proposed Scope of Work" for "former Maple Avenue School" as "[w]hole building demolition." In its exceptions to the Initial Decision dated October 2, 2023, petitioner again cites and describes Exhibit M on pages 11-12, consistent with its Statement of Undisputed Facts. In any event, petitioner's disagreement with the Commissioner's reliance upon Exhibit M and petitioner's own "Statement of Undisputed Facts" in connection with the analysis is not a sufficient basis for reconsideration.

Furthermore, petitioner's claim that deposition testimony and a certification contained in the record constitutes "newly discovered evidence likely to alter the outcome of the matter" lacks merit. The deposition testimony and certification were already considered by both the ALJ and the Commissioner.

Accordingly, the Motion for Reconsideration is hereby DENIED.

Sincerely,

Christopher Huber
Acting Commissioner of Education

CH/JS
c: State Law Library
101-24L

102-24
Agency Dkt. No. 303-11/23

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the
Teaching Certificates of Kelly Stern,
Board of Trustees of People's Achieve
Community Charter School, Inc., Essex County

This matter was opened before the Commissioner of Education on October 31 2023, by way of an Order to Show Cause served by petitioner (Board of Trustees of People's Achieve Community Charter School, Inc.) upon respondent (Kelly Stern), requiring respondent to show cause why an order should not be entered suspending her teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

By notice dated December 6, 2023, sent to respondent via email, the Office of Controversies and Disputes (Office) acknowledged proof that the Order to Show Cause had been served upon respondent and directed her to answer within 20 days. No answer having yet been received, on January 9, 2024, the Office sent respondent a second and final notice via email, regular mail, and certified mail directing her to file an answer within ten days if she wished to contest the suspension of her certificates. To date, the Office has not received a response from respondent.

The petition and supporting exhibits submitted by petitioner in this matter indicate that: on April 7, 2023, respondent executed an employment contract with petitioner for the 2023-2024 school year; the contract provides that it can be terminated by the employee upon thirty days' written notice, except that if notice was given in July, August, or September, the commencement

of the notice period would be October 1, 2023, with an expiration date of November 1, 2023; and, on August 15, 2023, respondent sent an email to petitioner indicating that she was resigning, thereby providing less than the required thirty days' notice. The respondent has not denied these allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(a) and further deems them sufficient to justify suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner, and respondent's teaching certificates, as well as any substitute teaching credential she may hold, are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 6, 2024
Date of Mailing: February 8, 2024

[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.

103-24
Agency Dkt. No. 331-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the
Teaching Certificates of Alexandra Braun,
Board of Education of the Borough of Ridgefield,
Bergen County.

This matter was opened before the Commissioner of Education on December 4, 2023, by way of an Order to Show Cause served by petitioner (Board of Education of the Borough of Ridgefield) upon respondent (Alexandra Braun), requiring respondent to show cause why an order should not be entered suspending her teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

By notice dated December 14, 2023, sent to respondent via regular mail, the Office of Controversies and Disputes (Office) acknowledged proof that the Order to Show Cause had been served upon respondent and directed respondent to answer within 20 days. No answer having yet been received, on January 8, 2024, the Office sent respondent a second and final notice via email directing her to file an answer within ten days if she wished to contest the suspension of her certificates. To date, the Office has not received a response from respondent.

The petition and supporting exhibits submitted by petitioner in this matter indicate that: respondent holds an instructional provisional certificate with a teacher of students with disabilities endorsement, and an instructional provisional certificate with an elementary school teacher Grades K-6 endorsement; respondent executed an employment contract with petitioner dated August 1, 2023, for the term September 1, 2023, through June 30, 2024; the contract provides that

it can be terminated by the employee upon sixty days' written notice; respondent commenced her employment with petitioner on September 1, 2023; and, on October 10, 2023, respondent sent an email to petitioner indicating that she was resigning effective immediately for personal reasons, thereby providing less than the required sixty days' notice. The respondent has not denied these allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(a) and further deems them sufficient to justify suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner. Respondent's teaching certificates, as well as any substitute teaching credential she may hold, are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 6, 2024
Date of Mailing: February 8, 2024

[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.

104-24
Agency Dkt. No. 332-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Luke Masella, Board of Education of the Township of Franklin, Somerset County.

This matter was opened before the Commissioner of Education on December 7, 2023, by way of an Order to Show Cause served by petitioner (Board of Education of the Township of Franklin) upon respondent (Luke Masella), requiring respondent to show cause why an order should not be entered suspending his teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

By notice dated December 14, 2023, sent to respondent via regular mail, the Office of Controversies and Disputes (Office) acknowledged proof that the Order to Show Cause had been served upon respondent and directed respondent to answer within 20 days. No answer having yet been received, on January 9, 2024, the Office sent respondent a second and final notice via regular and certified mail, directing him to file an answer within ten days if he wished to contest the suspension of his certificates. To date, the Office has not received a response from respondent.

The petition and supporting exhibits submitted by petitioner in this matter indicate that: on May 31, 2023, respondent accepted petitioner's offer of employment for the 2023-2024 school year; the contract provides that it can be terminated by the employee upon sixty days' written notice; on August 1, 2023, respondent sent an email to petitioner indicating that he was resigning, thereby providing less than the required sixty days' notice. The respondent has not denied these

allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(a) and further deems them sufficient to justify suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner, and respondent's teaching certificates, as well as any substitute teaching credential he may hold, are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 6, 2024
Date of Mailing: February 8, 2024

[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.

105-24
Agency Dkt. No. 333-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Alexa Ziler, Board of Education of the Township of Franklin, Somerset County.

This matter was opened before the Commissioner of Education on December 7, 2023, by way of an Order to Show Cause served by petitioner (Board of Education of the Township of Franklin) upon respondent (Alexa Ziler), requiring respondent to show cause why an order should not be entered suspending her teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

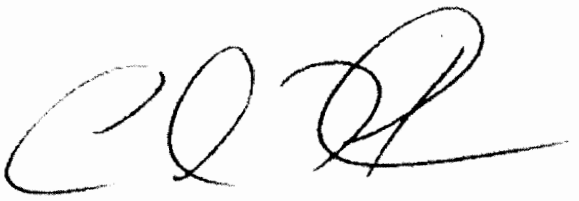
By notice dated December 14, 2023, sent to respondent via email, the Office of Controversies and Disputes (Office) acknowledged proof that the Order to Show Cause had been served upon respondent and directed respondent to answer within 20 days. No answer having yet been received, on January 9, 2024, the Office sent respondent a second and final notice via email, regular mail, and certified mail, directing her to file an answer within ten days if she wished to contest the suspension of her certificates. To date, the Office has not received a response from respondent.

The petition and supporting exhibits submitted by petitioner in this matter indicate that: respondent accepted petitioner's offer of employment for the 2023-2024 school year; the respondent provided petitioner with the right to terminate her employment upon sixty days' written notice; on September 11, 2023, respondent sent an email to petitioner indicating that she

was resigning, thereby providing less than the required sixty days' notice. The respondent has not denied these allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(a) and further deems them sufficient to justify suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner, and respondent's teaching certificates, as well as any substitute teaching credential she may hold, are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]



ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 6, 2024
Date of Mailing: February 8, 2024

[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.

107-24
OAL Dkt. No. EDU 00084-23
Agency Dkt. No. 311-11/22

New Jersey Commissioner of Education

Final Decision

Lydia Roca,

Petitioner,

v.

Board of Education of the Township of Edison, Middlesex County,

Respondent.

The record of this matter, the proposed Settlement Agreement (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 13, 2024
Date of Mailing: February 15, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. EDU 00084-23

AGENCY DKT. NO. 311-11/22

LYDIA ROCA,

Petitioner,

v.

TOWNSHIP OF EDISON BOARD OF EDUCATION, MIDDLESEX COUNTY,

Respondent.

Albert J. Leonardo, Esq., for petitioner (Zazzali, P.C., attorneys)

Matthew C. Moench, Esq., for respondent (Schiller, Pittenger & Galvin, P.C., attorneys)

Record Closed: January 24, 2024 Decided: January 24, 2024

BEFORE **WILLIAM COOPER**, ALJ:

This matter was transmitted to the Office of Administrative Law (OAL) on December 30, 2022, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On January 24, 2024, the parties filed a fully executed Settlement Agreement in this matter. The Agreement is attached and fully incorporated herein.

I have reviewed the terms of settlement and I **FIND**:

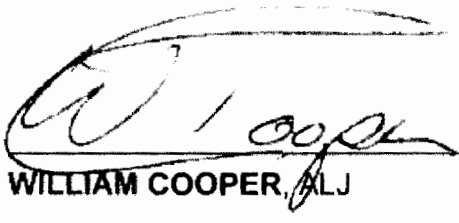
1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

Therefore, I **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, which 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.



January 24, 2024
DATE

WILLIAM COOPER, ALJ

Date Received at Agency: January 25, 2024

Date Mailed to Parties: January 25, 2024

/cb

SETTLEMENT AGREEMENT FORMER EMPLOYEE NO. 124122

BE IT
RESOLVED: that the Board of Education hereby approves Settlement Agreement in the matter of former employee No. 124122, and authorizes the administration and Board Attorney to take all necessary and appropriate steps to carry out this action of the Board.

THIS IS CERTIFIED TO BE A TRUE AND COMPARED COPY OF A RESOLUTION ADOPTED BY THE EDISON TOWNSHIP BOARD OF EDUCATION ON NOVEMBER 21, 2023.

SECRETARY

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into effective as of the 21 day of November, 2023 ("the Effective Date"), by and between LYDIA ROCA ("Roca") and the EDISON BOARD OF EDUCATION (the "Board").

WHEREAS, the Board is a body public and corporate, organized and existing by virtue of the laws of the State of New Jersey, N.J.S.A. 18A:11-1 which is entrusted with maintaining and governing the public schools of the Township of Edison School District;

WHEREAS, the Board has its administrative offices located at 312 Pierson Avenue Edison, New Jersey 08837;

WHEREAS, Roca is a former employee of the Board;

WHEREAS, Roca filed a Petition with the New Jersey Commissioner of Education, captioned Lydia Roca v. Edison Twp. Board of Education, OAL Docket No. EDU-00084-2023 S, Agency Docket No. 311-11/22, asserting that the Board unlawfully terminated her employment; and, Roca filed a Complaint in the New Jersey Superior Court captioned Lydia Roca v. Edison Twp. Board of Education, Dkt. No. MID-L-005909-22, asserting that the Board breached her employment contract (hereinafter "the Actions");

WHEREAS, the parties desire to resolve and settle all outstanding matters between them pursuant to the terms and conditions set forth in this Agreement; and,

NOW, THEREFORE, intending to be legally bound hereby and in consideration of the mutual covenants and conditions set forth in this Agreement, the Parties agree as follows:

1. **Settlement Terms**

Roca and the Board agree that the Board shall pay, as back pay minus mitigation, the gross amount of Fifty Thousand Dollars and No Cents ($50,000.00), in full satisfaction of all claims in the Actions for compensatory damages known or unknown, asserted or unasserted including, but not limited to, claims for legal or equitable relief, reinstatement, back or front pay, lost benefits, and contract claims. This sum shall be paid within thirty (30) calendar days of the date the Commissioner of Education approves this Agreement as follows:

a. In the form of a check made payable to Roca.

b. Any employer-side payroll taxes and/or penalties relating thereto, if any, are the sole responsibility of the Board.

c. The gross amount of Fifty Thousand Dollars and No Cents ($50,000) constitutes full back pay minus mitigation due to Roca for the time period September 15, 2022 through June 30, 2023.

2. **Stipulation of Dismissal**

Roca and the Board agree that by executing this Agreement, it (and a Board resolution) shall be submitted to the Administrative Law Judge for issuance of an Initial Decision approving the settlement. If the settlement is approved by both the Administrative Law Judge and the Commissioner of Education, Roca's pending Petition will be dismissed with prejudice and Roca's Superior Court Complaint will be withdrawn with prejudice.

3. **Assent to Terms**

Roca and the Board hereby acknowledge that they entered into this Agreement with a full understanding of their rights and that they were fully informed of the implications of this Agreement. Roca has reviewed this Agreement with Albert J. Leonardo, Esq., and Richard A. Friedman, Esq. and acknowledges she is satisfied with the quality of the services received. The parties enter into this Agreement without duress and of their own free will and volition and acknowledge that they were given a full and fair opportunity to fully consider this Agreement. This Agreement must be formally approved by the Board and this Agreement will be deemed null and void without said approval. All reasonable efforts will be made to timely obtain approval from the Board.

4. **No Admission of Liability**

Roca and the Board acknowledge and agree that this Agreement is a compromise and neither this Agreement, nor any consideration provided pursuant to this Agreement, shall be taken or construed to be an admission or concession by Roca or the Board of any kind with respect to any fact, liability, or fault whatsoever.

It is expressly understood that the arrangement herein is predicated exclusively upon the special circumstances of this matter and shall not be construed to represent any policy or procedure of the Board.

5. **Non-Disparagement**

Each party to this agreement agrees not to disparage or make or solicit any comments, statements, or the like to the media, the public or to others that may be considered derogatory or detrimental to the good name or business reputation of the other.

6. **Successors and Assignees**

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, assignees, heirs, officers, employees, officials and agents.

7. **Amendment; Severability; No Waiver**

This Agreement shall not be amended, changed or modified except in a writing signed by all parties. The provisions of this Agreement are severable. If it is determined by a court or administrative agency of competent jurisdiction that a specific clause of this Agreement is illegal or unenforceable, the remainder of the Agreement shall not be affected by such a ruling and shall remain in full force and effect unless doing so would destroy the essential nature of this Agreement. Any failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or of any other provision.

8. **No Further Consideration**

Roca and the Board each expressly acknowledge and represent that neither party will seek nor be entitled to any further consideration from the other in connection with this Agreement other than the consideration as detailed herein.

9. **Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matters herein, and supersedes and integrates any and all prior representations, negotiations, discussions, understandings and agreements, whether oral or written. Each party acknowledges that neither the other party, nor any agent or attorney of the other party, has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement to induce it to execute this Agreement.

10. **Counterparts**

This Agreement may be signed in counterparts and shall be binding as if all Parties executed the original thereof. A facsimile or electronically-transmitted signature shall have the same effect as an original signature.

11. Law Governing

This Agreement shall be governed by the laws of the State of New Jersey.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this agreement consisting of this and four (4) preceding pages on the dates set forth below.

Witness:

Lydia Roca

Dated: 10/17/23

DIEGO E ROCA

Dated: 17 OCT 23

STATE OF NEW JERSEY)

ss:

COUNTY OF Middlesex

I certify that on 17 oct, 2023, Lydia Roca personally came before me and acknowledged under oath, to my satisfaction, that she:

(a) is named in and personally signed this document; and
(b) signed this document as her voluntary act and deed.

Notary Public Signature

SANDEEP MALHOTRA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 29, 2028

EDISON BOARD OF EDUCATION

Attest:

By: _____
Xiaohan Peng, President

Dated: 11/22/23

Jonathan Toth, Board Secretary

Dated: 11/22/23

108-24
OAL Dkt. No. EDU 4438-23
Agency Dkt. No. 131-5/23

New Jersey Commissioner of Education

Final Decision

T.G., on behalf of minor child, A.G.,

Petitioner,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

The record of this matter, the proposed Settlement Agreement and Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 13, 2024
Date of Mailing: February 15, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. EDU 04438-23

AGENCY DKT. NO. 131-5/23

T.G. ON BEHALF MINOR A.G.,

Petitioner,

v.

CITY OF ELIZABETH BOARD OF EDUCATION,

UNION COUNTY,

Respondents.

T.G. parent on behalf of **A.G.**, petitioner, pro se

Brian J. Kane, Esq. for respondent (LaCorte, Bundy, Varady & Kinsella, attorneys)

Record Closed: February 2, 2024 Decided: February 5, 2024

BEFORE **JOHN P. SCOLLO**, ALJ:

The New Jersey Department of Education transmitted to the Office of Administrative Law for determination as a contested case on May 19, 2023, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The parties have settled this matter and have filed a Stipulation of Settlement and Resolution setting forth the terms of their settlement.

Having reviewed the Stipulation of Settlement and Resolution, I **FIND**:

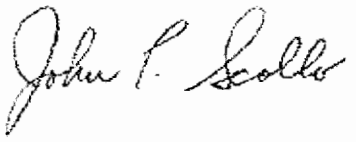
1. The parties have voluntarily agreed to the settlement as evidenced by the signatures of the parties and/or their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that the stipulation of settlement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the stipulation of settlement and, therefore, **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.



February 5, 2024
DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:
db

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE, (hereinafter referred to as "Agreement"), is made this 2nd day of February, 2024, by and between the Petitioner Tyneequa Gonzalez (hereinafter, also referred to as "Petitioner"), who currently resides at 50 David Street, Old Bridge, New Jersey 08857-1719 and the Elizabeth Board of Education (hereinafter, also referred to as the "Board"), with its principal offices located at 500 North Broad Street, Elizabeth, New Jersey 07208.

WHEREAS, Petitioner enrolled her minor child, A.G., as a student in the Elizabeth Public School District for the 2022-2023 school year; and

WHEREAS, the Board determined that the minor child A.G. was ineligible to attend the schools of the Elizabeth Public School District due to domicile outside of Elizabeth; and

WHEREAS, Petitioner commenced an action against the Board appealing its residency determination in a matter entitled, T.G .on behalf of minor child, A.G. v. City of Elizabeth Board of Education, OAL Dkt. No. EDU 04438-23, Agency Ref. No.: 245131-5/23, (hereinafter referred to as the "Petition"); and

WHEREAS, the Board filed a Counterclaim to the Petition against Petitioner for tuition reimbursement for A.G.'s ineligible attendance in the Elizabeth School District; and

WHEREAS, the Petitioner and the Board (hereinafter, also referred to as the "Parties") having reached a negotiated agreement to fully, and finally, the issue of residency and tuition reimbursement only, as asserted by the Petition and Counterclaim; and

NOW, THEREFORE, in consideration of the mutual promises and undertaking said forth herein, the parties agree as follows:

The foregoing recitals are incorporated herein as if set forth at length.

1. **Consideration.** In settlement of this matter, Petitioner will pay the Board the amount of $3,660.93, which represents the alleged tuition due and owing for her minor child A.G.'s alleged ineligible attendance in the Elizabeth School District for the 2022-2023 school year. Petitioner shall make out a check made payable to the Elizabeth Board of Education. The Petitioner shall pay the above amount in one (1) payment within thirty (30) days of the date of the approval of this agreement by the Commissioner of the Department of Education for the State of New Jersey.

In the event that Petitioner fails to make any of the payments described above, the Petitioner shall be in default of this agreement, and the parties agree that judgment shall be entered and docketed in the Superior Court of New Jersey in favor of the Respondent for the balance of $3,660.93 less any payments made prior to the date of default.

Each party agrees to bear its own attorneys fees and costs regarding this Agreement.

2. **Attendance of A.G. at Elizabeth Public School District.** Petitioner unenrolled the minor child A.G. from the Respondent school district on September 5, 2023 prior to the 2023-2024 school year. A.G. shall not be permitted to attend school in the Elizabeth Public Schools.

3. **Scope of Agreement**. The parties hereto agree that this Agreement resolves only the Petitioner's appeal of the Respondent's residency determination that minor child A.G. was not a resident of the Respondent's school district, as well as the Respondent's counterclaim for tuition reimbursement for periods of alleged ineligible attendance by A.G. in Respondent's school district during the 2022-2023 school year; and this agreement does not prohibit the Respondent from pursuing any other causes of action available under any applicable law. Each party waives the right to make a claim for costs and expenses regarding the residency appeal EDU-04438-23.

4. Waiver and Release of Claims. In settlement of this matter and in consideration of the payments set forth in Paragraph 1 above, Petitioner hereby releases and forever discharges the Board, in its official and personal capacities, and its related or affiliated entities, and its past, present and future officers, directors, attorneys, employees, owners, insurers, and their respective successors and assigns (collectively "Releasees"), jointly and severally, from any and all actions, complaints, causes of action, lawsuits or claims of any kind (collectively "Claims"), known or unknown, asserted or unasserted, which Petitioner, her heirs, agents, executors, successors or assigns ever had, now have or hereafter may have against Releasees arising out of any matter, occurrence, omission, or event existing or occurring prior to Petitioner's execution of this Agreement, including, without limitation: any and all causes of action suits, debts, dues, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, obligations, promises, variances, trespasses, damages, judgments, executions, claims and demands, whether arising in contract or tort, vested or contingent, whether known or unknown, direct or indirect, existing or not existing, by reason of any matter, cause or thing whatsoever, in law or at equity from the beginning of time to the date of the execution of this Agreement.

In settlement of this matter and in consideration of the payments set forth in Paragraph 1 above, Respondent hereby releases and forever discharges the Petitioner, in her personal capacity, from any and all actions, complaints, causes of action, lawsuits or claims of any kind, known or unknown, asserted or unasserted, regarding tuition reimbursement for 2022-2023 school year. Respondent explicitly does not waive nor release the Petitioner from any and all other causes of action, suits, debts, dues, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, obligations, promises, employment codes of conduct, disciplinary procedures, variances, trespasses, damages, judgments, executions, claims and demands, whether

arising in contract or tort, vested or contingent, whether known or unknown, direct or indirect, existing or not existing, by reason of any matter, cause or thing whatsoever, in law or at equity from the beginning of time to the date of the execution of this Agreement.

5. **Stipulation.** Simultaneous with the execution of this Agreement, Petitioner and counsel for the Board Parties shall execute a Stipulation of Dismissal with Prejudice with regard to the Petition and the Board's Counterclaim in the form attached hereto as Exhibit A.

6. **Counterparts; Entire Agreement; No Oral Modification.** This Agreement may be executed in counterparts, which together shall comprise the entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements, written or oral, expressed or implied. No other promises, agreements or amendments, or any separate agreement relating to the subject matter of this Agreement shall be binding or shall modify this Agreement unless expressed in writing and signed by all parties hereto.

7. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

8. **No Admission of Liability.** Nothing in this Agreement shall be construed as an admission or concession of liability or wrongdoing by either party to this agreement. Rather, this Agreement is being offered for the sole purpose of settling cooperatively and amicably the above residency determination appeal.

9. **Severability.** Nothing in this Agreement is intended to violate any law or shall be interpreted to violate any law. If any paragraph or part or subpart of any paragraph in this Agreement or the application thereof is construed to be overbroad and/or unenforceable, then the court making such determination shall have the authority to narrow the paragraph or part or subpart of the paragraph as necessary to make it enforceable and the paragraph or part or subpart of the

paragraph shall then be enforceable in its/their narrowed form. Moreover, each paragraph or part or subpart of each paragraph in this Agreement is independent of and severable (separate) from each other. In the event that any paragraph or part or subpart of any paragraph in this Agreement is determined to be legally invalid or unenforceable by a court and is not modified by a court to be enforceable, the affected paragraph or part or subpart of such paragraph shall be stricken from the Agreement, and the remaining paragraphs or parts or subparts of such paragraphs of this Agreement shall remain in full, force and effect.

10. Headings. The headings contained in this Agreement are for convenience of reference only and are not intended, and shall not be construed, to modify, define, limit, or expand the intent of the parties as expressed in this Agreement, and they shall not affect the meaning or interpretation of this Agreement.

11. Interpretation. This Agreement shall be construed without aid of any canon or rule of law requiring construction or interpretation against the party drafting or causing this Agreement or any provision thereof to be drafted.

12. Contingency. It is agreed and understood by all Parties hereto that this Agreement is contingent upon each of the Parties fulfilling all of their respective duties, obligations, and/or promises as stated herein.

13. Entire Agreement. By executing this Agreement, Petitioner represents and acknowledges, that she does not rely, and has not relied, upon any representation, or statement, not set forth in this Agreement made by Respondent, or their Counsel, with regard to the subject matter, basis, or effect of this Agreement, or otherwise. This Agreement sets forth the entire agreement between the parties, and supersedes any, and all, prior agreements, or understandings between the parties.

14. **Assent to Terms.** On October 3, 2023, Petitioner formally discharged Ellen Walsh, Esq. as her attorney and notified the Court that she would be proceeding pro se. Thereafter, the Petitioner and Respondent negotiated the terms of this Agreement. Petitioner's signature below indicates that she was given the opportunity to review this Agreement with an attorney, that Petitioner has read and understood the provisions, and that she has executed it voluntarily with full knowledge of the significance of all provisions. Ms. Tyneequa Gonzalez hereby acknowledges that she enters into this agreement with a full understanding of her rights and that she was fully informed of the implications of this Agreement, and does so without duress, of her own free will and volition.

STATEMENT BY PETITIONER

The Respondent has advised me, in writing through the Agreement, to consult with Counsel prior to executing the Agreement. I have carefully read, and fully understand, the provisions of the Agreement, the acceptance, and sufficiency, of which I acknowledge. I have had sufficient time, and opportunity, to consult with Counsel of choice prior to executing the document, and I intend to be legally bound by its terms. I further so execute the Agreement in a knowing, and voluntary, manner with the full knowledge that I am waiving any and all rights, or claims, I may have to later challenge the sufficiency, scope, or terms of the Agreement and have, again, done so after consultation with my Counsel. I understand that I may revoke my signature within seven (7) days following my signing, I understand that my rights under the Agreement are contingent on my signing the Agreement, and not revoking my signature on said document.

IN WITNESS WHEREOF, the signatures and/or seals of the parties or their duly authorized representatives have been set forth on the dates indicated below:

J. Gonzalez

TYNEEQUA GONZALEZ
Dated: 01/26/2024

STATE OF TEXAS

: ss

COUNTY OF WILLIAMSON

I certify that on JANUARY 26, 2024, TYNEEQUA GONZALEZ personally came before me and acknowledged under oath, to my satisfaction, that she is the person named in the Agreement, and that she personally signed the document, and signed, sealed, and delivered the document as her act and deed.

Lashondra Gant

HAROLD KENNEDY, JR.
Board Secretary/Business Administrator
For the Elizabeth Board of Education
Dated: 2/2/2024

This notarial act was an online notarization

109-24

New Jersey Commissioner of Education

Final Decision

T.M.,

Petitioner,

v.

New Jersey State Interscholastic Athletic Association,

Respondent.

Synopsis

Petitioner sought reversal of the final decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying his request for a waiver of the Eight Semester Rule – which limits a student's eligibility for high school athletics to eight consecutive semesters following his entrance into the 9th grade – to allow T.M. to participate in sports during his senior year at Hillsborough High School (Hillsborough). T.M. played on the freshman basketball team at Franklin High School during the 2019-2020 school year as a ninth grader, prior to his family becoming homeless in January 2020. T.M. completed that year remotely from various locations, often with sporadic internet service, because of COVID-19 protocols then in effect. His grades fell during this period, though his lowest grade was an 89 (eighty-nine). During the 2020-2021 school year, T.M.'s family decided to keep him home from school because they were concerned about his family's health if he attended in person and afraid his academics would suffer if he attended school virtually. In June 2021, T.M.'s family found stable housing, and he began attending Hillsborough as a sophomore for the 2021-2022 school year; he played on the varsity basketball team for both his sophomore and junior years, averaging seven points per game. In August 2023, petitioner filed an Eligibility Waiver Request with the NJSIAA requesting a waiver of the strict application of the Eight Semester Rule to enable T.M. to compete in basketball during his senior year. The request was denied, as NJSIAA found that T.M. did not meet the standards for granting a waiver of the Eight Semester Rule. Petitioner then appealed the decision to the NJSIAA's Eligibility Appeals Committee, which also determined not to grant the waiver, concluding, *inter alia*, that T.M.'s voluntary decision not to attend school for the 2020-2021 school year was "effectively an academic redshirt" and that granting him a waiver would give him an opportunity – a fifth year of eligibility – that other students do not get.

Upon careful review and consideration, the Commissioner upheld the NJSIAA's decision and dismissed the petition. In so doing, the Commissioner – who may not substitute his judgment for that of the NJSIAA on appeal – noted that the NJSIAA's decision to deny the request for waiver was not arbitrary, capricious, or unreasonable, and petitioner was afforded the due process to which he is entitled.

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.

109-24
Agency Dkt. No. 317-11/23

New Jersey Commissioner of Education

Final Decision

T.M.,

Petitioner,

v.

New Jersey State Interscholastic Athletic Association,

Respondent.

For Petitioner, Gracia Montilus, Esq.

For Respondent, Alexis C. Smith, Esq.

This case involves an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying petitioner T.M.'s request for a waiver of the Eight Semester Rule to allow him to participate in sports during his senior year at Hillsborough High School (Hillsborough).

Athletic competition in New Jersey's public schools is overseen by respondent, NJSIAA, a voluntary, non-profit organization which promulgates the rules and regulations governing high school athletics. *See B.C. v. Cumberland Reg. Sch. Dist.*, 220 *N.J. Super.* 214, 234 (App. Div. 1987). Article V, Section J of NJSIAA's Bylaws, Rules and Regulations restricts a student's eligibility to play sports to four years. Specifically, the provision known as the Eight Semester Rule provides that, "[n]o student shall be eligible for high school athletics after the expiration of eight consecutive semesters following his or her entrance into the 9th grade. A student

becomes ineligible for high school athletics when the class in which he/she was originally enrolled has graduated." The NJSIAA Guidelines set forth the reasons for the Eight Semester Rule in the NJSIAA Handbook:

> This rule is intended to prohibit "red shirting," and is also aimed at preventing athletically gifted pupils who are not meeting academic standards from replacing other students who are maintaining their academic standards but who might not have the same athletic prowess. The rule is also aimed at maintaining a uniform progression among all member schools within a four-year cycle and equalizing competition within these schools.

In appropriate cases, the NJSIAA may grant a waiver of the eligibility rules if the overall objectives of the association and its member schools are not undermined by the proposed waiver. The Eight Semester Rule can be waived when a student proves that he or she cannot comply with the rule due to circumstances beyond his or her control.

The material facts in this case do not appear to be in dispute. T.M. began high school at Franklin High School (Franklin) in Franklin, New Jersey during the 2019-2020 school year; he played on the freshman basketball team. In January 2020, T.M and his family were evicted from their home and stayed with family and friends in various locations. T.M. attended school remotely during the spring of 2020 due to the Covid-19 pandemic. T.M. had inconsistent access to the internet and struggled academically. However, T.M. passed all of his courses and his lowest grade was an 89 (eighty-nine). T.M.'s family decided to keep him home from school during the 2020-2021 school year because they were concerned about his family's health if he attended school in person and his academics if he attended school virtually. In June 2021, T.M.'s family found stable housing, and he began attending Hillsborough as a sophomore for

the 2021-2022 school year; he played on the varsity basketball team for his sophomore and junior years.

Because T.M. has already had four years of athletic eligibility, on August 25, 2023, an Eligibility Waiver Request was filed by the petitioner with the NJSIAA, requesting a waiver from the strict application of the Eight Semester Rule so that T.M. can participate in basketball during his senior year. On September 26, 2023, the NJSIAA Eligibility Committee voted 6-0 to deny the waiver request, finding that T.M. did not meet the standards for granting a waiver of the Eight Semester Rule.

Thereafter, the petitioner appealed the decision of the Eligibility Committee to the Eligibility Appeals Committee (EAC). Following a hearing on October 24, 2023, at which sworn testimony was taken from T.M. and his father, the EAC denied the request for a waiver of the Eight Semester Rule. The EAC determined that the family's choice for T.M. not to attend school during the 2020-2021 school year was voluntary and not compelled by circumstances beyond their control. Although T.M. expressed concerns that his grades would drop with remote learning, the EAC found that he passed all his courses with above-average grades during his remote learning period in the spring of 2020. The EAC also noted that remote or hybrid instruction was common in 2020-2021 and does not distinguish T.M. from other students across the State who learned remotely during the pandemic. Furthermore, although T.M. indicated that he had unreliable internet access, his sister was able to take college classes remotely in the fall of 2020, and T.M. did not re-enroll in school in January 2021 when the family regained reliable internet access. The EAC concluded that T.M.'s voluntary decision not to attend school for the 2020-2021 school year was "effectively an academic redshirt" and

granting him a waiver would give him an opportunity – a fifth year of eligibility – that other students do not get. The EAC found that T.M's participation as a fifth-year senior would provide Hillsborough an athletic advantage because he would be a starter for a competitive team who averaged seven points per game last season. Finally, the EAC concluded that allowing T.M. a fifth year of eligibility would be unfair to other students because there are a limited number of positions available on the varsity basketball team and if T.M. made the team, he would displace another student who only had four years of eligibility.

On December 21, 2023, the petitioner filed an appeal with the Commissioner of Education challenging the decision of the NJSIAA. On December 28, 2023, the NJSIAA filed its answer to the petition. On January 24, 2024, the petitioner filed his brief in support of the requested relief and on February 5, 2024, the NJSIAA filed its reply brief.

In his brief, the petitioner argues that the Eight Semester Rule was created to ensure that a student with poor grades who was ineligible to play because of poor academic standing would not be granted another year to play high school sports; however, T.M. has a 3.4 GPA. Additionally, T.M. argues that the circumstances of his family becoming homeless, together with the Covid-19 pandemic, were beyond his control.

In reply, the NJSIAA asserts that it provided the petitioner with due process, noting that this case was heard by two NJSIAA committees, both of which unanimously denied the request for a waiver of the Eight Semester Rule. The NJSIAA stresses that the Eight Semester Rule is designed to ensure that all students have an equal opportunity to play high school sports and limits that opportunity to four consecutive years starting when a student first enters high school. The NJSIAA argues that the family's decision for T.M. not to attend school during the

2020-2021 school year was entirely voluntary, noting that both T.M. and his father indicated in their testimony that the reason they did not want T.M. to attend school remotely was because he did not want to risk having bad grades. Accordingly, the NJSIAA maintains that the petitioner's ineligibility is not due to circumstances beyond his control, but instead constitutes "academic red shirting" and that any waiver would contradict the intent of the Eight Semester Rule. Additionally, the NJSIAA argues that Hillsborough would receive an advantage if T.M. were granted a waiver. The NJSIAA notes that T.M. is six feet, five inches tall (6'5"), would be a starter on a competitive team, and averaged seven points per game last season. According to the NJSIAA, T.M.'s participation would displace another student who only had four years of eligibility for high school sports.

Upon careful review and consideration, the Commissioner determines to uphold the decision of the NJSIAA and dismiss the petitioner's appeal. As explained above, the NJSIAA is a voluntary association of public and nonpublic schools, organized – pursuant to *N.J.S.A.* 18A:11-3 – to oversee athletics for its member schools in accordance with a constitution, bylaws, rules, and regulations approved by the Commissioner of Education and adopted annually by member schools, for which they become school policy enforceable by the NJSIAA. Hillsborough is a member of the NJSIAA.

It is well-established that the Commissioner's scope of review in matters involving NJSIAA decisions, including determinations made by the EAC, is appellate in nature. *N.J.S.A.* 18A:11-3; *Board of Education of the City of Camden v. NJSIAA*, 92 *N.J.A.R.* 2d (EDU) 182, 188. That is, the Commissioner may not overturn an action by the NJSIAA in applying its rules, absent a demonstration by the petitioner that it applied such rules in a patently arbitrary, capricious,

or unreasonable manner. *N.J.A.C.* 6A:3-7.5(a)(2); *B.C. v. Cumberland Regional School District*, 220 *N.J. Super.* 214, 231-232 (App. Div. 1987); *Kopera v. West Orange Board of Education*, 60 *N.J. Super.* 288, 297 (App. Div. 1960). Nor may the Commissioner substitute his own judgment for that of the NJSIAA, where due process has been provided and where there is sufficient credible evidence in the record as a whole to serve as a basis for the decision reached by the NJSIAA. *N.J.A.C.* 6A:3-7.5(a)(1); *Dam Jin Koh and Hong Jun Kim v. NJSIAA*, 1987 *S.L.D.* 259.

Additionally, the New Jersey courts have spoken as to the narrow scope of "arbitrary, capricious, or unreasonable" in the context of challenges such as petitioners:

> In the law, "arbitrary" and "capricious" means having no rational basis. *** Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.*** (citations omitted) *Bayshore Sew. Co. v. Dep't of Envt. Protection*, 122 *N.J. Super.* 184, 199-200 (Ch. Div. 1973), *aff'd* 131 *N.J. Super.* 37 (App. Div. 1974).

Petitioners seeking to overturn decisions of the NJSIAA therefore bear a heavy burden, and – considering the record of this matter in light of the prescribed standard of review – the Commissioner cannot find that petitioner herein has met his burden so as to entitle him to prevail on appeal.

More specifically, considering its duty to ensure fairness and integrity in athletic competition statewide, the Commissioner cannot find that the NJSIAA applied its rules in a patently arbitrary or unreasonable manner. T.M. has already had the opportunity to participate in four years of high school athletics – including the year when his family chose not to have him attend school – as envisioned by the eligibility rules. Moreover, the Commissioner is in accord with the NJSIAA's finding that the family's decision to have T.M. not attend school during the

2020-2021 school year was voluntary and does not amount to circumstances beyond their control. The record demonstrates that, despite the Covid-19 pandemic, T.M. earned good grades during the period of remote instruction in the spring of 2020, but his family chose to have him skip school during the following year for their own reasons. The Commissioner finds that the record supports the NJSIAA's conclusions that T.M.'s participation would affect the ability of another student to play basketball and would give Hillsborough an athletic advantage. Finally, the NJSIAA's conclusion that the circumstances in this case are effectively "red shirting" is not arbitrary, capricious, or unreasonable.

Accordingly, the Commissioner – having found that the petitioner was afforded the due process to which he was entitled and that the NJSIAA's decision denying the request for waiver was neither arbitrary nor unreasonable – upholds the NJSIAA's decision and dismisses the petition of appeal.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 13, 2024
Date of Mailing: February 15, 2024

[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.

116-24
SEC Dkt. No. C09-20
OAL Dkt. No. EEC 11269-20
Agency Dkt. No. 10-8/23A

New Jersey Commissioner of Education

Final Decision

In the Matter of S.J.,
Englewood Cliffs Board of Education,
Bergen County

This matter involves an appeal of the School Ethics Commission's (SEC) August 22, 2023, determination that appellant – a member of the Englewood Cliffs Board of Education (Board) – violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e) of the School Ethics Act (Act) by attending multiple executive sessions at which the Board discussed a matter involving a member of appellant's immediate family (Matter).[1] The SEC recommended that appellant be censured for the violation. Having carefully reviewed the SEC's decision and the record in its entirety, the Commissioner finds that the SEC's decision that appellant violated the Act is supported by sufficient, credible evidence, and that appellant failed to establish that the decision is arbitrary, capricious, or contrary to law. *N.J.A.C.* 6A:4-4.1(a). However, the Commissioner concludes that the appropriate penalty is a reprimand.

Appellant attended four executive session meetings where the Matter was discussed. According to appellant's certification, she was informed prior to the first meeting that the Matter

[1] During the proceedings at the Office of Administrative Law, the parties entered into a Consent Order sealing the record. While the Commissioner's decisions are public and therefore this decision cannot be under seal, the Commissioner finds that it is appropriate to protect the subject matter that the parties agreed was confidential. Accordingly, the details of the underlying matter discussed by the Board during the executive sessions will not be discussed herein.

would be discussed in executive session. Upon learning this information, she consulted with the Superintendent, Dr. Jennifer Brower, as to whether or not she should attend. The Superintendent indicated that she had consulted with Board counsel, who had advised that appellant was not required to leave the room because the discussion would not include the names of the individuals at issue. Appellant attended every executive session where the Matter was discussed, with the exception of the last meeting. At that meeting, Board counsel asked appellant to recuse herself from executive session, which she did. The Board voted to dismiss the Matter in its public session later in the meeting. However, prior to a written determination being issued to the parties involved in the Matter, appellant's husband sent an email to the Board enclosing additional information, causing the Matter to be reopened. Despite this new information, the Matter was later dismissed for a second time.

In her appeal to the Commissioner, appellant argues that the Matter was dismissed by the Board, such that she received no advantage from her presence in the executive sessions, nor did she influence Board members or district personnel in her favor. According to appellant, her husband, of his own accord, sent correspondence to the Board presenting additional information resulting from the Board's public vote dismissing the Matter. Appellant contends that the appearance of impropriety alone is not sufficient to justify the finding that she violated the Act. Finally, appellant argues that if she is found to have violated the Act, her actions were *de minimus* and no penalty is warranted, particularly given her defense that she relied on the advice of Board counsel that she could remain in the executive session as long as she did not vote or participate in any discussions. In the alternative, appellant urges the Commissioner to issue the lower penalty of a reprimand.

In opposition, the SEC argues that the Act does not require that a board member succeed in securing unwarranted benefits, but only that she attempt to do so, and the fact that the Board dismissed the Matter is inconsequential; an attempt to secure an advantage can reasonably be inferred from her presence alone. According to the SEC, appellant's spouse's correspondence specifically responded to the reasoning behind the Board's dismissal of the matter, which was only presented in executive session. The SEC contends that *N.J.S.A.* 18A:12-22(a) explicitly requires Board members to avoid conduct "which creates a justifiable impression among the public that [its] trust is being violated." Finally, the SEC argues that appellant's defense regarding the advice of counsel is unsubstantiated, and a penalty of censure is appropriate.

Upon a comprehensive review of the record, the Commissioner finds that the SEC's determination that appellant is in violation of the Act is supported by sufficient credible evidence, and appellant has not established that the SEC's decision is arbitrary, capricious, or contrary to law. *N.J.S.A.* 18A:12-24(b) prohibits a board member from using or attempting to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. "The determination of whether a particular interest is sufficient to disqualify a board member is necessarily factual in nature and depends upon the circumstances in each case... Absent controlling authority, the decision in issue is dictated by a practical feel for the situation.... An actual conflict of interest is not the decisive factor, nor is 'whether the public servant succumbs to the temptation,' but rather whether there is a potential for conflict." *Friends Retirement Concepts v. Bd. of Educ. of the Borough of Somerville*, 356 *N.J. Super.* 203, 214 (internal citations omitted).

N.J.S.A 18A:12-24.1 (e) states that the Board member "will recognize that authority rests with the boards of education and will make no personal promises nor take any private action that will compromise the board." *See also Messner v. Gray*, 2016 *N.J. Super. Unpub. Lexis* 703 (App. Div. Mar. 31, 2016). In *Messner*, a board member taped part of an executive session and shared it with her attorney. The SEC found this action violated *N.J.S.A.* 18A:12-24.1 (e) because Gray "took private action, or action that was outside the scope of her duties as a Board member when she intended to and did disclose the deliberations to two other third parties who would not otherwise have been privy to the Board's deliberations." *Id.* at *7. The SEC further concluded that Gray's action was of "such a nature that it had the potential to compromise the Board." *Id.* at *5. The Appellate Division agreed that Gray had violated the Act, concluding that "Gray's decision to further her own, purely private purposes had the potential to, and did, compromise the Board's ability to conduct its business in a lawfully convened executive session." *Id.* at *11.

During executive session on September 4, 2019, the Board discussed the merits of the Matter, and the Board attorney stated that there was insufficient evidence to support the claim made by appellant's family member. Later that evening, appellant's spouse sent an email to the Superintendent disagreeing with the Board's findings. The next day, prior to receiving the Board's written determination, appellant's spouse presented "new information" that resulted in the Matter being reopened at the next Board meeting. Appellant argues that the Matter was dismissed in public session at the September 4, 2019 board meeting, which alone triggered the email from her husband indicating his opposition to the determination, and that he volunteered information of his own accord. Appellant states in her certification that she never requested that the Matter be reopened or that her husband send an email in an effort to have the case reopened

or secure a favorable outcome. However, appellant's certification does not specifically assert that she kept details of the executive session confidential, and the new information that her husband provided to the Superintendent responded to the findings that were discussed in executive session, which were not available to the other individuals involved in the Matter. Such conduct indicates that appellant's presence in executive session compromised the Board's confidentiality and secured an unwarranted advantage for appellant's family, regardless of the ultimate outcome of the Matter. The Commissioner therefore affirms the SEC's conclusion that appellant violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1 (e).

Considering the evidence before it, the SEC imposed a penalty of censure. However, the Commissioner concludes that due to appellant's reliance on the advice of counsel, the penalty of reprimand is more appropriate. The Appellate Division has previously addressed charges of ethical violations by public officials acting on advice of counsel. *In re Zisa*, 385 *N.J. Super.* 188 (App. Div. 2006). The mayor in question in *Zisa* relied on the advice of counsel regarding his personal involvement in a real estate deal involving the municipality he represented. In examining the facts, the Appellate Division considered four prerequisites for an advice of counsel defense:

> 1. That the approval or advice was received prior to the action being taken.
>
> 2. That the individual who offered the advice or approval relied upon possessed authority or responsibility with regard to ethical issues.
>
> 3. That the individual seeking advice or approval made a full disclosure of all pertinent facts and circumstances.
>
> 4. That the individual complies with the advice received, including any restrictions it might contain.

Id. at 198-199 (internal citations omitted). *See also In the Matter of Marilyn Roman and Sudhan Thomas, and Jersey City Bd. of Educ., Hudson Co.*, slip op. at 12 (App. Div. Dec. 21, 2023).

Here, appellant has met all four prerequisites: appellant sought approval from the Superintendent prior to attending the meeting; the Superintendent advised that she had spoken to counsel and that appellant could attend but not vote; the Superintendent and the Board attorney were aware that appellant's family member was involved in the Matter; and appellant complied with the request to leave the fourth meeting when asked. Therefore, the Commissioner concludes that appellant's reliance on the advice of Board counsel is a valid defense in this matter. The Commissioner concludes that a penalty is nonetheless warranted, given that petitioner's actions resulted in an informational advantage concerning the details of the Matter, including the rationale behind the Board's decision, which was not afforded to the other participants in the Matter. Therefore, in light of the seriousness of appellant's actions, as mitigated by the advice of defense counsel, the Commissioner finds that in this instance, the penalty of reprimand is appropriate.

Accordingly, appellant is hereby reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 20, 2024
Date of Mailing: February 22, 2024

[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.

Before the School Ethics Commission
OAL Docket No.: EEC-11269-20
SEC Docket No.: C09-20
Final Decision

I/M/O S.J.,
Englewood Cliffs Board of Education, Bergen County
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on February 18, 2020,[1] by Edmond Duda (Complainant), a member of the Englewood Cliffs Board of Education (Board), alleging that S.J. (Respondent), also a member and President of the Board, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, when she attended multiple executive sessions while the Board discussed a matter involving a member of her immediate family. More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24(a) in Counts 1-4, *N.J.S.A.* 18A:12-24(b) in Counts 1-4, as well as *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code) in Counts 3-4.

On March 11, 2020, Respondent filed a Motion to Dismiss in Lieu of an Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On June 22, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing. As part of his response to the Motion to Dismiss and allegation of frivolous filing, Complainant voluntarily withdrew the alleged violations of *N.J.S.A.* 18A:12-24(a) in Counts 1-4.

At its meeting on August 25, 2020, the Commission voted to adopt a decision accepting the voluntary withdrawal of the alleged violations of *N.J.S.A.* 18A:12-24(a) in Counts 1-4; finding that the remaining allegations in the Complaint were timely filed; denying the Motion to Dismiss as to all other allegations; finding the Complaint not frivolous; denying Respondent's request for sanctions; and directing Respondent to file an Answer to Complaint (Answer).

Following the adoption of the Decision on the Motion to Dismiss, Respondent submitted a request for the Commission to reconsider its decision. After review of the submissions filed by both Respondent and Complainant, the Commission denied Respondent's request at its meeting on September 29, 2020. Respondent then filed an Answer on October 13, 2020, as directed.

Thereafter, at its meeting on November 24, 2020, the Commission voted to find probable cause for all of the remaining allegations in this Complaint. Based on its finding of probable

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[1] On February 18, 2020, Complainant filed a deficient Complaint; however, on March 9, 2020, Complainant cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

cause, the Commission voted to transmit the within matter to the Office of Administrative Law (OAL) for a hearing and, pursuant to *N.J.A.C.* 6A:28-10.7(b),[2] the attorney for the Commission (Petitioner) was charged with prosecuting the remaining allegations in the Complaint.

At the OAL, the parties entered into a Consent Order to Seal the matter on November 10, 2021. Following Petitioner's motion for summary decision, the Administrative Law Judge (ALJ) issued an Initial Decision on April 19, 2023. Both Petitioner and Respondent filed Exceptions to the Initial Decision, in accordance with *N.J.A.C.* 1:1-18.4.

At its meeting on July 25, 2023, the Commission considered the full record in this matter. Thereafter, at its meeting on August 22, 2023, the Commission voted to adopt the Initial Decision's findings of fact, legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24(b) in Counts 1-4 and *N.J.S.A.* 18A:12-24.1(e) in Counts 3-4, and voted to modify the recommended penalty of reprimand in favor of censure.

II. Consent Order to Seal

On November 10, 2021, the ALJ entered a Consent Order to Seal (Consent Order). In the Consent Order, the parties agreed upon, and the ALJ ordered:

1. The Clerk of the OAL is hereby directed to change the caption in this matter to "In the Matter of S.J."

2. All records produced or utilized in this matter, whether between the parties or to or from the [OAL], shall be done so under seal and marked "ATTORNEYS' EYES ONLY."

3. Any requests to non-parties or communications with non-parties, must not disclose the existence of the confidential underlying matter/issues unless there is an independent basis to know that those non-parties are already aware of the confidential underlying matters and Respondent's connection to same, and also provided that any such parties agree, in writing, that they understand and agree to be bound by the confidentiality provisions in this Order.

4. This matter shall be sealed until such a time that the parties mutually agree in writing that it may be unsealed, and the Office of Administrative Law enters an order unsealing the matter.

Pursuant to *N.J.A.C.* 1:1-14.1(c), when sealing a record, the ALJ "must specify the consequences of such an order to all material in the case file including any evidence, the stenographic notes or audiotapes and the initial decision. The treatment of testimony or exhibits shall be on such terms as are appropriate to balance public and private rights or interests and to preserve the record for purposes of review. The judge shall also indicate what safeguards shall be imposed upon the preparation and disclosure of any transcript of the proceedings." With the

[2] This citation refers to the regulation that was in effect at the time of the probable cause determination.

entry of the Consent Order, the ALJ did not provide the required specificity as to which aspects of the record would be sealed or the necessary analysis balancing the public and private rights or interests.

However, in reviewing the language of the Consent Order, the Commission finds that the scope of the Consent Order applies to "[a]ll records produced or utilized in this matter," and therefore, does not apply to its decision. Moreover, the recommended penalty in this matter is a censure, which is inherently public, and therefore, the decision cannot be under seal. As such, the within Final Decision of the Commission will be a public decision. The Commission nevertheless aims to protect the subject matter that the parties agreed was confidential. In doing so, the Commission recognizes the public and private interests and rights at stake in this case. Accordingly, even though the Commission's decision is public, the Commission's decision does not discuss the details of the underlying matter before the Board that supported the Complaint.

III. Initial Decision

Prior to executive session at the Board meeting on August 12, 2019, Respondent was informed that a matter involving an immediate family member would be discussed in executive session. *Initial Decision* at 2. According to Respondent, she discussed the matter with the Superintendent and in turn, Respondent stated the Superintendent had spoken with Board counsel, who also according to Respondent, indicated that Respondent could attend the executive session, but could not vote on the matter. *Ibid.* The other Board members were not aware that the discussion during executive session involved a member of Respondent's family. *Ibid.*

Prior to the September 4, 2019, Board meeting, Respondent was notified that the matter involving her family member would again be discussed in executive session. *Ibid.* During executive session, Board counsel discussed the details of the matter and stated there was insufficient evidence to support the action. *Ibid.* While Respondent abstained from voting on the matter, the Board voted 8-0-1, to dismiss the matter. *Ibid.* Later that evening, before receiving a copy of the Board's decision, Respondent's spouse emailed the Superintendent indicating that he disagreed with the findings and sent a follow-up email the next day providing "new information" to the Superintendent. *Id.* at 2-3.

Prior to the October 7, 2019, Board meeting, Respondent spoke with Englewood Cliffs School District (District) personnel regarding the matter, and at the Board meeting, the personnel indicated that the matter would be reopened due to new information. *Id.* at 3. Notably, the school officials who were presenting knew the identity of the individual involved and the relationship to Respondent.

The matter was discussed again at the November 4, 2019, Board meeting. During executive session, Board counsel asked Respondent to leave the meeting, and she complied, which first alerted Board members to Respondent's personal connection to the matter being discussed. *Ibid.* Again, the Board voted to dismiss the matter involving Respondent's family member. *Ibid.*

The ALJ concluded Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e) as there is a "clear appearance of impropriety" in this matter because Respondent was present in multiple executive sessions when a matter involving an immediate family member was discussed and her presence during those meetings creates a "justifiable impression among the public that trust is being violated." *Id.* at 4-5. The ALJ recommended the penalty of reprimand for the violations, as Respondent indicated she was told by the Superintendent that Board counsel said she could be present in executive session if she did not vote, and then when she was asked to leave the November 4, 2019, meeting, she did. *Id.* at 6.

IV. Exceptions

Petitioner's Exceptions

In its exceptions, Petitioner agrees with the ALJ's conclusion that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e), but takes exception to the recommended penalty of reprimand and asserts that a censure is the more appropriate penalty in this matter.

Petitioner argues, Board members are not "insulated from blame" simply because they relied on advice from counsel, as the Commission has previously refused to accept such a defense in cases without evidence that the board member ever actually requested legal advice. Here, Petitioner contends there is "nothing in the record" to support that Respondent was told by Board counsel that she could be present in the meeting while a matter involving a member of her family was discussed, nor that Board counsel was aware that the subject involved was a member of Respondent's family. Petitioner avers as an "experienced Board member and former practicing attorney," Respondent should have "directly confirm[ed]" the information with Board counsel. As such, Petitioner maintains the Commission should reject the reliance on advice of counsel as a mitigating factor when determining the appropriate penalty for Respondent's violations.

Petitioner further argues that before a copy of the Board's decision on the matter involving Respondent's family member was memorialized, Respondent's spouse contacted the Superintendent indicating he disagreed with the findings, and then sent the Superintendent "new information." Petitioner asserts based on these events, neither Respondent's purported reliance on the advice of counsel or that she recused herself at the last Board meeting after Board counsel asked her to leave, are "sufficient to negate or mitigate the offensiveness of her proven conduct between those meetings, which, standing alone, warrant a penalty of censure." The new information that Respondent's spouse provided to the Superintendent "directly responded to the findings that were discussed in executive session," which were not available to the other individuals who were involved, and which also indicated that Respondent shared confidential information. Additionally, as to the October 7, 2019, meeting, Respondent knew the District personnel, who were presenting the new information, were aware that the matter involved Respondent's relative, and therefore, "it would have been reasonable for [the District personnel] to feel threatened by the silent presence of [Respondent]," because their "continued employment ... depended on the Board's approval."

Petitioner contends "there is overwhelming circumstantial evidence that [Respondent] communicated privileged Board information to a third party for that third party's benefit in a matter before the Board" and Respondent failed to recuse herself from the Board meeting in which District administrators discussed a matter involving her family member, and therefore, the mitigating factors that the ALJ relies on are insufficient to defeat that Respondent should be censured for her conduct.

Respondent's Exceptions

In her Exceptions, Respondent argues the ALJ incorrectly concluded that Respondent "voted" on a matter involving a family member. Respondent maintains she never voted on any matter related to a family member, and the ALJ's decision is "unsound, contrary to the evidence and cannot be taken as true, and this matter should be sent back to the [OAL] for development of the factual record at a hearing."[3]

Respondent contends that the ALJ made numerous contradictory statements in the Initial Decision. Despite the ALJ's finding that "the circumstances could reasonably be interpreted to show that [Respondent] had the likely capacity to tempt the official to depart from his sworn public duty," the ALJ concluded that none of the Board members were aware that Respondent's family member was involved. Respondent deems it noteworthy that the Board did not rule in favor of Respondent's family member, and therefore, there was "no way that [Respondent] could have tempted the Board members into voting in a manner that was favorable to her when none of them" were aware of the relationship.

Respondent further points out that the ALJ made contradictory findings when she concluded that Respondent did not violate *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e), but went on to conclude that Respondent violated *N.J.S.A.* 18A:12-24(b) in Counts 1-4 and *N.J.S.A.* 18A:12-24.1(e) in Counts 3 and 4.[4] Per Respondent, "the fact that the ALJ's initial decision is riddled with inconsistent statements, especially as it relates to the ALJ's decision, is concerning to say the least."

Furthermore, Respondent argues the ALJ "misapplied the law" as she did not engage in any private action beyond the scope of her duties. On the contrary, Respondent reaffirms that as soon as she became aware that the matter involving her relative was going to be discussed she "immediately informed" the Superintendent, who then told Respondent that Board counsel said she could be present but could not vote or participate. Respondent claims she would never have attended the meeting if it were not for the Superintendent's insistence, and therefore, the ALJ erred in finding that Respondent took private action.

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[3] The Commission notes, while page 1 of the Initial Decision indicates that Petitioner asserts that Respondent violated the Act by "voting" on a matter involving a family member, the remainder of the decision only references Respondent's presence in executive session. The Commission finds the inclusion of the word "voting" was in error.

[4] The Commission notes the word "not" appears to be a typographical error. When the decision is read as a whole, the ALJ clearly intended to write that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e).

Respondent claims the ALJ failed to give the appropriate weight to the "advice of counsel defense" as the Initial Decision lacked analysis or a conclusion as to why the defense was inapplicable." Additionally, Respondent contends that summary decision is inappropriate as discovery is incomplete. According to Respondent, Petitioner "is delinquent in its discovery responses and therefore, is not entitled to summary decision." Finally, Respondent asserts that the Commission must uphold the ALJ's Consent Order sealing the records in this matter in any future proceedings and the matter must remain sealed.

V. Analysis

Upon a careful, thorough, and independent review of the record, the Commission agrees with the ALJ that Respondent violated *N.J.S.A.* 18A:12-24(b) in Counts 1-4 and *N.J.S.A.* 18A:12-24.1(e) in Counts 3-4. However, the Commission modifies the recommended penalty of reprimand in favor of censure.

N.J.S.A. 18A:12-24(b) prohibits a board member from using or attempting to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. By remaining in executive session while the Board discussed a confidential matter involving an immediate family member, Respondent used her official position as Board President to secure the unwarranted advantage of hearing the Board's private discussion regarding her family member during executive session. Respondent learned information about the matter to which members of the public and other individuals involved in the matter were not privy. The second Board meeting (September 4, 2019) exemplifies this advantage. At that meeting, in executive session, the Board discussed the merits of the matter involving Respondent's family member and during those discussions the Board attorney stated there was insufficient evidence to support Respondent's family's action. Despite the Board discussing Respondent's family member's matter in executive session, Respondent remained in executive session and heard the Board's confidential discussion. That night in public session, the Board then voted to dismiss the action brought by Respondent's family. However, the Board did not provide its written decision during public session. Later that evening, Respondent's spouse, who was not in the executive session and who had not yet received the Board's written decision, sent an email to the Superintendent disagreeing with the Board's findings – findings which were not yet disclosed to him. The following day, Respondent's spouse presented "new information" that then resulted in the matter being reopened at the next Board meeting. Respondent's presence in executive session, while the Board discussed her family's action and her spouse's subsequent communication to the Superintendent, prior to the Superintendent revealing the reasons for the Board's action, demonstrates that Respondent's presence in the executive session secured an unwarranted advantage for her family. Moreover, as noted above, the Board attorney stated in executive session that there was insufficient evidence to pursue Respondent's family's action and the next day, Respondent's spouse provided "new information" to support the matter. Based on the above, the Commission concludes that Respondent's failure to leave the executive session while the Board discussed her family's matter presented her with an advantage not otherwise available to the public or other individuals who were involved in the action.

Additionally, District personnel presented information regarding the confidential matter involving Respondent's immediate family member during the executive session of the Board's October 7, 2019, meeting. Again, Respondent was the Board President at the time, and Respondent's presence within the executive session had the potential to influence the District personnel's presentation regarding Respondent's family's action, which provided Respondent with an unwarranted privilege not available to members of the public or the other individuals who were involved in the action. As such, the Commission finds Respondent violated *N.J.S.A.* 18A:12-24(b) in Counts 1-4 when she remained in executive session on three occasions and on a fourth occasion, until she was asked to leave, while the Board discussed a personal matter involving her family.

Furthermore, under *N.J.S.A.* 18A:12-24.1(e), a board member must recognize that authority rests with the board and a board member shall not make any personal promises or take any action that may compromise the board. As a Board member and President, Respondent was required to remove herself from confidential discussions involving her family member. Her failure to do so constitutes action beyond the scope of her duty as a Board member. Respondent attended the executive session at the October 7, 2019, Board meeting while District personnel reopened a matter involving her family member based on new information that her spouse provided. At the time, District personnel were aware of the relationship between Respondent and the subject matter of their presentation, so Respondent's presence at that meeting had the potential to intimidate or sway the presenters. As such, Respondent's presence at executive session during discussions involving a matter in which she had a conflict, by its nature, had the potential to compromise the Board and the integrity of the matter. Similarly, when Respondent attended the executive session at the November 4, 2019, Board meeting (until she was asked to leave), this again had the potential to compromise the Board given her direct personal conflict. As such, the Commission finds Respondent violated *N.J.S.A.* 18A:12-24.1(e) in Counts 3-4.

The Commission disagrees with Respondent's argument that she did not violate the Act because she relied upon the advice of the Board attorney. Board members are not "insulated from blame" when they rely on the advice of counsel, and instead are "responsible for their own actions," with a duty to act "prudently and cautiously." *Cheng v. Rodas, West New York Board of Education*, Commissioner's Decision No. 22-17ASEC (January 20, 2017), at 6. At the outset, it is relevant to note that Respondent did not ask for the advice of counsel; instead, Respondent relied upon the advice of the Superintendent, who said that she had spoken to the Board attorney. Moreover, the record demonstrates that Respondent formerly practiced as an attorney. Also, Respondent was Board President and has undergone Board member ethics training. Thus, Respondent should have known that it was a conflict to remain in executive session while a matter in which she had a personal interest was discussed. However, at the very least, she should have taken efforts to confirm the advice with Board counsel. Respondent is responsible for her own actions and there is no question that she should have acted cautiously and removed herself from executive session when she learned that a matter in which she had a personal interest would be discussed.

Moreover, Respondent's argument that the ALJ's grant of summary decision should be rejected because of outstanding discovery is not persuasive. First, Respondent fails to articulate what discovery is outstanding and necessary in this case. Likewise, Respondent fails to explain

how that discovery would present issues of fact requiring a hearing in this matter. Lastly, a claim of incomplete discovery will not defeat a motion for summary decision if the additional discovery will not patently alter the outcome of the case. Cf. *Wellington v. Est. of Wellington*, 359 *N.J. Super.* 484, 496 (App. Div.), *certif. denied*, 177 N.J. 493 (2003) (in discussing a motion for summary judgment, the court found discovery was not needed as it would not affect the outcome). Here, the Commission is satisfied the undisputed facts support violations of the Act and the Code and, as a result, additional discovery would not affect the outcome of this case.

While the ALJ recommended a penalty of reprimand for Respondent's violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e), the Commission **modifies** the recommended penalty of reprimand to **censure**. Respondent should have known that she was not permitted to listen to confidential discussions about a matter in which she had a direct conflict. It should be obvious to any Board member who has ever undergone ethics training that a matter involving an immediate family member is a conflict and Board members cannot be present for confidential discussions in those matters for which they have a conflict. Respondent remained in executive session discussions not once, but on three occasions and on a fourth occasion until she was directly asked to leave. Additionally, given that the same night that Respondent witnessed executive session discussions, her spouse contacted the Superintendent regarding findings that had not been made public and then sought to provide new information, the evidence of impropriety is glaring. As such, the Commission finds that a penalty of censure is warranted in this matter.

The Commission disagrees with the ALJ that Respondent's purported reliance on counsel is a mitigating circumstance to justify the decreased penalty of reprimand. As explained, Respondent did not request legal guidance from the attorney. As a former attorney herself, there is no excuse for not confirming with counsel. Additionally, the fact that the other Board members were not aware that the matter involved Respondent's family member does not excuse Respondent's behavior, nor is it a mitigating circumstance. Regardless of what other Board members knew, Respondent heard the Board discuss confidential information regarding her family member that she was not entitled to hear. Moreover, the District personnel who presented information on the matter were aware of Respondent's connection to the matter, especially since Respondent spoke to them prior to the meeting, and as such there is no question that Respondent's presence was improper.

The Commission has previously issued a penalty of censure for a violation of both *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e). In *IMO Sanford Student, Evesham Township Board of Education, Burlington County,* OAL Dkt. No. EEC 2590-10, Agency Dkt. No. C40-09, Initial Decision (January 12, 2012), *adopted* School Ethics Commission (February 28, 2012), prior to the board formally voting to approve Beneficial Bank to provide banking services, the respondent contacted TD Bank and invited it to submit additional information that was outside the scope of the original request for proposal. The Commission found that the respondent's actions violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e) and warranted a penalty of censure, which was adopted by the Commissioner of Education. *Sanford Student*, Commissioner's Decision No. 138-12SEC (April 16, 2012). Similar to how the respondent in *Sanford Student* sought to secure an advantage for TD Bank, which then presented additional information in the hope of changing the board's decision, here, following Respondent's presence

during private executive session discussions, Respondent's spouse contacted the Superintendent with new information, which resulted in reopening a matter which had already been decided by the Board. As the respondent in *Sanford Student* was censured for his violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e), a penalty of censure is also justified in this matter.

VI. Decision

For all of the aforementioned reasons, the Commission adopts the Initial Decision's findings of fact and legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24(b) in Counts 1-4 and *N.J.S.A.* 18A:12-24.1(e) in Counts 3-4. However, the Commission modifies the recommended penalty of reprimand in favor of **censure** for the violations.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* **within thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: August 22, 2023

Resolution Adopting Decision in Connection with C09-20

Whereas, at its meeting on November 24, 2020, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Initial Decision dated April 19, 2023; and

Whereas, the ALJ found that Respondent violated *N.J.S.A.* 18A:12-24(b) in Counts 1-4 and *N.J.S.A.* 18A:12-24.1(e) in Counts 3-4, and recommended that Respondent be reprimanded; and

Whereas, Petitioner and Respondent filed exceptions to the Initial Decision; and

Whereas, at its meeting on July 25, 2023, the Commission reviewed the record in this matter, discussed adopting the ALJ's conclusion that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e), and discussed modifying the recommended penalty of reprimand in favor of censure; and

Whereas, at its meeting on August 22, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 25, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on August 22, 2023.

Brigid C. Martens, Acting Director
School Ethics Commission

8-21
C 06483-22
. 14-11/23A

New Jersey Commissioner of Education

Final Decision

Tyrone Jon Tarver,

Complainant,

v.

Jeffrey Wingfield, Orange Board of Education, Essex County,

Respondent.

This matter involves an appeal of a School Ethics Commission (Commission) decision issued October 17, 2023, determining that respondent/appellant Jeffrey Wingfield, a member of the City of Orange Board of Education, violated *N.J.S.A.* 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members (Code) by disseminating allegedly confidential email content regarding a Board matter to three non-Board members—the City Mayor, a City Attorney, and a City Councilwoman. Having carefully reviewed the Commission's decision and the record in its entirety, the Commissioner finds that the Commission's decision is supported by sufficient credible evidence, and that respondent failed to establish that the decision is arbitrary, capricious, or contrary to law. *N.J.A.C.* 6A:4-4.1(a). The Commissioner further finds that the penalty of a reprimand was appropriate.

The emails at issue pertained to a time-sensitive facilities request by NFL Films to produce a television show at Bell Stadium, the Orange High School football facility, featuring two well-known former NFL players. NFL Films submitted the facilities request form to the district on September 30, 2020, and wanted to tape the show on October 5, 2020; however, the next regularly scheduled Board meeting was not until October 13, 2020. Therefore, the Board could not formally vote to approve the facilities request until after the filming was tentatively scheduled to take place. Consequently, the Board Superintendent emailed complainant, the Board President, on October 1, 2020, regarding the facilities request and asked him to advise whether the Board would "allow retroactive approval."

That same day, October 1, 2020, complainant forwarded the Board Superintendent's email to the Board members. This email explained to the Board members, among other things, that: (1) the facilities request form was submitted the day before, "well after our deadline to consider" a facilities request; (2) the Board attorney had already reviewed and approved related paperwork "for our consideration," including a Hold Harmless Agreement; and (3) NFL Films had agreed to make a $5,000 donation to the district, but needed to know by the next morning whether the Board anticipated approving the request. Complainant asked Board members to reply before the end of the evening only if they anticipated voting against the facilities request at their upcoming October 13, 2020, meeting. Later that evening, respondent copied and pasted complainant's email to the Board, sent it to the City Mayor, a City Attorney, and a City Councilwoman, and wrote: "I HAVE COPIED AND PASTED FROM MY BOARD EMAIL TO YOU . . . You should know the following."

The next day, October 2, 2020, the Board Superintendent forwarded an email to the Board Members from the district's athletics director. The email contained a message that the athletics director received from an NFL Films location scout sometime on October 1, 2020, confirming that the district would receive the $5,000 donation and thanking him for making the event possible. When forwarding this email to the Board Members, the Board Superintendent added his thanks to the Board members for their efforts. Respondent copied and pasted the contents of that email and sent it to the City Attorney later that evening.

In the end, none of the Board members objected to the facilities request on the evening of October 1, 2020, in response to complainant's email. The filming took place as planned on October 5, 2020, without incident, and the Board retroactively approved the facilities request at its meeting on October 13, 2020.

Subsequently, complainant filed a complaint with the Commission alleging, among other things, that respondent violated *N.J.S.A.* 18A:12-24.1(c), (e) and (g) of the Code by copying and pasting the emails at issue and sending the content to the three non-Board members.[1] The Commission found probable cause to credit the allegations and transmitted the matter to the Office of Administrative Law (OAL) for a contested hearing. After complainant presented his case-in-chief, counsel for respondent requested leave to file a motion for a directed verdict, which the Administrative Law Judge (ALJ) permitted but treated as a motion for summary decision.

[1] Because they are not challenged on appeal, the other allegations in the complaint that were dismissed by the Commission on June 28, 2022, are not discussed herein.

Upon review of the motion papers and complainant's opposition thereto, the ALJ concluded that summary decision was appropriate because none of the material facts were in dispute. Critically, the ALJ found as fact that respondent did indeed copy and paste the content of the two Board emails at issue and shared the content with the City Mayor, a City Attorney, and a City Councilwoman. The ALJ reasoned, however, that the email content was not confidential. Ultimately, the ALJ concluded that complainant had not demonstrated by a preponderance of evidence that respondent's actions violated the Code; accordingly, the ALJ granted respondent's motion for summary decision, and dismissed the complaint. The parties did not file exceptions.

Thereafter, the Commission adopted the ALJ's conclusion that respondent did not violate *N.J.S.A.* 18A:12-24.1(c). However, the Commission rejected the ALJ's conclusion that respondent did not violate *N.J.S.A.* 18A:12-24.1(e) and (g) and instead found that respondent did violate subsections (e) and (g). The Commission recommended the sanction of a reprimand for those violations.

Regarding the violation of subsection (e), which states that a Board member "will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board," the Commission found that respondent acted beyond the scope of his duties as a Board member by sending the content of the Board emails to non-Board members, and that said action had the potential to compromise the Board. Specifically, the Commission determined that respondent disseminated information he learned about solely through his position on the Board that had not yet been voted upon and revealed inner communications of the Board. Regarding the violation of subsection (g), which states in relevant part that a Board member "will hold confidential all matters pertaining to the

schools which, if disclosed, would needlessly injure individuals or the schools," the Commission found that by sending the content of the Board emails to non-Board members, respondent took action to disclose information regarding the facilities request that was not public as the Board had not yet voted on the request.

On appeal, respondent does not deny that he shared the content of the two Board emails pertaining to the facilities request with the non-Board members. However, he maintains that he neither violated *N.J.S.A.* 18A:12-24.1(e) nor (g). Initially, he argues that the Commission's finding that his actions had the potential to compromise the Board is unsupported by the record. He maintains that the content of the Board emails was not confidential. Furthermore, he asserts that the terms of the deal with NFL Films were settled before he forwarded the information to the non-Board members—that is, the information he disclosed was not deliberative. He also claims that the Commission's finding that the event had not been publicized is an assumption that is unsupported by the record.

In adjudicating appeals from decisions of the Commission, the Commissioner must "ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated that [the Commission] acted in a manner that was arbitrary, capricious, or contrary to law." *N.J.A.C.* 6A:4-4.1(a). The Commissioner finds that the Commission's determination that respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g) is supported by sufficient credible evidence in the record, and that respondent has not demonstrated that it was arbitrary, capricious, or contrary to law.

Beginning with subsection (e), "[f]actual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that the respondent . . . took action beyond the scope of [his] duties such that, by its nature, had the potential to compromise the district board of education . . . ." *N.J.A.C.* 6A:28-6.4(a)(5). Sufficient, credible evidence in the record establishes that respondent unilaterally and independently took private action beyond the scope of his duties as a Board member when he disseminated the email content about the facilities request to the non-Board members. *See Persi v. Woksa*, 2017 *N.J. Super.* Unpub. LEXIS 625, *7 (App. Div. Mar. 10, 2017) (finding that action taken by a board member that is beyond the scope of his authority and duties as a board member meets the definition of "private action" and is sufficient to demonstrate a violation of the Code). Respondent's actions had the potential to compromise the Board in numerous ways. For instance, the City officials could have attempted to prevent the event from taking place, thereby jeopardizing the donation promised to the district. Alternatively, the City officials could have shared information about the event with other members of the public, which could have attracted a large crowd at Bell Stadium during the height of the COVID-19 pandemic and/or caused NFL Films to reconsider its location for the show.

As for subsection (g), "[f]actual evidence of a violation of the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that the respondent[] took action to make public, reveal, or disclose information . . . that was otherwise confidential in accordance with policies, procedures, or practices." *N.J.A.C.* 6A:28-6.4(a)(7). Again, it is undisputed that respondent disclosed the email content to three non-Board members. Furthermore, the Commissioner has previously held that pre-decisional, deliberative material in Board emails is confidential. *Lynch v. Skowronski, East Greenwich Township Board of Education, Gloucester County*, Commissioner

Decision No. 284-20SEC (December 15, 2020), at 3-4; *see Skowronski v. Board of Education of the Township of East Greenwich*, 2024 *N.J. Super.* Unpub. LEXIS 69, *18-19 (App. Div. January 16, 2024) (citing with approval, in a related indemnification matter, the Commissioner's decision in *Lynch* regarding the confidentiality of pre-decisional, deliberative material in Board emails that contain "tentative thoughts, suggestions and questions [that] are part and parcel of the Board's overall deliberative process").

The October 1, 2020, email from complainant to the Board members regarding the facilities request is pre-decisional, deliberative, and therefore confidential under *Lynch*. It is pre-decisional in that, as of the writing of the email, it was not yet settled whether the Board would retroactively approve the facilities request. Indeed, complainant asked Board members to reply if they anticipated voting against the facilities request because NFL Films needed confirmation of their anticipated approval by the following morning. Additionally, complainant informed the Board members that the Board attorney had reviewed and approved related paperwork "for our consideration."

The clear intent of the October 1, 2020, email was to invite the Board members to deliberate, i.e., to consider their position regarding the facilities request. Had any of the Board members expressed an objection to the request that evening, the event might not have gone forward. Moreover, the fact that non-Board members, including the district athletics director and the NFL Films location scout, participated in negotiations regarding the event does not alter the Commissioner's conclusion that, under *Lynch,* the October 1, 2020, email that respondent shared was confidential. The email contained "tentative thoughts, suggestions and questions

[that] are part and parcel of the Board's overall deliberative process." *Skowronski,* at *18-19 (quoting *Lynch*, at 4).

Additionally, respondent's disclosure of the October 1, 2020, email to the Board members needlessly injured the schools. Exposing the Board's internal decision-making practices to the public negatively impacts the Board's ability to deliberate about the important issues before it with candor and honesty. *Lynch*, at 4. The Commissioner has previously held that "[t]his factor alone is sufficient to demonstrate the requisite injury" under *N.J.S.A.* 18A:12-24.1(g). *Ibid.* Thus, by sharing the content of the October 1, 2020, email with the non-Board members, respondent exposed the Board's pre-decisional, deliberative process regarding the facilities request and caused needless injury to the schools in violation of *N.J.S.A.* 18A:12-24.1(g).

Respondent further contends that if the Commissioner does not rule in his favor and instead agrees with the Commission that he violated the Code, then the matter should be remanded to the OAL to continue the contested hearing because respondent has not yet presented his case. The Commissioner disagrees. With the ALJ's permission, respondent opted to forgo the opportunity to finish the contested hearing and instead proceeded via motion for summary decision after complainant presented his case. Respondent argued to the ALJ that no genuine issues of material fact existed. If no genuine issues of material fact exist, then a hearing is unnecessary. *See Frank v. Ivy Club*, 120 *N.J.* 73, 98 (1990) ("[W]here no disputed issues of material fact exist, an administrative agency need not hold an evidential hearing in a contested case."). Whether respondent took private action that compromised the Board, and whether the email content he shared with non-Board members is confidential, are not factual questions. They are legal questions.

Finally, the Commissioner concurs with the Commission regarding the sanction imposed. In *Lynch*, at 4-5, the Commission issued a reprimand for a violation of *N.J.S.A.* 18A:12-24.1(g) when a board member inadvertently disclosed a Board email to a member of the public. Here, the disclosure was intentional. Furthermore, respondent violated both *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g). On balance, as noted by the Commission, the two emails disclosed pertained to a one-time event which fortunately took place without incident or disruption. For these reasons, a reprimand—the least severe penalty—is appropriate and reasonable under the circumstances.

Accordingly, respondent is hereby reprimanded as a school board member found to have violated the Code.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 20, 2024
Date of Mailing: February 22, 2024

[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.

Before the School Ethics Commission
OAL Docket No.: EEC-06483-22
SEC Docket No.: C98-21
Final Decision

Tyrone Jon Tarver,
Complainant

v.

Jeffrey Wingfield,
Orange Board of Education, Essex County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on December 24, 2021, by Tyrone Jon Tarver (Complainant), alleging that Jeffrey Wingfield (Respondent), a member of the Orange Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq*. More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code) in Counts 1-51.

At its meeting on June 28, 2022, and after reviewing Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and Complainant's response thereto, the Commission adopted a decision at its meeting on June 28, 2022, finding that the Complaint was timely filed, granting the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) in Counts 1-45 (including those already voluntarily withdrawn by Complainant), and denying the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) in Counts 46-51. The Commission also adopted a decision finding the Complaint not frivolous and denying Respondent's request for sanctions. Based on its decision, the Commission also directed Respondent to file an Answer to Complaint (Answer) as to the remaining allegations in the Complaint (Counts 46-51), and to transmit the above-captioned matter to the Office of Administrative Law (OAL) following receipt of the Answer, which he filed on July 18, 2022.

At the OAL, a hearing was held on January 30, 2023. Following the conclusion of Complainant's case-in-chief, Respondent requested leave to file a motion for Summary Decision, which the Administrative Law Judge (ALJ) granted. Thereafter, Respondent filed a motion for Summary Decision and the ALJ issued an Initial Decision on August 1, 2023. The parties did not file exceptions to the Initial Decision.

At its meeting on September 26, 2023, the Commission considered the full record in this matter. Thereafter, at its meeting on October 17, 2023, the Commission voted to modify the

Initial Decision by adopting the Initial Decision's conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c) but modifying the Initial Decision to find Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g). The Commission also voted to recommend a penalty of reprimand.

II. Initial Decision

This matter stems from a National Football League (NFL) initiative to film a show at Bell Stadium. On October 1, 2020, the Superintendent sent Complainant (Board President) an email regarding a "facilities request form" that NFL Films submitted and inquiring whether the Board will allow for retroactive approval. *Initial Decision* at 3. On the same date, Complainant forwarded the Superintendent's email to the Board and indicated:

> A facilities request form was submitted, but only yesterday, which is well after our deadline to consider a Facilities Request. In addition, a Hold Harmless Agreement, and other paperwork, were reviewed by Atty. Kleen, and she approved all of the paperwork for our consideration.
>
> A $5,000 donation to the district was also agreed upon by NFL Films.
> . . . NFL needs to know of our anticipated approval no later than tomorrow morning.
>
> Please do not reply to this email with "Yes" or "Absolutely" or any positive comments. I am doing my best to avoid this becoming a meeting via email.
>
> Please only reply if you anticipate voting "**NO**" for this retroactive Facilities Request Resolution during our October 13 Board Meeting. But I need any "**NO**" replies before the end of this evening.
>
> [*Id.* at 3-4.]

Also on the same date, Respondent copied and pasted Complainant's email and sent it to officials for the Township of Orange (Township), including the Mayor, counsel, and a Councilwoman, and added the text "I HAVE COPIED AND PASTED FROM MY BOARD EMAIL TO YOU . . . You should know the following." *Id.* at 4. At some point that day, the NFL Films location scout sent an email to the Board's Athletic Director to confirm the donation amount and thank him for the opportunity to use the stadium, which the Superintendent forwarded to the Board the following morning. *Id.* at 4-5. Respondent copied and pasted the email chain and sent it to the Township attorney. *Id* at 5. The NFL completed filming on October 5, 2020, and the Board retroactively approved the request on October 13, 2020. *Ibid.*

Respondent argues the content of the emails shared was not confidential because the information in the email was "public and not deliberated," and the Board had already decided on the date, location, hold harmless agreement and donation amount by October 1, 2020. *Id.* at 9-10. Complainant counters that the emails were not public, the matter was still under deliberation as of October 1, 2020, and the matter should have remained confidential until the Board voted on October 13, 2020. *Id.* at 9. Additionally, according to Complainant, Respondent's actions put the "public safety in 'jeopardy,'" as the Board was not publicizing the event due to COVID restrictions, and this could have negatively impacted the Board. *Ibid.*

As to the allegations of *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e), the ALJ asserts Complainant did not present any evidence other than his own testimony that Respondent's actions jeopardized the safety of the public or may have caused unwanted public reaction. *Id.* at 13. Therefore, the ALJ concludes violations of *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) have not been established. *Ibid.*

Regarding a violation of *N.J.S.A.* 18A:12-24.1(g), the ALJ contends the issue remains whether the information contained in the email that Respondent forwarded was (1) public, and (2) if not, whether the information contained in the email was deliberative. *Id.* at 14. According to the ALJ, the record reveals that the emails Respondent forwarded disclose that the parties negotiating the "facilities request form" were the NFL and the Athletic Director (not a Board member). Per the ALJ, as the negotiations for the "facilities request form" were not confined to the capacities of the Board, they were not confidential. *Id.* at 14-15. Moreover, the ALJ contends the information that was in the shared email was not confidential because it was not being deliberated by the time Respondent forwarded it to the Mayor, counsel and the Councilwoman on October 1. *Id.* at 15. The ALJ asserts the donation price, hold harmless agreement, and location for the request were already agreed upon, and the facts show the only thing needed was the Board's "anticipated approval" by October 2. *Id.* at 17. Therefore, the ALJ concludes the Board's "negotiative process" concerning the approval for the NFL filming was finalized on October 1, 2020, which was before the time Respondent forwarded the email from the Superintendent, so the alleged violation of *N.J.S.A.* 18A:12-24.1(g) should be dismissed. *Id.* at 17-18.

III. Analysis

Upon a careful, thorough, and independent review of the record, the Commission agrees with the ALJ that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), but finds Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g). As such, the Commission modifies the Initial Decision and recommends a penalty of reprimand.

Pursuant to *N.J.S.A.* 18A:12-24.1(c), board members must confine board action to "policy making, planning, and appraisal" and "frame policies and plans only after the board has consulted those who will be affected by them." The Commission finds Respondent's actions in copying and pasting from his Board email, while inappropriate, does not constitute Board action to effectuate policies and plans without consulting those affected by such policies and plans. As Complainant did not meet his burden of establishing that Respondent sought to effectuate policy, the Commission finds a violation of *N.J.S.A.* 18A:12-24.1(c) has not been established.

Pursuant to *N.J.S.A.* 18A:12-24.1(e), a board member must recognize that authority rests with the board and a board member shall not make any personal promises or take any action that may compromise the board. The ALJ found that Respondent did send the emails to the Township officials. *Initial Decision* at 4, n.3. In copying and pasting from his Board email and sending the information to Township officials, Respondent took action beyond the scope of his duties as a Board member that had the potential to compromise the Board. *See Arthur Jacobs v. Raymond Delbury, Sussex Wantage Regional Board of Education*, C44-07 (November 25, 2008) (finding a violation of *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g) and *N.J.S.A.* 18A:12-24.1(i) when a board member posted an email sent to the board "word for word" on an internet chat room and bulletin board). The scheduled filming had not been publicized, and Respondent took it upon himself to spread information that he learned about solely because of his position as a Board member. Revealing the inner communications of the Board is not only inappropriate but, by its nature, has the potential to compromise the Board. Accordingly, the Commission finds Respondent violated *N.J.S.A.* 18A:12-24.1(e).

As set forth in *N.J.S.A.* 18A:12-24.1(g), Board members must "hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools." Establishing a violation of *N.J.S.A.* 18A:12-24.1(g), "shall include evidence that the respondent(s) took action to make public, reveal, or disclose information that was not public under any laws, regulations, or court orders of this State, or information that was otherwise confidential in accordance with policies, procedures, or practices." *N.J.A.C.* 6A:28-6.4(a)(7). The Commission finds by copying and pasting from his Board email, Respondent took action to make public, reveal or disclose information that was not public. Contrary to the ALJ's conclusion, the Commission finds the matter was not public when Respondent shared the Board correspondence. The October 1 email makes clear that the Board had not yet voted on the matter as it provides Board members the opportunity to indicate whether they "anticipate" voting against the "retroactive" facilities request. The NFL filming did not occur until October 5, 2020, and the Board did not officially vote on the matter until October 13, 2020. *Initial Decision* at 5. Moreover, Complainant sent the email at 5:39 p.m. on October 1 and asked the Board members to reply if they intended to vote "no" by the end of the evening. Respondent then forwarded the October 1 email at 9:20 p.m. that same evening to the Township officials, followed by a sending a second email to Township officials on October 2 that had been sent to the Board from the Superintendent. The testimony cited by the ALJ shows that Board members could have weighed in on the proposal until the time the filming occurred on October 5. *Initial Decision* at 6-7. The fact that no further negotiations occurred does not mean that Respondent did not disclose information that was still being considered by the Board.

Contrary to the ALJ's conclusion, the Commission finds *James Lynch v. Michael Skowronski, East Greenwich Township Board of Education*, Commissioner's Decision No. 284-20SEC (December 15, 2020) instructive in this matter. There, the Commissioner of Education (Commissioner) found a violation of *N.J.S.A.* 18A:12-24.1(g) when a board member inadvertently shared an email with a parent, which discussed Board business. The Commissioner noted that the email contained deliberative material because it contained "tentative thoughts, suggestions, and questions," which are all part of the deliberative process. *Id.* at 3-4. The

Commissioner also found that the disclosure of such deliberative material needlessly injures the schools. *Id.* at 4. Here, Respondent intentionally shared Complainant's email proposing how to handle the approval of the NFL filming with Township officials mere hours after receiving it. Certainly, Complainant's email could fall under the realm of deliberative material as Complainant made a suggestion to the Board as to the Board's action, and when Respondent shared the email, it was not clear whether the Board agreed or disagreed with the proposed plan. As such, the Commission finds Respondent violated *N.J.S.A.* 18A:12-24.1(g).

With respect to the violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g), the Commission finds a penalty of **reprimand** is appropriate. Copying and pasting directly from the Board email and sending its non-public contents to public officials is not a de minimis action. *See Lynch, supra,* (issuing a penalty of reprimand for a violation of *N.J.S.A.* 18A:12-24.1(g) when a board member inadvertently disclosed a Board email to a member of the public); *Jacobs, supra* (recommending a penalty of censure for violations of *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g) and *N.J.S.A.* 18A:12-24.1(i) resulting from the posting of a board email on NJ.com, when the respondent had previously been censured for ethics violations). Respondent's actions not only revealed Board communications regarding a suggested Board action, but also made public an event that had not yet been publicized. However, given that the disclosure was limited to two emails about a one-time event, the Commission recommends a penalty of reprimand for the violation.

IV. Decision

For the aforementioned reasons, the Commission modifies the Initial Decision of the OAL. Specifically, the Commission adopts the Initial Decision's conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c). However, the Commission modifies the Initial Decision to find Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g) and recommends a penalty of **reprimand** for the violation.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* **within thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: October 17, 2023

Resolution Adopting Decision in Connection with C98-21

Whereas, at its meeting on June 22, 2022, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Initial Decision dated August 1, 2023; and

Whereas, the ALJ found that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(g), and ordered the dismissal of the above-captioned matter; and

Whereas, the parties did not file exceptions to the Initial Decision; and

Whereas, at its meeting on September 26, 2023, the Commission reviewed the record in this matter, and discussed adopting the Initial Decision's conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c) but modifying the Initial Decision to find Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g), and recommending a penalty of reprimand; and

Whereas, at its meeting on October 17, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 26, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on October 17, 2023.

Brigid C. Martens, Acting Director
School Ethics Commission

118-24

New Jersey Commissioner of Education

Final Decision

L.G., on behalf of minor child, D.G.,

Petitioner,

v.

Board of Education of the West Morris Regional High School District, Morris County,

Respondent.

Synopsis

Pro se petitioner L.G. sought permission to have her son, D.G., a junior at West Morris Central High School, register for IB-HL Calculus/Analysis 3 for the 2023-2024 school year. "IB" in the course name stands for "International Baccalaureate." Both the respondent Board's Program of Studies and the International Baccalaureate Organization mandate that IB/HL Calculus 3 be offered solely to students in Grade Twelve (12) who have satisfied the necessary prerequisites. Petitioner alleged that the Board's refusal to permit D.G. to register for the class was based on his age and therefore in violation of *N.J.A.C.* 6A:7-1.7(b)(2). A hearing in the matter was held on September 28, 2023 and the record closed thereafter on December 22, 2023.

The ALJ found, *inter alia*, that: school board decisions are entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was arbitrary, capricious or unreasonable; where board actions are challenged, the petitioner bears the burden of proof to show that the Board's actions were unlawful, arbitrary, capricious or unreasonable; in matters involving the exercise of a local board of education's discretion, the Commissioner's role is not to substitute his judgment for that of the board, but to determine whether there was a reasonable basis for the board's conclusions; here, petitioner's reliance on *N.J.A.C.* 6A:7-1.7(b)(2) to support her argument that the Board discriminated against D.G. based on his age when they denied his requested placement in IB-HL Calculus/Analysis 3 as a junior is without merit; the Board provided a rational basis for its policy to limit enrollment in IB/HL Calc 3 to twelfth (12^{th}) grade students only; D.G. was entitled to take the course in the 2023-2024 school year, but D.G. and his family chose to enroll in "senior option" for this year, effectively negating his ability to enroll in the desired math course. The ALJ concluded that the Board's actions were not arbitrary, capricious, or unreasonable. Accordingly, the petitioner's appeal was denied.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, for the reasons stated therein. The petition was dismissed.

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

118-24
OAL Dkt. No. EDU 03332-23
Agency Dkt. No. 52-3/23

New Jersey Commissioner of Education

Final Decision

L.G., on behalf of minor child, D.G.,

Petitioner,

v.

Board of Education of the West Morris Regional High School District, Morris County,

Respondent.

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 that the West Morris Regional High School District Board of Education's decision to deny D.G. the opportunity to enroll in IB-HL Calculus/Analysis 3 – a course limited to twelfth-grade students – as an eleventh-grade student was not arbitrary, capricious, or unreasonable and does not violate *N.J.A.C.* 6A:7-1.7(b)(2).

Accordingly, the OAL decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 20, 2024
Date of Mailing: February 22, 2024

[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 03332-23
AGENCY DKT. NO. 52-3/23

L.G. ON BEHALF OF MINOR CHILD, D.G.,
Petitioner,
v
WEST MORRIS REGIONAL HIGH SCHOOL DISTRICT, BOARD OF EDUCATION, MORRIS COUNTY,
Respondent.

L.G., petitioner, pro se

Danielle A. Panizzi, Esq., for respondent, (Cleary, Giacobbe, Alfieri & Jacobs, LLC)

Record Closed: December 22, 2023 Decided: January 22, 2024

BEFORE **ELISSA MIZZONE TESTA,** ALJ:

STATEMENT OF THE CASE

Petitioner, L.G., seeks to have the West Morris Regional High School District, Board of Education, Morris County ("BOE", "WMRHSD" or "respondent") permit her son D.G. to register for the next Calculus class in his pathway for the 2023-2024 school

year; in particular, IB/HL Calculus/Analysis 3 (also referred to as "IB/HL Calculus III and IB/HL Calc III"). Petitioner alleges that the BOE's refusal to permit D.G. to register for the class is based on his age and thus, is in violation of N.J.A.C. 6A:7-1.7(b)(2). "IB stands for International Baccalaureate".

PROCEDURAL HISTORY

On or about February 26, 2023, petitioner L.G. on behalf of her son, D.G. filed a *pro se* Petition with the New Jersey Department of Education ("NJDOE") Office of Controversies and Disputes seeking that the respondent should allow D.G. to register for the next math class in his pathway IB/HL Calculus/Analysis 3, for the 2023-2024 school year, recognizing that D.G. has completed the prerequisite course and has teacher recommendation to move on to IB/HL Calculus/Analysis 3 for the 2023-2024 school year, and WMRHSD should recognize that prohibiting any general education student from registering for a class due to age is a violation of New Jersey Administrative Code 6A:7-1.7(b)(2). Respondent filed an Answer to the Petition on April 12, 2023. The matter was transmitted to the Office of Administrative Law ("OAL") on April 13, 2023. A hearing was conducted on September 28, 2023. Post-hearing summation briefs were submitted by the parties and the record was closed based on the last submission date of December 22,2023.

FINDINGS OF FACT

Based upon the testimonial and documentary evidence presented at the hearing, the following facts are undisputed and thus, I **FIND**:

The District's principal place of business is 10 South Four Bridges Road Chester, New Jersey 07930. Petitioner L.G., on behalf of minor child D.G., resides at 186 Old Turnpike Road, Port Murray, New Jersey 07865. D.G. is currently sixteen (16) years old and is an eleventh (11^{th}) grade student at West Morris Central High School. During his ninth (9^{th}) grade year in the 2021-2022 school year, D.G. successfully completed Geometry Honors and Algebra II Honors at West Morris Central High School. D.G. also completed College Calculus I through the County College of Morris Challenger

Program. He successfully passed an Accuplacer examination allowing him to skip Pre-Calculus Honors following the completion of the College Calculus I course. Accordingly, D.G. was placed in B.C. Calculus for the 2022-2023 school year and successfully completed the course. Because both the District Program of Studies and the International Baccalaureate Organization mandates that IB/HL Calculus III is offered to Grade Twelve (12) students only, the District denied D.G.'s request to enroll in the course as a Grade Eleven (11) student. D.G.'s decision to enroll in the District's "senior option" track is at his sole discretion. (Emphasis Added).

L.G. is D.G.'s mother and testified on her son's behalf. D.G. is currently a junior at WMRHSD. L.G. is a science teacher in the District. She testified with respect to D.G.'s academic trajectory in math courses at Central. Specifically, D.G. completed Geometry Honors and Algebra II Honors in ninth (9^{th}) grade. He also completed College Calculus I in ninth (9^{th}) grade via enrollment through the County College of Morris Challenger Program. Due to his mastery of these subjects, the District permitted D.G. to skip Pre-Calculus Honors after he successfully passed an end-of-course test.

Accordingly, D.G. took BC Calculus in tenth (10^{th}) grade for the 2022-2023 school year. D.G. completed the course with a 98% average. L.G. testified that D.G. would like to become a quantum physicist. She further testified that the most competitive universities expect their applicants to have completed the highest level of course work in their school districts with respect to physics and mathematics. Because the highest level of mathematics that the District offers with respect to mathematics is IB/HL Calculus III, she requested that D.G. be placed in that course for his eleventh (11^{th}) grade year. She testified that the District did not accept her request because the District offers IB/HL Calc III to Grade 12 students only. She testified that she disagreed with the District's decision to deny D.G.'s enrollment in the course, especially because he completed BC Calculus already, which is the prerequisite course for IB/HL Calc III. In her opinion, IB/HL Calc III should be offered to any general education student who has successfully completed the requisites, and "age should not matter." (Emphasis added). She testified that D.G. will be participating in "senior option" for the 2024-2025 school year, which means that he will be attending four (4) classes in the morning at Central and attending County College of Morris in the afternoons and evenings. She

testified that because he is exercising this option, he will not have room in his high school schedule to take a math class in twelfth (12th) grade. L.G. testified that this has "set up a hardship situation" because he will not be able to be an "ideal candidate" for ivy league schools without taking IB/HL Calc III. (Emphasis added). It is important to note that it is D.G.'s choice to participate in the senior option route; and at no time did the District advise or instruct D.G. to do so.

L.G. also testified that because D.G. is not a student in the IB program, the IB rules requiring that the IB/HL Calc III examination be taken in a student's twelfth (12th) grade year should not apply to D.G. She testified that the District's limits on remote links for students to take classes virtually in only specific circumstances are "age" and "socioeconomic" discrimination. L.G. testified that the fact that the IB/HL Calc III course is offered in-person at Mendham High School, the other District high school and not Central is a form of discrimination biased against those of us who cannot afford to reside in the more affluent zones of the District.

L.G. further conceded and stipulated to the fact that there is a difference between a "grade restriction" with respect to academic course offerings and an "age restriction." (Emphasis added). She confirmed that D.G. is sixteen years old, and the District has never relayed to her that he cannot take IB/HL Calc III due to the fact that he is sixteen- but rather because he is in Grade 11. She further admitted that she understood different grade levels encompass children of all different ages. For example, a 12th grade class can consist of ages from 16 through 19.

Additionally, with respect to D.G.'s courses and exercising his "senior option," L.G. testified that the District did not tell her specifically that D.G. would not be able to take IB/HL Calc III during his twelfth (12th) grade year, but rather, D.G. chose other classes aside from Calc III for his four District courses. She testified that if D.G. chose to take Calc III, it would eliminate another course selection that he wanted to take. (1Tr. 39:1-25). Specifically, she stated:

> You're right that was our choice that the four classes that we have potentially picked definitely was our choice, right. And we chose not to pick the Calculus III for senior year.

(1Tr. 39:11-19). (Emphasis added).

The undersigned followed the District's cross-examination with several follow-up questions for purposes of clarification and completeness of the record.

> Q. Okay. So, the only reason why you're now seeking for your son to be in this AB Calculus III class which is only offered for 12th grades, while you're now seeking it for the 11th grade is because you've chose and your son has chosen to do the senior option, correct?
>
> A. Correct, yes. It sets up a hardship to where he can't get into it his 12th grade year.
>
> Q. Well, it's only a hardship because you chose a different pathway for your son, correct?
>
> A. Oh, I see. I see, okay.
>
> Q. Yes?
>
> A. Yes.

(1Tr. 43: 1-16).

Melissa Heike testified on behalf of the respondent. On July 1, 2023, Heike was appointed and continues to be employed as the District's Assistant Superintendent of Curriculum and Instruction. Before being appointed as the Assistant Superintendent of Curriculum and Instruction, Heike was employed as the District's Supervisor of Mathematics, Assistant Principal, and Supervisor of Curriculum, Instruction, and Evaluation. Throughout these roles, Heike has had continued oversight of the District's Math Department. As Math Supervisor, she was responsible for overseeing the mathematics curriculum and creating the District's Program of Studies, among other

roles. As Assistant Superintendent of Curriculum and Instruction, she oversees curriculum, professional development, and evaluation of all of the District's departments and teachers. She is a certified teacher of Mathematics, and has a New Jersey State Supervisor's Certificate, New Jersey State Principal's Certificate, and a provisional certificate for Chief School Administrator.

Heike testified that D.G. is currently a junior at West Morris Central High School for the 2023-2024 school year. Because the District is a regional high school district, the District has two high schools - Central and Mendham. Heike first became familiar with D.G. in November of 2021 of his freshman year when a guidance counselor reached out to her with respect to D.G.'s math placement. At the time, D.G. was an "incredibly bright student" enrolled in Geometry Honors and Algebra II Honors. (Emphasis added). L.G. had reached out to the District requesting that D.G. be placed in BC Calculus for his tenth (10^{th}) grade year. (1Tr. 51:1-18). The District permitted D.G. to take the required Accuplacer Assessment to test out of pre-calculus for tenth (10^{th}) grade. He achieved the required score and was accordingly placed into Advanced Placement Calculus BC for tenth (10^{th}) grade. Heike testified that the College Board, which governs Advance Placement ("AP") classes, does not have a grade restriction for the course. So, D.G. was able to take the class as a sophomore.

Heike next spoke with L.G. in December 2022 of D.G.'s sophomore year. Heike advised L.G. that because IB/HL Calc III is only offered to twelfth (12^{th}) grade students, the next appropriate course for D.G. would be placement in AP Statistics. She testified that because IB/HL Calc III is an International Baccalaureate class, the International Baccalaureate Organization mandates that the course be taken in the student's senior year. She testified that the Grade 12 Restriction has nothing to do with age, but it is rather defined by the number of credits a student has accumulated and their anticipated graduation year. She testified that pursuant to the West Morris Program of Studies, students must have completed BC Calculus first and are planning to take the IB exam in HL math. (R-2). Heike testified that IB/HL Calc III has been limited to Grade 12 students in the Program of Studies since the 2020-2021 school year when it was first offered. (R1 through R-5). She testified that because IB/HL Calc III is a higher-level course, it is completed in a two (2) year sequence. She testified that the 2019-2020

school year was the first year the IB/HL Calc III course appeared in the Program of Studies - when D.G. was in the seventh (7th) grade. She testified that at that time, D.G. was not even on the path for taking the IB/HL Calc III course, so he was not affected by the Grade 12 restriction.

Heike further testified that in February of 2023 of D.G.'s tenth (10th) grade year, L.G. reached out to Assistant Superintendent Ed Braun, and other District personnel including Heike and former Superintendent of Schools Michael Ben-David again respect to D.G.'s math placement for his junior year via e-mail. (P-7). She discussed that the members of the District's Administration determined through a three-pronged approach if D.G. could take the class remotely via the course offered at Central High School during his junior year. The District first assessed whether D.G. needed the course as a graduation requirement. D.G. had already completed his math requirements. The District then assessed whether IB/HL Calc III was a program requirement that he could not fulfill at Central Highschool. Since D.G. is not in the IB program, this reasoning did not apply. Finally, the District assessed whether D.G. had exhausted all of his course options available in person: he did not - as he had not yet taken AP statistics. She testified that absolutely none of the District's reasoning for D.G.'s math placement had to do with his age. He has always had and continues to have, the option to take the course in twelfth (12th) grade. She testified that D.G. would be able to take the class virtually during twelfth (12th) grade because he would then have exhausted all of his course offerings in math.

Heike testified that with respect to D.G.'s decision to exercise his "senior option" for twelfth (12th) grade, there may be scheduling concerns that he would need to prioritize which classes are important to him to take - since you can only take four (4) classes within the District. She testified that she has seen scenarios where students must choose between courses that are scheduled during the same time period.

It is necessary for me to assess and weigh the credibility of the witnesses for the purposes of making factual findings as to the disputed facts. Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in

which it "hangs together" with the other evidence. Carbo v. Unites States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A trier of fact may reject testimony as "inherently incredible," and may also reject testimony when "it is inconsistent with other testimony or with common experience" or it is "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, "[t]he interests, motive, bias or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts, and must simply be a reasonable one. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

In evaluating the testimony and evidence, I found L.G. and Heike to be forthright and credible witnesses. They both gave detailed, candid, and sincere testimony regarding their knowledge of the issue, and which I accept as **FACT**.

LEGAL DISCUSSION AND CONCLUSION

In general, a board of education's actions are entitled to a presumption of lawfulness and good faith... Where board actions are challenged, the challenger bears the burden of proving that such actions were unlawful, arbitrary, capricious or unreasonable. Schuster v. Bd. of Educ. Montgomery Twp., 96 N.J.A.R.2d (EDU) 670, 676 (citing Schnick v. Westwood Bd. of Educ., 60 N.J. Super. 448 (App. Div. 1960, and Quinlan v. North Bergen Bd. of Educ., 73 N.J. Super. 40, 46 (App. Div. 1962)). This standard has been defined by the New Jersey courts as follows:

> In the law, arbitrary and capricious means having no rational basis. ... Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where

> there is no room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached . . . Moreover, the court should not substitute its judgement for that of an administrative or legislative body if there is substantial evidence to support the ruling. [Piccoli v. Bd. of Educ. of Ramapo Indian Hills Regional School District, OAL Dkt. EDU 1839-98 (January 22, 1999 (citing, Bayshore Sewage Co. v. Dept. of Envir. Protection, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff'd 131 N.J. Super. 37 (App. Div. 1974) (emphasis added).

Absent a clear showing of abuse of discretion, the Commissioner will not substitute his own judgment for that of the Board of Education. Massaro v. Bd. of Educ of the Borough of Bergenfield, 1965 S.L.D. 84, 85 In Kopera v. Bd. of Educ. of West Orange, 60 N.J. Super. 288, 294 (App. Div. 1960the Appellate Division stated the well-established rule that action of the local board [of education] which lies within the area of its discretionary powers may not be upset unless patently without rational basis or induced by improper motives. See also, G.M. v. Roselle Park Borough Bd. of Educ., 95 N.J.A.R.2d (EDU) 107, 109 (where the Commissioner adopted the decision of the ALJ when in a challenge to board action, the ALJ stated, it is the management prerogative of boards of education that will not be usurped or assumed by the Commissioner of Education absent a definitive showing of bad faith or arbitrary actions taken in bad faith without a rational basis.)

As long as the record reflects a rational basis for the action, as well as an absence of bad faith, the board's action shall be upheld. See Red Bank Teachers Ass'n v. Bd. of Educ. of Red Bank, OAL Dkt. EDU 5328-80 (April 30, 1981) adopted Comm. Ed. (June 15, 1981 (where the ALJ upheld a board's approval of a new Mastery Learning curriculum as a valid exercise of managerial prerogative that was rationally determined.); G.M., 95 N.J.A.R. 2d (EDU) 107 (where the ALJ found the board's decision to change geographic boundaries for kindergarten pupil placement, with a goal of evenly distributing the pupils at different schools within the district, to be a reasonable exercise of authority).

To support her claims that the District somehow discriminated against D.G. with respect to his math placement, Petitioner relies on N.J.A.C. 6A:7-1.7(b)(2) which provides, in pertinent part:

> Each district board of education shall ensure the school district's curriculum and instruction are aligned to the New Jersey Student Learning Standards. The district board of education also shall ensure its curriculum and instruction address the elimination of discrimination by narrowing the achievement gap, by providing equity in educational programs, and by providing opportunities for students to interact positively with others regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, by:
>
> ... 2. Ensuring courses shall not be offered separately on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation gender, religion, disability, or socioeconomic status.

N.J.A.C. 6A:7-1.7(b)(2).

Although petitioner claims that the District's decisions with respect to D.G.'s math placement constitute "age discrimination," the District provided sound, rational bases at hearing to support its choice to limit IB/HL Calc III to twelfth (12th) grade students in its Program of Studies. Indeed, Heike testified that the District must adhere to the protocols and regulations of the International Baccalaureate Organization, which mandates that IB/HL Calc III be taken in a student's senior year. Most importantly, the petitioner conceded and stipulated to the fact that there is a difference between a "grade restriction" with respect to academic course offerings and an "age restriction". Indeed, D.G. is sixteen (16) years old, and the District has never relayed to the petitioner that he cannot take IB/HL Calc III due to the fact that he is sixteen. Rather, he simply must wait - just as every other student in the District irrespective of their age- to complete the course during his twelfth (12th) grade year. To wit, both petitioner herself and Heike testified that the District has never communicated that D.G. is prohibited from taking the course due to his age. Moreover, the petitioner's claims that D.G. was thwarted from his pathway to take the course during his eleventh (11th) grade year is without merit.

Heike testified that the 2019-2020 school year was the first year the IB/HL Calc III course appeared in the Program of Studies - when D.G. was in the seventh (7th) grade - well before D.G. was on the path to taking IB/HL Calc III.

Heike's testimony further demonstrated the District's rational basis for denying petitioner's request for D.G. to enroll in IB/HL Calc III during his junior year. Through her testimony, Heike explained that although D.G. attends West Morris Central High School, D.G. IB/HL Calc III is offered virtually at West Morris Mendham High School. Aside from the fact that IB/HL Calc III is limited to twelfth (12th) grade students, the District used a three-pronged approach to reason that: 1) there was no imminent need for D.G. to be enrolled in the course for junior year as he has already completed his math requirements; 2) D.G. is not enrolled in the IB program - and thus, he was not required to be enrolled in course at Central to meet IB program requirements; and 3) D.G. had not exhausted all of his in-person math requirements, as he did not yet take AP Statistics. Petitioner's "age discrimination" claims are baseless in fact. Moreover, she unfairly presumes that the District's exercise of its legitimate managerial prerogatives is prejudicial. Although petitioner claims that the District's decision to limit IB/HL Calc III to twelfth (12th) grade students poses a hardship to D.G. because he will only be able to take four (4) courses in-person at the District next year, it is of no moment to the District that D.G. decided to enroll in "senior option" for the 2023-2024 school year. It is not disputed that West Morris is an extremely competitive school district, and many students are faced with difficult decisions with respect to course scheduling and prioritizing certain classes to appeal to universities as they move forward in their respective academic careers.

I **CONCLUDE** that petitioner failed to present evidence that the District acted in violation of N.J.A.C. 6A:7-1.7(b)(2) with respect to D.G.'s math placement. The District's determination to limit the course to Grade Twelve (12) students and thereby deny D.G.'s enrollment in the course for his Grade Eleven (11) year is not arbitrary, unreasonable, or capricious. D.G. may take the course in the 2023-2024 school year.

ORDER

Based on the foregoing, it is hereby **ORDERED** that petitioner's appeal is **DENIED**.

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 22, 2024

DATE

ELISSA MIZZONE TESTA, ALJ

Date Received at Agency: January 22, 2024

Date Mailed to Parties: January 22, 2024

sej

APPENDIX

LIST OF WITNESSES

For Petitioner:

L.G.

For Respondent:

Melissa Heike

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

None.

For Respondent:

R-1 Page 35 of the 2023-2024 Program of Studies

R-2 Page 38 of the 2022-2023 Program of Studies

R-3 Page 40 of the 2021-2022 Program of Studies

R-4 Page 40 of the 2020-2021 Program of Studies

R-5 Page 39 of the 2019-2020 Program of Studies

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OAL Dkt. No. EDU 13777-15
Agency Dkt. No. 209-8/15

New Jersey Commissioner of Education

Final Decision

Atlantic City Education Association and
Kelley Williams,

Petitioners,

v.

Board of Education of the City of Atlantic City,
Atlantic County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL), dismissing the petitioners' appeal for petitioner Williams' failure to appear at a scheduled ZOOM hearing before the Administrative Law Judge (ALJ) on January 25, 2024, have been reviewed and considered.

Petitioners, the Atlantic City Education Association and Kelley Williams, alleged that respondent, the Atlantic City Board of Education (BOE), violated Williams' tenure rights under *N.J.S.A.* 18A:17-2 by terminating her employment pursuant to a reduction in force which occurred on June 30, 2015. The petition of appeal in this matter was filed with the Commissioner in August 2015 and transmitted to the Office of Administrative Law as a contested case in September 2015.

After a lengthy delay and lack of participation by petitioner Kelley Williams, the Administrative Law Judge (ALJ) scheduled the matter for a Zoom hearing on January 25, 2024. Williams was properly notified of the hearing multiple times. None of the regular mailings to her were returned as undeliverable by the United States Post Office. The appeal has been pending for approximately seven years and Williams has had only sporadic contact with her attorney during the pendency of this matter.

The ALJ concluded that, pursuant to *N.J.A.C.* 1:1-14.4(a), the petitioner has abandoned her appeal by failing to participate in the hearing scheduled for January 25, 2024. Accordingly, the ALJ determined that the matter should be dismissed.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 1, 2024
Date of Mailing: March 6, 2024

[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
DISMISSAL
OAL DKT. NO. EDU 13777-15
AGENCY DKT. NO. 209-8/15

ATLANTIC CITY EDUCATION ASSOCIATION, ON BEHALF OF ITSELF, AND ON BEHALF OF KELLEY WILLIAMS, AND KELLEY WILLIAMS, INDIVIDUALLY,
Petitioners,
v.
BOARD OF EDUCATION OF THE CITY OF ATLANTIC CITY, ATLANTIC COUNTY,
Respondent.

Jason E. Sokolowski, Esq., for petitioners (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys)

Tracy L. Riley, Esq., for respondent (Law Offices of Riley and Riley, attorneys)

Record Closed: January 25, 2024 Decided: February 5, 2024

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioners, the Atlantic City Education Association and Kelley Williams, allege respondent, the Atlantic City Board of Education (BOE), violated Ms. Williams' tenure rights under N.J.S.A. 18A:17-2 by terminating her employment pursuant to a reduction in force which occurred on June 30, 2015. At issue is whether Ms. Williams' tenure rights were violated.

PROCEDURAL HISTORY

This matter arose with the filing of a petition of appeal with the Commissioner of Education (the Commissioner) on August 5, 2015. The BOE filed its answer on September 4, 2015. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on September 9, 2015.

On December 23, 2019, Administrative Law Judge John S. Kennedy issued a Letter Order denying respondent's Motion for Summary Decision. After Judge Kennedy's appointment to the Judiciary of the Superior Court, the matter was assigned to me on or about July 29, 2021.

After conducting numerous telephone conferences with the attorneys and giving multiply opportunities to Ms. Williams to participate, I scheduled the matter for a hearing, via Zoom platform, on January 25, 2024. Ms. Williams failed to appear.

FACTUAL FINDINGS

I **FIND t**he following as **FACTS:**

After a lengthy delay and lack of participation by petitioner, Kelley Williams, this matter was scheduled for a Zoom hearing on January 25, 2024, at 9:30 a.m. Petitioner was notified of the hearing by her attorney, Mr. Sokolowski, by regular mail, dated November 29, 2023. On November 30, 2023, Mr. Sokolowski provided her with instructions on how to join the Zoom proceeding. In his correspondence, Mr. Sokolowski

advised Ms. Williams that her appeal would be dismissed if she failed to participate in the hearing.

At the hearing, Mr. Sokoloski advised me that he is satisfied that his contact information for Ms. Williams is correct. Over the course of the last four years, Mr. Sokolski has had telephone conversations with Ms. Williams about the information he needed to proceed with her appeal. Mr. Sokolski represented that Ms. Williams understood her obligations.

On January 24, 2024, Mr. Sokolowski sent an email notification to Ms. Williams reminding her to appear at today's hearing. Ms. Williams failed to respond and failed to appear.

None of the regular mailings to Ms. Williams were returned as undeliverable by the United States Post Office. This appeal has been pending for approximately seven years and Ms. Williams has only made sporadic contact with her attorney, Mr. Sokolowski.

Ms. Williams has abandoned her appeal by failing to participate in the hearing scheduled for January 25, 2024, without good cause.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to N.J.A.C. 1:1-14.4(a),

> If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, . . . direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

This matter was scheduled for a hearing via Zoom on January 25, 2024, at 9:30 a.m. Petitioner was given notice of the hearing date and time by her attorney. Petitioner did not appear for the Zoom hearing.

Accordingly, I **CONCLUDE** that despite receiving appropriate notice, Ms. Williams failed to appear at the hearing scheduled for January 25, 2024. Therefore, the matter should be dismissed as the petitioner has abandoned her appeal.

ORDER

It is **ORDERED** that the Clerk return this matter to the Commissioner of the Department of Education for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

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.

Kathleen M. Calemmo

February 5, 2024
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/tat

123-24

New Jersey Commissioner of Education

Decision

Richeall Kennedy,

Petitioner,

v.

Board of Education of the Passaic Valley Regional High School District No. 1, Passaic County,

Respondent.

Synopsis

Petitioner – a tenured science teacher employed since 2005 by the respondent Board's school district – challenged the Board's reduction in her salary as a violation of her tenure rights under *N.J.S.A.* 18A:28-5. The Board initially contended that the appeal should be dismissed as it is strictly a contractual matter that is pending in other forums. After jurisdiction was decided in favor of the petitioner, the parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute here, and the matter is ripe for summary decision; the petitioner has been employed under tenure by the Board since 2005; during the entire 2020-2021 school year, the petitioner was approved to be absent from work for legitimate Covid-related reasons; as a result of her absence she was not advanced to the next step on the district's salary guide upon her return to work in 2021-2022; the issue herein stems from the Board's adoption of a new Collective Bargaining Agreement (CBA), with associated salary guide, covering 2022-2024; the new guide reduced the salary for petitioner's salary step; petitioner alleged under *N.J.S.A.* 18A-25 et. seq. that the Board impermissibly reduced her compensation in violation of the tenure laws by paying her the reduced salary step included in the 2022-2024 salary guide. The ALJ concluded that petitioner's tenure rights were violated when the Board reduced her salary upon her return to work in 2021-2022, which is prohibited by the tenure laws. Accordingly, the ALJ granted summary decision in favor of petitioner and denied the Board's motion for summary decision.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion, and adopted the Initial Decision as the final decision is this matter. The Commissioner directed the Board to immediately restore petitioner's salary to her October 2021 level of $114,251, and to compensate petitioner for the difference between the reduced salary she has received under the new salary guide since November 2021 and her prior salary.

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.

123-24
OAL Dkt. No. EDU 01309-22
Agency Dkt. No. 17-2/22

New Jersey Commissioner of Education

Final Decision

Richeall Kennedy,

Petitioner,

v.

Board of Education of the Passaic Valley Regional High School District No. 1, Passaic County,

Respondent.

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 that the respondent Board unlawfully reduced petitioner's salary in violation of *N.J.S.A.* 18A:6-10 and *N.J.S.A.* 18A:28-5. *See Cohen v. Board of Education of the Borough of South River, Middlesex County*, 94 *N.J.A.R.2d (EDU)* 242 (Comm'r Jan. 28, 1994) (holding that *N.J.S.A.* 18A:6-10 and *N.J.S.A.* 18A:28-5 prohibit boards of education from placing an employee at a step on a new salary guide which reduces their salary from its previous level).

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner's motion for summary decision is granted, and the Board's motion for summary decision is hereby denied. The Board is directed to immediately restore petitioner's salary to

her October 2021 level of $114,251, and to compensate petitioner for the difference between the reduced salary she has received under the new salary guide since November 2021 and her prior salary.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 1, 2024
Date of Mailing: March 6, 2024

[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 01309-22
AGENCY DKT. NO. 17-2/22

RICHEALL KENNEDY,
Petitioner,
v.
PASSAIC VALLEY REGIONAL HIGH SCHOOL,
DISTRICT NO. 1 BOARD OF EDUCATION,
PASSAIC COUNTY,
Respondent.

Richard A. Friedman, Esq., for petitioner (Zazzali, Fagella Nowak Kleinbaum & Friedman, attorneys)

Raymond B. Reddin, Esq., for respondent (Reddin Masri, LLC, attorneys)

Record closed: December 18, 2023 Decided: January 24, 2024

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, a science teacher with the Passaic Valley Regional High School (Respondent or District), brings this appeal challenging a reduction in salary as a violation of her tenure rights. Respondent contends the appeal should be dismissed as it is strictly

a contractual matter, which is pending in the form of a grievance filed with the Public Employees Retirement Commission and in a separate action pending in Superior Court.

FACTUAL DISCUSSION

Petitioner is employed by respondent as a Science teacher. The District says during the 2020-2021 school year, the petitioner did not report to work. As a result, the District says petitioner failed to advance herself on the salary guide for the 2021-2022 school year.

According to the District, under Article 15 of the 2018-2021 Collective Bargaining Agreement between the Passaic Valley Education Association, of which petitioner was a member, and the District, that provision states: "for purposes of advancement on the salary guide and years of service to the District, a member must work nine consecutive weeks in order to earn sufficient credits for that year.

Under this criteria, the District contends that petitioner did not earn the necessary credits to advance on the salary guide. As such, it was petitioner herself, and not the District who failed to advance herself on the salary guide.

The District says that the old CBA expired in June 2021, resulting in a new three-year agreement being implemented for the 2022-2024 school years. At the start of the new 2021 school year, all employees were paid under the old salary guide because the new guide had not yet been established. Once the new guide was finalized and approved by the Board, all employees received retroactive pay to make them whole for any difference in salary from the old agreement to the new agreement.

The Board says that petitioner did receive her longevity pay that was due as of September. However, since petitioner did not advance another step up the guide, presumably because she missed almost a full year away from teaching, she was paid the salary under the new guide at the step where she remained. What causes the dispute here is that the salary was less than the salary for the same step under the old guide.

The Board continued its prior argument that this matter is a contractual dispute that should be heard and decided in a different venue other than the Office of Administrative Law. They contend that because the petitioner filed a grievance and requested the appointment of a panel of arbitrators with the Public Employees Retirement Commission, her grievance should be decided in that forum.

Petitioner argues that the issue of whether her tenure rights were violated should be considered separate and apart from her contractual grievance before PERC. She argues that the reduction in salary that was imposed on her is not permissible as a matter of law, and specifically is a violation of the tenure laws. For the reasons set forth herein, while seemingly unintentional, the net effect of keeping petitioner at the same grade under the new agreement had the net result of a forced salary reduction. Accordingly, **I agree** that petitioner's salary was wrongfully reduced as a matter of law and constitutes a violation of her tenure rights.

UNDISPUTED FINDINGS OF FACT

1. Petitioner Richeall Kennedy was hired as a science teacher with the Passaic Valley School District in 2005.
2. Petitioner has tenure with the District.
3. Petitioner is a member of the Passaic Valley Education Association which is the sole entity designated with negotiating rights on behalf of petitioner and her fellow union members.
4. An agreement which petitioner was party to was in effect from July 30, 2018 until June 30, 2021.
5. During the 2020-21 school year, petitioner did not work any day during that period of time as a teacher. At that time, her earned annual base salary was $112,367.00.
6. In June 2021, the Collective Bargaining Agreement between the District and petitioner's union expired, and following negotiations, the parties entered into a new contract for the years 2021-24 on October 26, 2021. Since a new

salary guide was not yet approved at the beginning of the school year, all employees including petitioner were initially paid under the expiring salary guide.

7. In November 2021, it is undisputed that respondent reduced petitioner's annual base salary under the new Collective Bargaining Agreement from $114,251.00 to $107,770.00

8. No tenure charges were filed against petitioner.

9. Petitioner stayed at Step 19 under the new salary guide.

10. Petitioner was subsequently paid $111,190.00 for the 2022-23 school year and was due to earn $112,904.00 for the 2023-24 school year.

11. Upon returning to school for the next school year after a year away for legitimate reasons, petitioner was not eligible to advance to the next step under the new salary guide due to the fact that she had not worked for nine consecutive weeks during the previous school year.

12. As a result of the lower salary from when the old agreement expired and the new agreement was implemented, I **FIND** without placing blame or determining fault, the resulting salary reduction, was a violation of petitioner's tenure rights, the net effect is that she was penalized for not actively teaching while a new agreement was negotiated and implemented, and I further **FIND**, as such, she is entitled to retroactive pay and reinstatement to the appropriate salary level under the Collective Bargaining Agreement Step Guide.

LEGAL DISCUSSION AND ANALYSIS

Among other things, the Board previously argued in an earlier Motion that pursuant to N.J.A.C. 6A:3-1.10, a petition may be dismissed if no valid cause of action is advanced with the pleadings, and the Office of Administrative Law does not have jurisdiction over the claim.

The Board argued that the nature of petitioner's claim is contractual and is already pending in the form of a PERC filing. Finally, with a claim pending in another forum, the

Board argued that the "entire controversy" doctrine bars arguing the same matter in two forums at the same time.

Essentially, the Board argued that PERC has primary jurisdiction over the dispute, and once that aspect of the case is completed, there is nothing left for the OAL to review.

The issue of jurisdiction was previously decided in favor of petitioner, and the matter proceeded with both sides submitting briefs leading to a determination by way of summary disposition on the papers.

Petitioner brings this claim alleging under N.J.S.A. 18A-25 et. seq. that the Board impermissibly reduced her compensation in violation of the tenure laws, which is an entirely separate claim from the grievance filed before PERC.

N.J.S.A. 18A-6-10 provides than "no person shall be dismissed or reduced in compensation, (emphasis added), if he or she shall be under tenure of office, position or employment during good behavior and efficiency...except for inefficiency, incapacity unbecoming conduct or other just cause, and then only after a hearing held by the Commissioner or their designee... (Emphasis added). Thus, the petitioner argues that the issue of whether the Board violated her tenure rights is a genuine disputed fact constituting a valid cause of action, separate and apart from the PERC grievance.

The existence of a compensation provision in a collective bargaining agreement does not abrogate the protections of the tenure statute nor remove the matter from the Commissioner or OAL's jurisdiction. See: Laufenberg v. Ramapo Indian Hills Reg'l High School Dist., OAL Dkt. No. EDU 5576-90, Agency Dkt. No. 207-6/90 (Dec. 12, 1991).

The purpose of Teacher Tenure Laws is to "aid in the establishment of a competent and efficient school system by affording teachers a measure of security in the ranks they hold after years of service." Carpenito v. Rumson Bd. of Ed., 322 N.J. Super. 522, (App. Div. 1999). It is well-settled that a teacher in a tenured position may not have his or her salary reduced except under the procedures set forth in the tenure statute. Harris v. Bd. of Educ. Pemberton Twp. 1039-1949 S.L.D. 164 (Comm'r Dec. 1938).

N.J.S.A. 18A:28-5 specifies that teaching staff members who meet the statutory standards for the acquisition of tenure "shall be under tenure during good behavior an efficiency and they shall not be dismissed or reduced in compensation, except for inefficiency, incapacity or conduct unbecoming such a teaching staff member or for other just cause."

Petitioner correctly points out that there is also a distinction between a collective bargaining action, which is brought by the member's association as a contractual claim, and a tenure violation action, which is brought by the individual. See Hoffman v. Bd. of Ed. of Hillsborough, 1996 N.J. AGEN. LEXIS 740 EDU 678-96 22-1/96 Initial Decision (Aug. 9, 1996) adopted by Commr. of Educ. (June 24, 1996).

A board of education does not have legal authority to reduce the salary of a tenured teacher once the salary has been established. In fact, tenured teachers may not have their compensation reduced, even under the terms of a Collective Bargaining Agreement. See, Spiewak v. Rutherford Bd. of Educ. 90 N.J. 63 (1982).

For some time, the Commissioner of Education has stood for the precedent that similar to the facts of this case, the terms of negotiated Collective Bargaining Agreement cannot override tenure law protections against reductions in salary. (Emphasis added). In a case which essentially mirrors the within dispute between Ms. Kennedy and Passaic Valley, a board placed a teacher on a different step under a newly ratified Collective Bargaining Agreement which effectively reduced that teacher's salary by $6,000. The Commissioner ruled that this reduction was a violation of the teacher's tenure rights. Cohen v. Bd. of Educ. of the Borough of South River., 1994 N.J. AGEN LEXIS 74 (Final Agency Decision January 28, 1994). See also: Stockton v. Bd. of Ed. of the City of Trenton, 210 J.J. Super 150. (App. Div. 1986). And see: Schalango-Schirm v. Kearny Bd. of Educ. 1998 N.J. AGEN. LEXIS 356 adopted Comm'r 1998 N.J. AGEN. LEXIS 1064, (Aug. 6, 1998, affirmed, State Bd. of Educ. 1998 N.J. AGEN. LEXIS (Dec. 2, 1998), which also stands for the principle that a tenured teacher's salary may not be reduced even if a new Collective Bargaining Agreement is adopted which changes the levels of pay at various steps on the guide. Using firm language which clearly makes salary reduction for

tenured teachers a prohibited practice, the Commissioner in the Schalango-Schirman case opined that "once a salary is established tenure rules apply to it and render it beyond recall.

In support of its position that petitioner's new reduced salary did not constitute a tenure violation, the District cites several cases, each of which involves teachers who relied upon their tenure rights to challenge a resulting salary reduction.

First, the District argues that most cases of a similar nature involve a clerical error or mistake where a teacher received a lower salary than they were entitled to. See Stockton v. Trenton Bd. of Educ. 1987 S.L.D. 512 and Rivers v. Mercer County Vo. Tech. School Bd. of Ed. EDU 1368-83, Initial Decision (November 30, 1983) aff'd Comm'r (January 17, 1984). In seeking to distinguish those cases from that of petitioner, the Board argues that it did not set petitioner's new salary, it was done by petitioner's Union ratifying a new contract, thus her Union and not the Board was responsible for the reduced salary, and there was no mistake involved for the Board to correct.

Since the Board was a party to the Collective Bargaining Agreement, and a majority of its members had to vote to approve the contract, I **CONCLUDE** that this argument, that petitioner was somehow responsible for the reduction defies logic and cannot be sustained.

In more of an effort to distinguish petitioner's case from the reality of other caselaw, and the tenure laws which prohibit a reduction, the board relies on Anson v. Bridgeton Bd. of Ed. 1972 S.L.D. 638 (Comm'r Dec. 5) which stands for the proposition that tenured teachers acquire vested rights to the salaries established for them by the Board's adoption of their salary placement, and they cannot be deprived of such a right by a subsequent action of the Board. Because the Teacher' Union in Anson, established the salary step guide, and the Board simply approved it, the Board was precluded from adopting a subsequent resolution to modify that teacher's salary. See also, Docherty v. West Paterson Bd. of Ed. 1967 S.L.D. 297 (Comm'r Oct. 23) preventing a Board from correcting a mistake by subsequent resolution regarding a teacher's placement on the salary guide. Again here, the Board attempts to justify the end result by simply stating it

had not initiated tenure charges against petitioner, so she has to live with the end result, even though both the Union and the Board approved the new salary step guide. I **CONCLUDE** that argument simply does not make sense, as petitioner was a tenured teacher who was approved to be away from her teaching duties for a full year, only to return under a new Collective Bargaining Agreement where the Step she returned to was reduced by several thousand dollars from her prior salary. I further **CONCLUDE** that what amounts to an indirect penalty for not working the minimum nine weeks in the prior year, and forcing her to return at a reduced salary, even with her longevity in the District is a violation of her tenure rights that cannot be sustained.

Here, the petitioner alleges that her tenure rights were violated when she returned to work with a lower salary under the new Collective Bargaining Agreement as a result of remaining on the same Step level. It is undisputed that she was absent from teaching for a full year for a variety of reasons, all of which were justified, including but not limited to her own medical leave, and her need to stay home with her child while their school remained closed due to Covid protocols. There is no indication that by remaining home and away from teaching for a full year, she was ever deemed insubordinate by the District, and/or that the District ever contemplated bringing disciplinary or tenure charges against her. While part of her claim may be decided later from a contractual standpoint under a PERC grievance, it is difficult to determine to reach any conclusion other than the reduction in salary upon her return to work was a violation of her tenure rights, which is prohibited by law.

Accordingly, pursuant to Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995) I **CONCLUDE** with no genuine issues of material fact remaining, that petitioner's Motion for Summary Decision should be **GRANTED,** and the District's Cross-Motion for Summary Disposition should be **DENIED.**

ORDER

Summary Disposition is hereby **GRANTED** in favor of petitioner. Respondent's Motion for Summary Disposition is **DENIED**.

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.

Andrew Baron

January 24, 2024
DATE

ANDREW M. BARON, ALJ

Date Received at Agency: January 24, 2024

Date Mailed to Parties: January 24, 2024

sej

APPENDIX

EXHIBITS

For Petitioner:

P-1 Certification of Richeall Kennedy

For Respondent:

R-1 2018-21 Collective Bargaining Agreement (ref. to s Exhibit A)

R-2 Longevity and Salary Guide for 2018-21 (ref. to as Exhibit B)

R-3 Salary Guide for years 2021,22, 23 and 24, (ref to as Exhibit C)

R-4 Certification of Colin Monahan, Business Administrator

124-24
SEC Dkt. No. D02-23
Agency Dkt. No. 11-10/23A

New Jersey Commissioner of Education

Final Decision

In the Matter of Caren Freyer,
Roseville Community Charter School,
Essex County

This matter involves an appeal of the School Ethics Commission's (SEC) October 17, 2023 determination that appellant, Caren Freyer – a member of the Roseville Community Charter School Board of Trustees (Board) – violated the School Ethics Act (Act) by failing to timely file complete Personal/Relative and Financial Disclosure Statements (Disclosure Statements) in accordance with *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1. The Commission recommended a penalty of censure, finding that a school official who completes the disclosure statements after the issuance of an Order to Show Cause, but before the Commission issues its decision, shall receive a censure, pursuant to *N.J.A.C.* 6A:28-3.3(c). Having carefully reviewed the SEC's decision and the record in its entirety, the Commissioner finds that the SEC's decision that appellant violated the Act is supported by sufficient, credible evidence, and that the appellant failed to establish that the decision is arbitrary, capricious, or contrary to law. *N.J.A.C.* 6A:4-4.1(a). The Commissioner further finds that the recommended penalty of censure is appropriate.

In her appeal to the Commissioner, appellant argues that despite several attempts, she was unable to complete her Disclosure Statements in the SEC's online system. Appellant stated that her failed attempts to submit the Disclosure Statements were due to issues with the system

starting in February; however, she includes no dates evidencing these failed attempts, nor any additional supporting documentation explaining the lengthy delay. According to her certification, several months later – at the beginning of the summer of 2023 – appellant contacted the SEC to obtain a hard copy of the Disclosure Statement form via express mail. Appellant executed and sent the document back; however, her certification failed to state when this occurred. This attempt to sign and submit a hard copy of the document was rejected on August 17, 2023. The Disclosure Statements were ultimately completed on appellant's third attempt, on September 27, 2023, one day after the Order to Show Cause was issued by the SEC. Appellant also cited the extensive demands of her employment as a reason for her delay in timely completing the Disclosure Statements.

In opposition, the Commission argues that appellant received multiple reminders from the Commission that her filing was incomplete and required completion or an Order to Show Cause would be issued. The Commission sent reminders on the following dates: July 31, 2023; August 30, 2023; September 6, 2023; and September 11, 2023. An Order to Show Cause was subsequently issued on September 26, 2023. Nonetheless, appellant did not complete the Disclosure Statements until after the issuance of the Order to Show Cause, nearly five months after the Disclosure Statements were originally due.

Upon a comprehensive review of the record, the Commissioner finds that the SEC's determination that appellant is in violation of the Act is supported by sufficient credible evidence, and the appellant has failed to establish that the SEC's decision was arbitrary, capricious, or contrary to law. Appellant was required to complete her Disclosure Statements by April 30, 2023. See *N.J.A.C* 6A:28-3.1. Appellant was ultimately able to correctly file her Disclosure Statements

after the issuance of an Order to Show Cause. However, at that point, the Disclosure Statements were significantly out of time. Further, at the time of the filing, appellant provided no reason or explanation as to why the Disclosure Statements were untimely. *N.J.A.C.* 6A:28-3.3 (c) specifically states, "Unless good cause is shown . . ., the Commission shall recommend that a school official who completes the disclosure statements after the issuance of an Order to Show Cause, but before the Commission issues its decision, receives a censure." Therefore, with respect to the appropriate penalty, the Commissioner concurs with the SEC that a censure in this case is appropriate.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 1, 2024
Date of Mailing: March 6, 2024

[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.

Before the School Ethics Commission
Docket No.: D02-23
Decision for Failure to File Complete Personal/Relative and Financial Disclosure Statements

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I/M/O Caren Freyer,
Roseville Community Charter School, Essex County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) at its meeting on September 26, 2023, directing Respondent, a "school official" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find her in violation of the Act for failing to file complete Personal/Relative and Financial Disclosure Statements (Disclosure Statements) as required by *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1.

In the OTSC that was served on September 26, 2023, the Commission notified Respondent that she had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. By virtue of *N.J.S.A.* 18A:12-23.1, the breadth of the Act was expanded to include charter school trustees and administrators.

Pursuant to *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1(a), all school officials must file, on forms prescribed by the Commission, Disclosure Statements with their local board secretaries or charter school designees, and must do so on or before April 30th of each year. In addition, all newly elected board members or board members appointed to fill vacancies, newly appointed members of a board of trustees of a charter school, and administrators appointed to fill a vacancy must file their Disclosure Statements within thirty (30) days of appointment or taking office. *N.J.A.C.* 6A:28-3.1(c), *N.J.A.C.* 6A:28-3.1(d), *N.J.A.C.* 6A:28-3.1(e), and *N.J.A.C.* 6A:28-3.1(f).

When it is determined that a school official's otherwise timely filed Disclosure Statements are incorrect or incomplete, the filing shall be returned to the school official, and she shall have twenty (20) days from receipt of the returned filing to correct and/or complete the Disclosure Statements, and to resubmit them to the local board secretary or charter school designee. *N.J.A.C.* 6A:28-3.4(a), *N.J.A.C.* 6A:28-3.4(b). At the expiration of twenty (20) days, or upon receipt of a filing which continues to fail to provide the information required by *N.J.S.A.* 18A:12-25 and/or *N.J.S.A.* 18A:12-26, the Commission shall issue an Order to Show Cause, directing the school official to show cause as to why the Commission should not impose a sanction. *N.J.A.C.* 6A:28-3.4(c). If the school official fails to submit a response within twenty (20) days, or if the school official fails to properly file, "the Commission may regard the school official's incomplete filing as a failure to file, and the Commission shall proceed in accordance with *N.J.A.C.* 6A:28-3.3." *N.J.A.C.* 6A:28-3.4(d). As set forth in *N.J.A.C.* 6A:28-3.3(a), failure to timely file the required Disclosure Statements "shall constitute a violation of the Act, and may result in the reprimand, censure, suspension, or removal of a school official."

With the above in mind, Respondent is a returning school official and, therefore, was required to file complete Disclosure Statements by April 30, 2023. Although Respondent filed Disclosure Statements on August 11, 2023, her filing was rejected. Even though Respondent received reminders as further detailed below, Respondent failed to file complete Disclosure Statements.

More specifically, throughout the months of July through September, the Commission's staff sent repeated messages to the Charter School Lead advising that Respondent had not yet filed complete Disclosure Statements. The electronic correspondence to the Charter School Lead further advised that if Respondent failed to file complete Disclosure Statements, the Commission had the authority to issue an OTSC, find Respondent in violation of the Act, and recommend a penalty up to and including removal for non-compliance.

In addition, by electronic correspondence dated July 31, 2023, August 30, 2023, September 6, 2023, and September 11, 2023, Respondent was reminded that she did not file complete Disclosure Statements. Respondent was further advised that continued failure to file complete Disclosure Statements would result in the Commission issuing an OTSC, and recommending a penalty, up to and including removal.

When Respondent failed to file complete Disclosure Statements as required by *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1, an OTSC was issued by the Commission at its meeting on September 26, 2023. After having been served with the OTSC, Respondent completed her Disclosure Statements on September 27, 2023, but did not dispute that her filing was untimely, or otherwise submit anything explaining why a penalty should not be imposed.

III. Decision/Penalty Recommendation

Based on the record as set forth above, and at its meeting on October 17, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1 because she did not file complete Disclosure Statements. Although Respondent ultimately completed her Disclosure Statements, the filing was several months late, and submitted only after multiple reminders were sent reiterating her statutory obligation to file Disclosure Statements.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed on the school official. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-3.3(a); *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a school official who completes the disclosure statements after the issuance of an Order to Show Cause, but before the Commission issues its decision, receives a censure." *N.J.A.C.* 6A:28-3.3(c). For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **censure**.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended penalty of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such

exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4-1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's brief on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: October 17, 2023

Resolution Adopting Decision for Failure to File Complete Personal/Relative and Financial Disclosure Statements
Docket No.: D02-23

Whereas, Respondent is a "school official," as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a school official, Respondent was required to file Personal/Relative and Financial Disclosure Statements (Disclosure Statements) by April 30, 2023; and

Whereas, Respondent failed to file complete Disclosure Statements within the statutorily required timeframe; and

Whereas, at its meeting on September 26, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause why she failed to file complete Disclosure Statements as required by *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1; and

Whereas, after having been served with the OTSC, Respondent completed her Disclosure Statements, but did not dispute that her filing was untimely, or otherwise submit anything explaining why a penalty should not be imposed.

Whereas, at its meeting on October 17, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1 by failing to file complete Disclosure Statements; and

Whereas, at its meeting on October 17, 2023, the Commission recommended that the Commissioner of Education impose a penalty of censure; and

Whereas, at its meeting on October 17, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender

Robert W. Bender, Chairperson

I hereby certify that the within Resolution
was duly adopted by the School Ethics Commission
at a special meeting on October 17, 2023.

Brigid C. Martens

Brigid C. Martens, Acting Director
School Ethics Commission

125-24

New Jersey Commissioner of Education

Final Decision

D.H., on behalf of O.H.,

Petitioner,

v.

Board of Education of the Township of Gloucester, Camden County,

Respondent.

Synopsis

Pro se petitioner challenged the determination of the respondent Board that three aggressive incidents against her son, O.H., by a classmate did not constitute harassment, intimidation, or bullying (HIB) under District Policy 5512 and New Jersey's Anti-Bullying Bill of Rights Act, *N.J.S.A.* 18A:37-14. O.H. was a fourth-grade student at the time of the events in question, wherein he was the victim of three separate unprovoked incidents by the same child, a classified student with recognized impulse control difficulties. The Board determined that petitioner's allegations did not constitute HIB, as a finding of HIB requires that the conduct be reasonably perceived as being motivated by an actual or perceived distinguishing characteristic, and no such motivation was found during the HIB investigation in this case. A hearing in the matter was held in the Office of Administrative Law on October 5, 2023.

The ALJ found, *inter alia*, that: the decision of a board acting within the scope of its authority is entitled to a presumption of correctness and will not be overturned unless there is an affirmative showing that such decision was arbitrary, capricious, or unreasonable; further, the action of a board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives; in this case, none of petitioner's allegations met the legal standards of the HIB statute; for a finding of HIB, the alleged behavior must reasonably be perceived as being motivated by an actual or perceived distinguishing characteristic of the victim, a critical element that is missing in this case; although petitioner believes that the HIB policy must be revised to protect all students, nevertheless, a finding of HIB requires that the conduct be reasonably perceived as being motivated by an actual or perceived distinguishing characteristic, and no such motivation or distinguishing characteristic was identified here. The ALJ concluded that the Board's determination that the three incidents in question did not constitute harassment, intimidation, or bullying was not arbitrary, capricious, or unreasonable. Accordingly, the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that the Gloucester Township Board of Education's determination in this matter was not arbitrary, capricious, or unreasonable. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

125-24
OAL Dkt. No. 05662-23
Agency Dkt. No. 141-5/23

New Jersey Commissioner of Education

Final Decision

D.H., on behalf of minor child, O.H.,

Petitioner,

v.

Board of Education of the Township of Gloucester, Camden County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that the Gloucester Township Board of Education's determination that O.H. was not the victim of harassment, intimidation, and bullying was not arbitrary, capricious, or unreasonable.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 1, 2024
Date of Mailing: March 6, 2024

[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 05662-23
AGENCY DKT. NO. 141-5/23

D.H. ON BEHALF OF O.H.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF GLOUCESTER, CAMDEN COUNTY,
Respondent.

D.H., petitioner, pro se, and on behalf of her minor child, O.H.

Daniel H. Long, Esq., for respondent (Wade, Long, Wood & Long, LLC, attorneys)

Record Closed: December 12, 2023 Decided: January 24, 2024

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioner, D.H., challenged the decision of the respondent, the Board of Education of the Township of Gloucester (Board), that the three incidents against her son, O.H., by a classmate did not constitute harassment, intimidation, or bullying (HIB) under District Policy 5512 as defined in the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-14.

PROCEDURAL HISTORY

On May 23, 2023, petitioner filed a petition of appeal with the Commissioner of Education, Office of Controversies and Disputes. On June 20, 2023, respondent filed its answer. The matter was transmitted to the Office of Administrative Law on June 22, 2023, to proceed as a contested matter under N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

The hearing was held on October 5, 2023. The record closed on December 12, 2023, after receipt of the parties' post-hearing submissions.

FACTUAL DISCUSSION AND FINDINGS

Having heard the testimony presented at the hearing, and having reviewed the documentary evidence, I **FIND**:

O.H. was a fourth-grade student at Chews Elementary School. On January 9, 2023, O.H. was the victim of three separate unprovoked incidents by the same student, A.A. The incidents were consistently described as follows:

The first incident occurred at the start of the school day. O.H. was in line when A.A. ran towards him and slapped him on his cheek. A.A.'s explanation was that he thought O.H. and another student were fighting, so he tried to break up the fight. O.H. and the other classmate admitted to "playing around" while in line. (R-2.)

The second incident occurred after recess. During recess, a group of boys, including A.A. and O.H., were playing cops and robbers. When the bell rang, ending recess, A.A. claimed he wanted to "finish the game and get another point." (R-2.) A.A. saw O.H. bending down to tie his shoe, so he ran to him and grabbed him by twisting his neck.

The third incident occurred at the lunch table. A.A. thought O.H. and his friends were talking about him. In response, A.A. stated to the group, "I'm going to kill you, you, and you." (R-2.)

On the day of the incidents, the vice principal called D.H. to report what happened to her son, O.H. On January 10, 2023, O.H.'s parents met with the vice principal to discuss the incidents. D.H. was not satisfied with the school's response to the incidents, so she filed a report requesting a HIB investigation into the matter. (R-2.) The investigation was assigned to Raylene Aita, the anti-bullying specialist (ABS) at Chews. Ms. Aita is also a school counselor.

As part of her investigation, Ms. Aita interviewed O.H., two other student witnesses, and A.A. (R-2.) After conducting her investigation, Ms. Aita determined that the events happened as described above. A.A. did not deny his actions. Based on the descriptions received from O.H. and the other witnesses, and considering A.A.'s explanations for his behavior, Ms. Aita determined that A.A. did not target O.H. based on any actual or perceived characteristics of O.H. identified under HIB. (R-2.)

Based on her experience, knowledge, and training, Ms. Aita determined that A.A. acted impulsively and with a misunderstanding of social cues and situations. Ms. Aita explained that A.A. thought he was breaking up a fight that he perceived as real. Likewise, his actions at recess and his verbal threat were based on an impulsive reaction to perceived events. He wanted to continue playing so he jumped on O.H. to gain another point. A.A. thought O.H. and his friends were talking negatively about him, so he threatened them. A.A.'s actions were clearly not appropriate. His aggression and threatening language violated the school's code of conduct, for which A.A. was appropriately disciplined.

Ms. Aita further explained that A.A. is a classified student under the Individuals with Disabilities Education Act, with known struggles with impulse control.

The testimony of Ms. Aita was not controverted. She expressed a clear knowledge of her role as the ABS. Moreover, Ms. Aita has been a counselor for Glassboro schools

for over twenty years. She expressed her familiarity with the students and was confident that the students were comfortable in speaking with her during the interviews. Based on the consistency of the events as stated in her investigation report, her clear understanding of her role in a HIB investigation, and her knowledge of what constitutes a HIB violation, I accept the testimony of Ms. Aita as credible. She provided a reasonable, plausible, and sound justification why A.A.'s actions against O.H. based on the facts and circumstances did not constitute HIB.

During their initial meeting on January 10, 2023, O.H.'s parents believed that the threats against their son were downplayed by the school administration. They did not accept that the discipline imposed on A.A. reflected the magnitude of what had occurred. They also felt that these three incidents directed at their son on the same day showed that A.A. had targeted O.H. A.A. did not act impulsively towards any other student, just O.H. Therefore, under their interpretation of the plain meaning of bullying, harassment, and intimidation, they felt that O.H. was targeted and should be afforded protection under HIB. I accepted the testimony of D.H. and S.H. as being motivated by their love and concern for the safety and well-being of their son. Their testimony was both sincere and heartfelt. While petitioner expressed her dissatisfaction with the statutory language, respondent and this tribunal are required to follow the definition of HIB provided in N.J.S.A. 18A:37-14.

CONCLUSIONS OF LAW

It was the intent of the Legislature in enacting the "Anti-Bullying Bill of Rights Act" to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises. N.J.S.A. 18A:37-13.1, -13.2.

N.J.S.A. 18A:37-14 and District Policy 5512 define harassment, intimidation, or bullying in pertinent part as anything that could be "reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic" that

"takes place on school property" and "substantially disrupts or interferes with the orderly operation of the school or the rights of other students" and that:

> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

O.H.'s parents believed that the focus of Glassboro's administration, their ABS, and the Board on an actual or a perceived characteristic was too restrictive, and this focus failed to consider the impact on their son, who was the target of the aggression. As explained by Ms. Aita, the ABS, there was no distinguishing characteristic that motivated the inappropriate behavior. Ms. Aita reasonably determined that A.A.'s impulsivity and failure to understand social situations caused his misbehavior towards O.H. The Board's finding that no HIB occurred because there was no distinguishing characteristic does not diminish what happened to O.H. The Appellate Division in K.L. v. Evesham Township Board of Education, 423 N.J. Super. 337, 350–51 (App. Div. 2011), succinctly stated:

> The statutory definition of "bullying" does not include all violent or aggressive conduct against a student. The definition, both before and after adoption of the 2010 Anti-Bullying Act, refers to conduct that is "reasonably perceived as being motivated" by a "distinguishing characteristic" of the victim, such as, "race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory [disability]." N.J.S.A. 18A:37-14. The statute has not limited "distinguishing characteristic" to those specifically enumerated, but it has consistently required such a perceived motivation.
>
> Thus, harmful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without

> identifiable motivation, does not come within the statutory definition of bullying.

Thus, an incident may be physically, psychologically, or socially harmful, but still not meet the HIB criteria.

Petitioner argued that A.A.'s motivation for singling out her son was not known or developed through the investigation. She contended there was no valid reason for A.A. to slap, put his hands on, or threaten to kill O.H. While the petitioner did not accept the response that A.A. misunderstood social situations and reacted impulsively due to his disability as a sufficient explanation for his aggression against her son, the investigation did not reveal any other motive, or a distinguishing characteristic as legally required for a HIB violation. Petitioner questioned why the perception of O.H. was not considered. Under N.J.S.A. 18A:37-14, the required element is "how the actor's motivation is perceived and whether that perception is reasonable." Wehbeh v. Bd. of Educ. of Verona, 2020 N.J. AGEN LEXIS 50 (Feb. 4, 2020), at *8. To determine whether the perception is reasonable, "the alleged victim [need not] correctly assess the actor's motivation, as such a requirement would convert the analysis from one about reasonably perceived motivation to one about actual motivation and would inappropriately place the burden on the alleged victim to divine the intent of the actor." Ibid., n.3. The HIB investigation by Ms. Aita reasonably showed that A.A.'s behavior on January 9, 2023, towards O.H. was not motivated by any distinguishing characteristics of O.H.

After hearing D.H.'s appeal, the Board voted to affirm the decision that the conduct by A.A. did not meet the definition of HIB. Petitioner presented her arguments to the Board but was dismayed when none of the Board members had any questions for her about the incidents.

The decision of a board acting within the scope of its authority is "entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious, or unreasonable." Thomas v. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Similarly, the action of a board "which lies within the area of its discretionary powers may not be upset unless patently arbitrary,

without rational basis or induced by improper motives." Kopera v. Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). The petitioner contended that the Board did not fully explore all aspects of her arguments and did not provide a detailed basis for its decision. Petitioner believes that the HIB policy must be revised to protect all students; nevertheless, a finding of HIB requires that the conduct be reasonably perceived as being motivated by an actual or perceived characteristic. No such motivation or distinguishing characteristic or difference has been identified.

In view of the foregoing, I **CONCLUDE** that the Board's determination that these three incidents did not constitute harassment, intimidation, or bullying was not arbitrary, capricious, or unreasonable.

ORDER

It is hereby **ORDERED** that the petitioner's appeal 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 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.

Kathleen M. Calemmo

January 24, 2024
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/editing/tat

APPENDIX

WITNESSES

For Petitioner:

D.H.

S.H.

For Respondent:

Raylene Aita, ABS

Grant Hildebrand

EXHIBITS

For Petitioner:

P-1 Gloucester Township Public Schools—the Anti-Bullying Bill of Rights

P-2 Petition of Appeal

P-3 Typed statements

P-4 Email chain

For Respondent:

R-1 Policy 5512—HIB

R-2 HIB Report

R-3 Investigation Parental Notification Letter

R-4 Board Appeal Notification Letter

126-24
OAL Dkt. No. EDU 04745-23
Agency Dkt. No. 148-5/23

New Jersey Commissioner of Education

Final Decision

A.N., on behalf of minor children, S.R. and K.W.,

Petitioner,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

The record of this matter, which was transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-14.4 and includes an advisement of petitioner's failure to appear at the scheduled OAL hearing on January 25, 2024, has been reviewed. Petitioner did not file an explanation for her failure to appear, notwithstanding the opportunity to do so. Accordingly, petitioner's residency appeal is hereby dismissed, and the Board's determination that petitioner's minor children were not entitled to a free public education in Elizabeth remains in effect.

However, the Elizabeth Board of Education (Board) filed exceptions, arguing that the Administrative Law Judge (ALJ) should have heard and considered the Board's position regarding its counterclaim against petitioner for tuition reimbursement, instead of dismissing it with the residency appeal.

Upon review, the Commissioner concludes that the Board was entitled to provide ex parte proofs once petitioner failed to appear for the hearing and was also entitled to an initial decision on the merits of its counterclaim. *See N.J.A.C.* 1:1-14.4(d). Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor children were ineligible to attend school in the district. The statute provides that the Commissioner may order tuition "computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance." *N.J.S.A.* 18A:38-1b. In the absence of any factual findings by the ALJ regarding these issues, the Commissioner is unable to complete the necessary calculations.

Accordingly, this matter is remanded to the OAL for further proceedings to develop the factual record regarding the number of days of ineligible attendance and the per diem cost of tuition.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 1, 2024
Date of Mailing: March 6, 2024

128-24

State of New Jersey
DEPARTMENT OF EDUCATION
PO BOX 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

KEVIN DEHMER
Acting Commissioner

March 8, 2024

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Re: *Board of Education of the Borough of Manasquan, Monmouth County v. New Jersey State Interscholastic Athletic Association and State-Operated School District of Camden City, Camden County*, Agency Dkt. No. 59-3/24

Dear Counsel:

The petition of appeal and motion for emergent relief submitted by the Manasquan Board of Education (Manasquan) on March 7, 2024, and respondents' replies thereto, have been reviewed. Manasquan alleges that during a basketball game between Manasquan and Camden on March 5, 2024, New Jersey State Interscholastic Athletic Association (NJSIAA) officials made an erroneous call that a basket at the end of the game was made after time expired, resulting in Manasquan losing the game. Manasquan protested the determination to the NJSIAA, which denied the appeal, and now seeks to have the officials' call and the NJSIAA's determination overturned by the Commissioner.

Upon careful consideration of this matter and granting every inference to Manasquan for purposes of this proceeding, the Commissioner is unable to grant the relief requested.

Article VII, Section 1 of the NJSIAA's bylaws states:

> Protests based upon an official's judgement or misinterpretation (*misapplication*) of the playing rules will not be honored.
>
> CL 2: "Protests based upon an official's judgement or misinterpretation (misapplication) of the playing rules will not be honored" does not preclude a League or Conference from addressing same; however, the NJSIAA will not honor such protests for non-conference games/meets, neither will the NJSIAA hear appeals to a League or Conference decision based upon an official's judgement or misinterpretation (misapplication) of the playing rules.

Further, under *N.J.A.C.* 6A:3-7.1(c), the Commissioner shall decline to hear an appeal of a "determination of the NJSIAA in an area that is expressly designated as not appealable by the NJSIAA constitution, bylaws or rules and regulations as adopted by member schools pursuant to law."

The Commissioner cannot find that the officials' decision regarding the basket was anything other than a judgment call, and the NJSIAA rules clearly state that once an official has made a judgement call, no appeals will be honored. Even if the officials' decision was not correct, under the clear and explicit bylaws of the NJSIAA, it is not reviewable. The NJSIAA's bylaws are adopted as controlling policy by boards of education when they elect to join the NJSIAA, which is a fully voluntary organization. *N.J.S.A.* 18A:11-13. Therefore, Manasquan – and every other member district – is aware that game officials will make judgment calls and applications of rule which cannot be challenged on the basis of error, and that there is no allowance for exception, even in the case of those errors which are deemed egregious by the affected party. *Bd. of Educ. of the Twp. of Hazlet, Monmouth Co. v. NJSIAA*, Commissioner Decision No. 399-94E (decided Dec. 3, 1999).

Accordingly, the Commissioner finds that the officials' decision is not reviewable, and the NJSIAA's determination not to honor Manasquan's protest was consistent with its own bylaws. The motion for emergent relief is denied, and the petition of appeal is hereby dismissed.

Sincerely,

Kevin Dehmer
Acting Commissioner

KD/JS
c: State Law Library

128-24

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New Jersey Commissioner of Education

Final Decision

Kevin Harriman,

Petitioner,

v.

New Jersey State Board of Examiners,

Respondent.

Synopsis

In this matter, *pro-se* petitioner appealed the determination of the respondent New Jersey State Board of Examiners (SBE) that respondent improperly denied his application for certification after revocation pursuant to *N.J.A.C.* 6A:9B-4.9. Petitioner previously held a Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, Teacher of Health and Physical Education Certificate, and a Teacher of Driver Education Certificate. In December 2015, the SBE voted to revoke Harriman's teaching certificates as a result of his dismissal from his tenured position with the Elmwood Park School District (Elmwood Park) due to unbecoming conduct. A hearing regarding petitioner's appeal was held on August 16, 2023.

On appeal, the ALJ found, *inter alia*, that: the legal issue here is whether petitioner has demonstrated rehabilitation from unbecoming conduct, incompetence, or other cause for the revocation of his teaching certificates since 2015, as required pursuant to *N.J.A.C.* 6A:9B-4.9(b)(3); petitioner bears the burden to demonstrate, by a preponderance of the evidence, that the SBE improperly denied his application for certification after revocation; petitioner has not satisfied this requirement as he has failed to show that he has been rehabilitated for the unbecoming conduct that led to the revocation of his teaching certificates, and in fact continues to deny the conduct and shift blame to former coworkers; further, petitioner's submissions in these proceedings prove that he has intentionally withheld information from current and prospective employers regarding the revocation of his teaching certificates; petitioner has continuously failed to acknowledge that his actions led to the revocation of his teaching certificates, a key component of rehabilitation; and petitioner's failure to demonstrate rehabilitation for the unbecoming conduct is underscored by the fact that he still believes that his certificates were wrongfully revoked, and does not believe that he engaged in conduct unbecoming at all. For these reasons, the ALJ concluded that the Board's decision denying petitioner's application for certification after revocation must be affirmed.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, for the reasons stated therein. Accordingly, the petition of appeal was dismissed.

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.

129-24
OAL Dkt. No. EDU 02542-21
Agency Dkt. No. 7-1/21

New Jersey Commissioner of Education

Final Decision

Kevin Harriman,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

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 adopts the Initial Decision as the final decision in this matter for the reasons stated therein. The Commissioner concurs with the Administrative Law Judge that petitioner failed to demonstrate that respondent improperly denied his application for certification after revocation pursuant to *N.J.A.C.* 6A:9B-4.9. Specifically, petitioner has not satisfied the regulatory requirements as he failed to provide evidence demonstrating rehabilitation for the unbecoming conduct which resulted in the revocation of his certificates and, in fact, continues to deny that he committed unbecoming conduct or needs rehabilitation.

Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 8, 2024
Date of Mailing: March 11, 2024

[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 DECISON
OAL DKT. NO. EDU-02542-21
AGENCY DKT. NO. 7-1/21

KEVIN HARRIMAN,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,
STATE BOARD OF EXAMINERS,

Respondent.

Kevin Harriman, pro se

Amna Toor, Deputy Attorney General, for respondents (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: January 19, 2024 Decided: January 29, 2024

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, Kevin Harriman, appeals the decision by respondent, New Jersey Department of Education, State Board of Examiners denying his application for certification after revocation under N.J.A.C. 6A:9B-4.9.

PROCEDURAL HISTORY

Petitioner Kevin Harriman (Harriman) previously held a Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, Teacher of Health and Physical Education Certificate, and a Teacher of Driver Education Certificate.

On December 10, 2015, the New Jersey Department of Education, State Board of Examiners (the Board) voted to revoke Harriman's teaching certificates as a result of his dismissal from his tenured position with the Elmwood Park School District (Elmwood Park) due to unbecoming conduct, which included conduct that was deceptive and untruthful; inappropriate, defiant and insubordinate conduct; failure to follow administrative directives; failure to enroll in anger management classes; and disregard of corrective action plans. [1]

On April 23, 2020, Harriman applied for certification after revocation under N.J.A.C. 6A:9B-4.9. (R-1). On June 26, 2020, the Board denied Harriman's application because it determined that Harriman had failed to satisfy the regulatory criteria set forth in N.J.A.C. 6A:9B-4.9 to receive new certificates. (R-2).

On August 18, 2020, Harriman filed a petition with the Commissioner of Education (Commissioner), appealing the June 2020 Board's denial of his application (R-3). Because the petition included information that was not presented to the Board at the time of its decision, the Board requested, with Harriman's consent, that the matter be remanded to the Board to consider the new information along with the information presented at the time of the Board's June 26, 2020 decision. Ibid. In light of that request, the August

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[1] See, In the Matter of the Tenure Hearing of Kevin Harriman, Docket No. 50-3/12 (Comm'r decision, Oct. 12, 2012), affirmed, In re Harriman, No. A-1386-12T3 (App. Div. March 12, 2014).

2020 petition was marked "withdrawn", and the matter was closed by the Office of Controversies and Disputes. Ibid.

On October 29, 2020, the Board again considered Harriman's April 23, 2020, application for certification with all the information he submitted with his petition of appeal to the Commissioner, which included two letters from mental health professionals, as well as various letters of recommendation and references. Id.

On December 10, 2020, after reviewing the additional information provided by Harriman, the Board found no basis to overturn its initial determination of June 2020, and issued a decision which again denied Harriman's application for certification after revocation. Ibid. at pp. 5-6.

On January 15, 2021, Harriman filed a notice of appeal of the Board's December 10, 2020, decision with the Office of Controversies and Disputes . On February 4, 2021, the Board filed its answer. After submission of the Board's answer, Harriman filed a brief in support of his notice of appeal, and the matter was transmitted to the Office of Administrative Law (OAL) as a contested case, where it was filed on February 23, 2021.

An initial telephone status conference was held on April 7, 2021, and several status conference calls were held thereafter through July 13, 2023. Pre Hearing Orders were then issued on June 28, 2021, March 31, 2022, June 27, 2022, December 20, 2022, and April 18, 2023.

An in person hearing was held on August 16, 2023. Request was made to obtain a hearing transcript and submit post-hearing submissions. On or about October 19, 2023, the post-hearing summations were submitted. The record closed on January 19, 2024.

ISSUE

The legal issue is whether Harriman has demonstrated rehabilitation from unbecoming conduct, incompetence, or other cause for the revocation of his teaching certificates since October 2015, as required pursuant to N.J.A.C. 6A:9B-4.9.

FACTUAL DISCUSSION AND FINDINGS

Except for the ultimate finding of whether or not Harriman has established sufficient rehabilitation pursuant to N.J.A.C. 6A:9B-4.9, the facts are largely undisputed. The hearing in this matter was held on August 16, 2023. At the hearing, Harriman testified, and Rani Singh (Singh), Secretary of the Board, testified on behalf of the Board. The following is a summary of their respective testimony, which I **FIND** as **FACT** herein:

Testimony of Rani Singh

Singh is the Director of the Office of Certification within the New Jersey Department of Education, and the Secretary of the Board of Examiners. As director of the Office of Certification, Singh is responsible for all certifications issued to public school educators in the State. In her role as secretary for the Board, Singh is tasked with ensuring that all rules, regulations, and policies are met when the Board reviews matters, and must ensure that there is a quorum at every meeting.

Singh testified that on April 23, 2020, Harriman filed an application for certification after revocation. She explained that under N.J.A.C. 6A:9B-4.9, an individual who has had any certificate revoked may apply for certification again. But in order to be eligible for new certificates the applicants must meet the requirements set forth in N.J.A.C. 6A:9B-4.9, including making a demonstration that they satisfy the criteria for issuance of the certificate that are in effect at the time of the application; that at least four years have passed since the date of the revocation of the certificate(s); and showing evidence demonstrating rehabilitation for the unbecoming conduct or other cause for the revocation.

Singh testified as to the content of Harriman's application for certification after revocation. (R-1). Singh testified that Harriman claimed in his application that he meets all the criteria for issuance of the new certificates and he stated that he does not have a criminal background; that he continued teaching over the last seven years in two schools; that he has lost six consecutive coaching positions due to people Googling his name; that he was harassed, intimidated, and bullied; that no crime was committed; and that there was no rehabilitation needed because he did not engage in conduct unbecoming of a teacher. Id.

Singh testified that after reviewing Harriman's submission, the Board denied Harriman's application for certification after revocation on June 26, 2020. (R-2). Singh explained that in reaching its decision, the Board found that Harriman failed to provide or show evidence of rehabilitation for his unbecoming conduct because he continues to deny the behavior that was found to have occurred and stated in his application that he does not need rehabilitation.

Singh testified that Harriman then filed a petition with the Commissioner, appealing the Board's June 26, 2020 decision. (R-3). Singh explained that since Harriman's petition included additional information and new evidence that was not submitted with his April 23, 2020 application, the Board requested that the matter be remanded back to the Board to consider the new information. Id. Singh stated that the Commissioner returned the matter to the Board. Singh testified that the additional information Harriman had provided included an undated letter from Dr. Igor Gefter, a psychiatrist, and a letter from Dr. A. Nanjiani, dated July 23, 2020, and various letters of recommendation dated from 2013, 2016, and 2018.

Singh testified that after the Board considered these additional documents, on December 10, 2020, the Board again issued a decision denying Harriman's application for certification after revocation. In reaching its decision, Singh explained that that the Board did not give much weight to the letter submitted by Dr. Gefter because it was undated, and it just referenced a conversation with Harriman and an evaluation that was

done but provided no information or evidence about the nature or results of the evaluation. With respect to the letter by Dr. Nanjiani, Singh testified that the letter was drafted three months after Harriman's initial application and the contents of the letter focused more on what would be beneficial for Harriman as opposed to addressing the underlying conduct that led to his certificates being revoked and how he has rehabilitated from that conduct.

Singh further testified that the burden is on the applicant to demonstrate evidence of rehabilitation for the conduct that resulted in the revocation of the applicant's certificates. Singh testified that every case is different, and the Board does not specify to an applicant they "type" of rehabilitation required to demonstrate compliance with the regulation. T160:25 – T161:1-19.

Testimony of Kevin Harriman

Harriman did not present direct testimony. All of his testimony was in response to cross-examination questions by the Board. Harriman testified that he submitted an application for certification after revocation (application) dated April 23, 2020 (R-1). Harriman testified regarding the contents of his application.

Regarding the answer contained in paragraph 2 of the application (R-1), Harriman read the same into the record:

> Yes. Four miserable years have passed since the illegal revocation took place December 15th to December 19th. Luckily none of my two current principals knew I was revoked during that time or you would have cost me another two teaching positions. They had no reason to research me, but I did lose six consecutive coaching positions to date by the school districts who did have to Google my name to background check a new coach.
>
> [T172:1-172:17]

When asked on cross-examination why he stated in his application that "it was an illegal revocation?", Harriman responds:

> A. Because it was done by arbitrarily and capricious by Mr. Higgins. Because if it was don with bias as you treated nobody else the way you treated me.
> Q. Sorry, sir. Just to clarify who is you?
> A. You and the Board.
> Q. You as in the Board?
> A. The board has never treated anybody in past precedent cases which are listed on line, thousands of decision that I've read, you've never treated anybody like that. Okay. So that's with bias, that you're deliberately trying to hurt me.
>
> [171:19-173:6]

Harriman further stated that the Board's decision is "way out of [its] statute of limitations;" that they "voted without a quorum;" and that the revocation of his teaching certificates was a "wrongful revocation without a doubt." (T173:2-15).

Harriman testified that as part of his application there was no requirement for his rehabilitation as he has "never done anything unbecoming of a teacher ever," and that "[a]ll charges and storylines are fictitious and compulsive lying [sic]." (T173:22-25 – T174:1-9). Regarding this point, Harriman testified:

> This is the God's honest truth. Mr. Sabor [sic] was simply jealous of the elementary gym teacher. You can't make this stuff up. He was the evil one . . . He was removed from his principal position in the spring of 2018 due to sexual harassment of his female teachers. Someone called me from Elmwood Park and told me about this, a teacher. When he went back to Tomko to see how he could get rid of me back then, Tomko pre-mediated and orchestrated a plan for he and Mrs. Alison Jackter to harass, intimidate and bully me by writing me up over frivolous things any time I went to their school. My third principal, Dominic Silla because I worked for all three schools at the same time, he refused to get involved in the entire team by telling Tomko to his face, leave me out of that, I never had a problem with Kevin. Mr. Silla is also my mentor for my masters degree, so Tomko knew that it would not be able to be justified to

> use him, so he gave directives to two of three, Sabor [sic] and Jackter to do this to me[.][2]
>
> [T174:9-25 - T175:1-3].

Harriman responded in the affirmative that he did not engage in "unbecoming conduct and that there was no rehabilitation needed as a result" and that he still believed that he did not engage in unbecoming conduct. (175:16-176:5). Finally, in defense of the Board's decision that he did not provide the Board with proof of rehabilitation, Harriman stated that "..I needed to be told what type of rehabilitation needless to say. (T191:4-6).

LEGAL ANALYSIS AND CONCLUSIONS

The New Jersey Legislature has designated the Board as the body responsible for the issuance and revocation of appropriate certificates to teach or to administer, as well as the direction or supervision of the teaching, instruction or educational guidance of students in public schools. N.J.S.A. 18A:6-38. A certificate that has been revoked cannot be reinstated, but an individual may file an application for a new certificate with the Board. N.J.A.C. 6A:9B-4.9 (governing applications for certification after revocation), which provides in part:

> (a) A certificate that has been revoked for any of the grounds set forth in this chapter shall not be reinstated. An individual who has had a certificate revoked may file an application for a new certificate with the Board of Examiners.

The Board cannot issue a new certificate to an individual whose certificate(s) has been revoked unless they meet the requirements set forth in N.J.A.C. 6A:9B-4.9. See N.J.A.C. 6A:9B-4.9(b) (setting forth the conditions that must be met for issuance of a new

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[2] In his application for certification after revocation, Harriman states that he was "harassed, intimidated and bullied by the now Superintendent in the Belleville School District, the notorious Richard D. Tomko, Gilbert Ave School principal, the late David A. Saper and Gantner Ave School Allison Jackter in Elmwood Park." See R-1.

certificate). N.J.A.C. 6A:9B-4.9(c) (setting forth the circumstances when the Board cannot issue a new certificate). The most relevant provision herein is N.J.A.C. 6A:9B-4.9(b)(3), which requires that an applicant provide "evidence demonstrating rehabilitation for the unbecoming conduct, incompetence, or other cause for the revocation."

When a petitioner challenges a finding by the Board denying a request for the issuance of a certificate, the Board's decision may be reviewed to determine "whether the decision is consistent with applicable statutory and regulatory provisions." Jessica Walder v. St. Bd. of Exam'rs, Commissioner's Decision No. 503-14, dated December 29, 2014 (noting that in making this determination, the Commissioner is not mandated to give deference to her staff); see Jaroslaw Nimczyk v. St. Bd. Of Exam'rs, Comm'r Decision No. 98-22 (May 16, 2022) (citing Br. of Trust. Of the Passaic Cty. Elks Cerebral Palsy Cntr. V. Office of Fiscal Account. and Compliance, Comm'r Decision No. 334-14 (Aug. 14, 2014)); see N.J.A.C. 6A:4-1.3(b)(1) (providing that appeals of decisions of the Board denying issuance of a certificate shall proceed as contested cases in accordance with N.J.A.C. 6A:3). Consequently, a determination is required to determine if the Board's decision was legally appropriate. Ibid.

Here, it is Harriman's burden to demonstrate, by a preponderance of the evidence, that the Board improperly denied his application for certification after revocation. See McQuilken v. St. Bd. of Exam'rs, OAL Dkt. No. EDU 8375-11, Initial Decision (Dec. 13, 2011), https://njlaw.rutgers.edu/collections/oal/html/initial/edu8375-11_1.html, adopted Comm'r (January 27, 2012) (citing Farrar v. St. Bd. of Exam'rs, OAL Dkt. No. EDU 13768-08, Initial Decision (Sept. 9, 2009), adopted, Comm'r (July 26, 2010) (finding that the "petitioner carries the burden of demonstrating by a preponderance of the credible evidence that she is entitled to the endorsement she seeks")). I **CONCLUDE** that Harriman has not satisfied this requirement as he cannot carry this burden because he has not met the requirements needed for the issuance of a certificate under N.J.A.C. 6A:9B-4.9.

Specifically, the record shows that Harriman has failed to show that he has been rehabilitated for the unbecoming conduct that led to the revocation of his teaching certificates, as required under N.J.A.C. 6A:9B-4.9(b)(3). For example, in his April 23, 2020 application, (R-1) Harriman claimed that he satisfies all criteria for issuance of new certificates; yet he also stated four years have passed since the "illegal revocation" and that "there was no rehabilitation needed as [he] NEVER did ANYTHING unbecoming of a teacher EVER." See R-1 (emphasis in original); (172:9-25; T173:22-25 – T174:1-9).

Furthermore, Harriman stated that he was harassed, intimidated and bullied by various personnel from Elmwood Park. Ibid. As a result of Harriman's responses in his application, that he did not need to provide evidence of rehabilitation because he did not feel that he engaged in unbecoming conduct, the Board denied his application for certification after revocation on June 26, 2020 (R-2). In reaching its decision, the Board found that Harriman had not provided any proof of rehabilitation and instead continues to deny the conduct and shift the blame to other coworkers. Ibid. I agree.

There is also the concerning proof provided herein and to the Board that Harriman has intentionally withheld information from his current and prospective employment of the revocation of his certificates. This conduct is completely opposed to the concept that Harriman has been rehabilitated, when he admits that he fails to disclose factual information that his certificates are revoked.

The record shows that after Harriman submitted new information that was not provided to the Board at the time of its first decision, the Board once again reviewed his application for certification in light of the additional material (R-3 and R-4), but the Board ultimately found the additional documentation, including letters from mental health professionals and other various reference letters, to be inconsistent with the statements made by Harriman in his April 23, 2020 application (R-4, at p. 5). Even if Harriman believes his certificates were wrongfully revoked, does not demonstrate behavior of someone that has been rehabilitated.

Harriman's testimony in this matter further illustrates that he has not accepted responsibility for his actions, and that he instead continues to place blame on others. For example, Harriman testified that various personnel from the Elmwood Park district lied and/or created fictitious storylines. In particular, he testified they were "simply jealous of the elementary gym teacher," and that they had "pre-meditated and orchestrated a plan" to "harass, intimidate, and bully" him by writing him up for "frivolous things." (T174:9-25 - T175:1-3). Harriman further testified that he believes that his certificates were "illegally revoked", without providing proof. (T172:9-25). Harriman still continues to believe that he has not engaged in conduct unbecoming of a teacher. Simply put, these are not the statements of someone who has even accepted responsibility for their own actions, let alone ones consistent with having been rehabilitated.

I **CONCLUDE** that Harriman has not met the requirements needed for issuance of a new certificate under N.J.A.C. 6A:9B-4.9, as he has continuously failed to acknowledge that his actions led to the revocation of his teaching certificates, a key component of rehabilitation. In addition, I **CONCLUDE** that Harriman's failure in demonstrating rehabilitation for the unbecoming conduct is underscored by the fact that he still believes that his certificates were wrongfully revoked, and he does not believe that he engaged in conduct unbecoming at all.

Consequently, I **CONCLUDE** that Harriman has failed to meet his burden to show by a preponderance of the evidence that the Board improperly denied his application for certification after revocation under N.J.A.C. 6A:9B-4.9. For the forging reasons, I **CONCLUDE** that the Board's decision denying Harriman's application is **AFFIRMED.**

ORDER

It is **ORDERED** that the decision by the New Jersey Department of Education, State Board of Examiners of December 10, 2020, denying Kevin Harriman's application for certification after revocation is **AFFIRMED**.

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 29, 2024 — Julio Morejon

DATE — **JULIO C. MOREJON**, ALJ

Date Received at Agency: January 29, 2024

Date E-Mailed to Parties: January 29, 2024

JCM/lr

APPENDIX

WITNESSES

For petitioner

Rani Singh, Secretary of the Board

For respondent

Kevin Harriman

EXHIBITS

Petitioner

P-4 Dr. Nanjlani letter

P-5 Dr. Gefter letter

P-6A Kevin Harriman letter

P-6B Letter of 5-14-2015

P-7 Letter to NJDOE

P-8 Letter to NJDOE

P-10 Attorney's answer

P-12 Letter

Respondent

R-1 Application 4-23-2020

R-2 Decision of the Board

R-3 Application

R-4 Second Decision of the Board

130-24
OAL Dkt. No. EDU 00802-23
Agency Dkt. No. 1-1/23

New Jersey Commissioner of Education

Final Decision

J.B., on behalf of minor child, J.B.,

Petitioner,

v.

Board of Education of the Township of Union, Union County.

Respondent.

The record of this matter, the proposed Settlement Agreement and Release (Agreement), and the Initial Decision[1] issued by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 9 of the Agreement includes a Confidentiality clause. The parties are reminded that the Board must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* in regard to information concerning this matter, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement

[1] The transmittal of this case from the Department of Education to the OAL included an error in the Agency Docket Number, which was carried over to the OAL's Initial Decision in this matter. The correct Agency Docket Number for this case is 1-1/23.

terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 8, 2024
Date of Mailing: March 11, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 00802-23
AGENCY DKT. NO. 1-12/23

J.B. ON BEHALF OF MINOR CHILD, J.B.,
Petitioners,
v.
BOARD OF EDUCATION OF THE CITY OF THE TOWNSHIP OF UNION, UNION COUNTY,
Respondent.

J.B. on behalf of minor child. **J.B.,** petitioner pro se

Lester E. Taylor, III, Esq.,(Taylor Law Group, attorneys) for respondent.

Record Closed: January 23, 2024 Decided: February 21, 2024

BEFORE **ERNEST M. BONGIOVANNI,** ALJ:

On January 25, 2022, the matter was transmitted to the Office of Administrative Law for determination as a contested case.

The parties have agreed to an amicable resolution of the matter and submitted the attached Settlement Agreement on January 23, 2024.

Having reviewed the record and the settlement terms, I **FIND** as follows:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or the signatures of their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

Therefore, I **CONCLUDE** that the agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. Accordingly, it is **ORDERED** that the parties comply with the settlement terms, and it is **FURTHER ORDERED** that the proceedings in this matter be concluded.

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.

February 21, 2024

DATE

Ernest M. Bongiovanni

ERNEST M. BONGIOVANNI., ALJ

Date Received at Agency: Feb. 22, 2024

Date Mailed to Parties: Feb. 22, 2024

id

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("the Agreement") is entered into effective as of the 23 day of January, 2024 ("the Effective Date"), by and between JAYMARK BAILEY, Sr. ("Bailey") and the TOWNSHIP OF UNION BOARD OF EDUCATION (the "Board").

WHEREAS, the Board is a body public and corporate, organized and existing by virtue of the laws of the State of New Jersey, N.J.S.A. 18A:11-1 which is entrusted with maintain and governing the public schools of the Township of Union School District (the "District");

WHEREAS, the Board has its administrative offices located at 2369 Morris Avenue, Union, New Jersey 07083;

WHEREAS, Bailey, currently residing at 476 Crawford Avenue, Union, New Jersey 07083, is the parent of minor child J.B.;

WHEREAS, J.B. is a student currently enrolled in the District;

WHEREAS, the Board determined on November 22, 2022 that J.B was not domiciled in the Township of Union, therefore not entitled to a free public education in the District pursuant to N.J.A.C. 6A:22-3.1; and

WHEREAS, Bailey filed an appeal with the New Jersey Commissioner of Education, captioned J.B. o/b/o minor child, J.B. v. Twp. of Union BOE, Union County, OAL Docket No. EDU-00802-2023 N, Agency Docket No. 1-12/23 (the "Appeal"), challenging the Board's determination; and,

WHEREAS, the parties desire to resolve and settle all outstanding matters between them pursuant to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, intending to be legally bound hereby and in consideration of the mutual covenants and conditions set forth in this Agreement, the Parties agree as follows:

1. **Settlement Terms**

Bailey and the Board agree that Bailey shall pay to the Board tuition in the gross amount of Two Thousand Five Hundred Dollars and No Cents ($2500.00), representing tuition owed to the Board for J.B.'s attendance at District schools while ineligible, in full satisfaction of all claims the Board has against Bailey for same. The first installment shall be paid within thirty (30) calendar days of the date the Commissioner of Education approves this Agreement as

follows:

Bailey shall make five payments to the Board in the amount of Five Hundred Dollars and No Cents ($500) each via cashiers checks made payable to:

Township of Union Board of Education

2369 Morris Avenue,

Union, New Jersey, 07083

The first installment shall be due and owing to the Board no later than thirty (30) calendar days from the date the Commissioner of Education approves this Agreement. Each subsequent payment shall be paid by Bailey to the Board within thirty (30) days of the previous payment, until Bailey has paid the Board Two-Thousand Five Hundred Dollars and no cents ($2500).

2. Consent to Judgment

In the event that Bailey fails to make any of the Five-Hundred Dollar ($500) installments to the Board in accordance with the process set forth above, Bailey hereby consents to the full amount of tuition owed for the period of time which J.B. attended District schools while ineligible, in the amount of Five Thousand and Ninety-Nine Dollars and no cents ($5099.00), to be reduced to a judgment by a court of competent jurisdiction.

3. Stipulation of Dismissal

Bailey and the Board agree that by executing this Agreement, it (and a Board resolution) shall be submitted to the Administrative Law Judge for issuance of an Initial Decision approving the settlement. If the settlement is approved by both the Administrative Law Judge and the Commissioner of Education, Bailey's pending Appeal will be dismissed with prejudice.

4. Release

Upon the fulfillment by Bailey of the terms and conditions of the Agreement, Bailey, his heirs and assigns hereby irrevocably and unconditionally waive, release and forever discharge any and all claims or rights, whether known or unknown, which they have or may have against the Board, personally and officially, individually and collectively, its past and present Board members, all officers and administrators, its attorneys, agents and employees, as well as their successors, and assigns, including, but not limited to any and all claims for attorneys' fees, any claims for emotional distress or pain and suffering, and all claims arising under any federal, state or local ordinance, regulation or law including, but not limited to, the Reconstruction Era Civil Rights Act, as amended, 42 U.S.C. §§ 1981, § 1983, et seq. ("Civil Rights Act"); the Civil Rights Act of 1991, as amended, 42 U.S.C. § 1981a, et seq. ("CRA of 1991"); the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. ("LAD"); any common law claim and any and all other claims, that could be initiated in any venue, for harassment, discrimination or retaliation of any kind, breach of promise,

misrepresentation, negligence, fraud, estoppel, defamation, violation of public policy, or any other tort, contractual or quasi-contractual claim, up to the date of this Agreement. Bailey expressly understands and acknowledges that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. Bailey expressly accepts and assumes the risk of such unknown or underestimated losses or claims and acknowledges and agrees that the benefits to be provided to him pursuant to this Agreement fully compensate him for such risks.

Upon receipt of the aforementioned tuition payment, the Board, its past and present Board members, all officers and administrators, its attorneys, agents and employees, as well as their successors, and assigns hereby irrevocably and unconditionally waive, release and forever discharge any and all claims or rights, whether known or unknown, which they have or may have against the Bailey up to the date of execution of this Agreement, including, but not limited to any and all claims for attorneys' fees, any claims for emotional distress or pain and suffering, and all claims arising under any federal, state or local ordinance, regulation or law including, but not limited to, the Reconstruction Era Civil Rights Act, as amended, 42 U.S.C. §§ 1981, § 1983, et seq. ("Civil Rights Act"); the Civil Rights Act of 1991, as amended, 42 U.S.C. § 1981a, et seq. ("CRA of 1991"); the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. ("LAD"); any common law claim and any and all other claims, that could be initiated in any venue, for harassment, discrimination or retaliation of any kind, breach of promise, misrepresentation, negligence, fraud, estoppel, defamation, violation of public policy, or any other tort, contractual or quasi-contractual claim, up to the date of this Agreement. The Board expressly understands and acknowledges that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. The Board expressly accepts and assumes the risk of such unknown or underestimated losses or claims and acknowledges and agrees that the benefits to be provided to it pursuant to this Agreement fully compensate it for such risks.

5. Assent to Terms

Bailey and the Board hereby acknowledge that they entered into this Agreement with a full understanding of their rights and that they were fully informed of the implications of this Agreement. Bailey has been offered the opportunity to review this Agreement with an attorney. The parties enter into this Agreement without duress and of their own free will and volition and acknowledge that they were given a full and fair opportunity to fully consider this Agreement. This Agreement must be formally approved by the Board and this Agreement will be deemed null and void without said approval. All reasonable efforts will be made to timely obtain approval from the Board.

6. No Admission of Liability

This Agreement does not in any way constitute an admission of liability or wrongdoing by either party with respect to the events giving rise to the Appeal.

It is expressly understood that the arrangement herein is predicated exclusively upon the special circumstances of this matter and shall not be construed to represent any policy or procedure of the Board.

7. Successors and Assignees

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, assignees, heirs, officers, employees, officials and agents.

8. Amendment; Severability; No Waiver

This Agreement shall not be amended, changed or modified except in a writing signed by all parties. The provisions of this Agreement are severable. If it is determined by a court or administrative agency of competent jurisdiction that a specific clause of this Agreement is illegal or unenforceable, the remainder of the Agreement shall not be affected by such a ruling and shall remain in full force and effect unless doing so would destroy the essential nature of this Agreement. Any failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or of any other provision.

9. Confidentiality:

Bailey and the Board agree that the terms and conditions of this settlement and the claims upon which it was based shall remain confidential insofar as permitted by law. The Parties agree to not discuss this case or settlement with third Parties. This prohibition shall include, but shall not be limited to, verbal communications, email or text message communications, writing a letter to the editor of any publication, posting of any comments or communication on any website, weblog, or "blog" online internet forum, or in any chat room including but not limited to any social media outlets. In the event that any individual makes an inquiry to either Party regarding the litigation, the Party shall only indicate that the matter has been amicably resolved. The Parties understand and agree that this paragraph is a material provision of this Agreement and that any breach of this paragraph shall be a material breach of this Agreement, and that each party would be irreparably harmed by violation of this provision and the Parties would be entitled to all remedies at law and in equity as a result of the breach of this Paragraph, including an award of attorneys fees to the prevailing party should the breach be deemed willful by a Court of competent jurisdiction.

10. Non-Disparagement

Each party to this agreement agrees not to disparage or make or solicit any comments,

statements, or the like to the media, the public or to others that may be considered derogatory or detrimental to the good name or business reputation of the other.

11. No Further Consideration

Bailey and the Board each expressly acknowledge and represent that neither party will seek nor be entitled to any further consideration from the other in connection with this Agreement other than the consideration as detailed herein.

12. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matters herein, and supersedes and integrates any and all prior representations, negotiations, discussions, understandings and agreements, whether oral or written. Each party acknowledges that neither the other party, nor any agent or attorney of the other party, has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement to induce it to execute this Agreement.

13. Construction

The terms of this Agreement are not to be construed against any one party but are to be construed as if all parties prepared it equally.

14. Counterparts

This Agreement may be signed in counterparts and shall be binding as if all Parties executed the original thereof. A facsimile or electronically-transmitted signature shall have the same effect as an original signature.

15. Law Governing

This Agreement shall be governed by the laws of the State of New Jersey.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement consisting of this and four (4) preceding pages on the dates set forth below.

Jaymark Bailey, Sr.

Date: 1/23/2024

Township of Union Board of Education

Lester E. Taylor III

Date: 1/23/24

131-24

New Jersey Commissioner of Education

Decision

R.R., on behalf of minor child, A.R.,

Petitioner,

v.

Board of Education of the Borough of Ramsey, Bergen County,

Respondent.

Synopsis

Petitioner disputed the respondent Board's finding that his son, A.R., committed an act of harassment, intimidation, or bullying (HIB) against a fellow student pursuant to New Jersey's Anti-Bullying Bill of Rights Act, *N.J.S.A.* 18A:37-13.2 et seq (the Act). After an investigation by the school's anti-bullying specialist (ABS), the Board determined that A.R. had committed an act of HIB against an African-American classmate when he told her during recess that she is Black, and "black is bad", which caused the victim to become visibly upset; she cried and told several friends that A.R. had made "racist" comments to her. The petitioner contended that his son told the victim, "you smell" and "you're bad," and that if A.R. did say anything racist toward the victim, he didn't mean to. A hearing in the matter was held in the Office of Administrative Law (OAL) on November 17, 2023.

The ALJ found, *inter alia*, that: an action by a board of education is entitled to a presumption of correctness unless it is proven to be arbitrary, capricious or unreasonable; under the Act, "harassment, intimidation, or bullying" is broadly defined as any gesture, any written, verbal, or physical act, or any electronic communication that is reasonably perceived as motivated by any actual or perceived distinguishing characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability, that takes place on school property and substantially disrupts the orderly operation of the school; in the instant case, the testimony of the ABS regarding the HIB investigation was credible; it was reasonable and rational for the ABS to have found the victim's explanation more consistent with the evidence collected during the investigation; the petitioner was sincere in his testimony and steadfastly denied that his son ever said "you're Black" and "black is bad" to the victim, maintaining that the victim simply misheard what was said; nevertheless, the ALJ concluded that petitioner failed to meet his burden of demonstrating that the Board acted arbitrarily when it determined that A.R. committed an act of HIB as defined at *N.J.S.A.* 18A:37-14 within the Anti-Bullying Bill of Rights Act, *N.J.S.A.* 18A:37-13 to 37. Accordingly, the ALJ dismissed the petition.

Upon review, the Commissioner concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

131-24
OAL Dkt. No. EDU 03078-23
Agency Dkt. No. 61-3/23

New Jersey Commissioner of Education

Final Decision

R.R., on behalf of minor child, A.R.,

Petitioner,

v.

Board of Education of the Borough of Ramsey, Bergen County,

Respondent.

The record of this matter, the hearing transcript, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4, have been reviewed and considered. The Board did not file a reply to petitioner's exceptions.

This matter involves the Board's determination that petitioner's son, A.R., committed an act of harassment, intimidation, or bullying (HIB) when he told an African-American classmate during recess that she is Black, and "black is bad." Immediately thereafter, the victim became visibly upset, cried, and told several friends that A.R. had made "racist" comments to her. During the HIB investigation conducted by the school's anti-bullying specialist (ABS), A.R. maintained that he told the victim, "you smell" and "you're bad" and further stated that "if he happened to say something racist" to the victim, "he didn't mean to." Upon completion of the investigation, the ABS concluded that A.R. had made racially motivated, insulting, or demeaning

comments to the victim which created a hostile educational environment, and the Board upheld the ABS's findings and conclusions. Petitioner now appeals the Board's determination.

During the contested hearing at the OAL, the ABS and petitioner testified. The ALJ found that the ABS testified credibly regarding the HIB investigation. The ALJ further found that, upon considering both the victim and A.R.'s version of the interaction, it was reasonable and rational for the ABS to have found the victim's explanation more consistent with the other evidence collected during the investigation. For his part, petitioner steadfastly denied that his son ever said, "you're Black" and "black is bad" to the victim. He maintained that his son said, "you smell" and "you're bad" to the victim and that the victim simply misheard what was said. Ultimately, the ALJ concluded that petitioner failed to meet his heavy burden of demonstrating that the Board acted arbitrarily, capriciously, or unreasonably when it determined that A.R. committed an act of HIB as defined at *N.J.S.A.* 18A:37-14 within the Anti-Bullying Bill of Rights Act, *N.J.S.A.* 18A:37-13 to -37.

In his exceptions, petitioner argues—as he did before the ALJ—that his son never said, "you're Black" and "black is bad" and that the victim simply misheard what his son said. He contends that the record lacks substantial credible evidence to establish that his son committed an act of HIB. He emphasizes that none of the other students interviewed by the ABS heard his son say, "you're Black" or "black is bad" and that the victim's emotional reaction is not sufficient evidence of bullying. He also contends that the victim's statements to her friends about what A.R. said were inconsistent, though she repeatedly referenced A.R.'s use of the word "black." Additionally, petitioner points to the fact that the victim told one friend that she did not hear the full sentence that A.R. spoke to her. Petitioner's exceptions did not address

the ALJ's findings and conclusions regarding the specific statutory requirements codified at *N.J.S.A.* 18A:37-14, which must be met to sustain a HIB finding; his exceptions state that his "disagreement with the [ALJ] is not about the law or the facts, it is about logic."

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. Bd. of Educ. of W. Orange*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration," and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't of Env't Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff'd*, 131 *N.J. Super.* 37 (App. Div. 1974). Regarding HIB determinations, this standard has been explained as requiring a petitioner to "demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." *G.H. and E.H. o/b/o K.H. v. Bd. of Educ. of Borough of Franklin Lakes, Bergen Cnty.*, EDU 13204-13 (Initial Decision Feb. 24, 2014), *adopted* Commissioner Decision No. 157-14 (Apr. 10, 2014).

Upon careful review of the entire record, the Commissioner adopts the Initial Decision of the ALJ as the final decision in this matter. The Commissioner concurs with the ALJ that petitioner failed to satisfy his heavy burden of demonstrating that the Board acted arbitrarily, capriciously, or unreasonably when it determined that A.R. committed an act of HIB as defined at *N.J.S.A.* 18A:37-14. Petitioner has not shown that the Board's HIB determination was arbitrary, without rational basis, or induced by improper motives. Nor has petitioner

demonstrated that the Board acted in bad faith or in utter disregard of the circumstances before it. As detailed by the ALJ in the Initial Decision, the experienced ABS conducted a thorough, non-biased investigation of the HIB allegation during which she considered all relevant circumstances including, but not limited to, A.R.'s version of events and the victim's acknowledgment that she did not hear the full sentence that A.R. spoke to her:

> Undeniably, [the ABS] agrees that the event presents a difficult 'he-said-she-said' situation, which can be the case in HIB investigations. However, in making her HIB determination, [the ABS] found the victim to be more persuasive in her version of the incident than A.R. At no time during the investigation did A.R. assert that the victim misheard him. Still, her HIB report confirms that A.R. maintained that he said something different than the victim stated. [The ABS] acknowledges that witnesses reported that the victim was unclear about the whole sentence A.R. said and that others did not overhear what A.R. said. In other words, she considered those factors in her analysis.
>
> Ultimately, [the ABS] believed the victim more than A.R. [The ABS] highlighted what swayed her. Initially, the victim was consistent when she immediately told her peers that A.R. commented about her skin color, which upset her, and she cried. Indeed, the victim immediately reported to her friends that A.R. said something like "black is bad" and that he was being "rude" and "racist." She was sufficiently distressed to report the incident to her parents that day. [The ABS] analyzed the victim's demeanor and significant emotional response when describing the incident to her [during the] interview, which [the ABS] found genuine. Her experience with school-aged children was a reluctance to tattletale. Indeed, the victim expressed worry that her classmates would get in trouble and be upset with her over the incident.
>
> [Initial Decision, at 6.]

The Commissioner disagrees with petitioner that the records lacks substantial credible evidence to support the Board's HIB determination. Substantial evidence has been defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion." *In re*

Pub. Serv. Elec. & Gas Co., 35 *N.J.* 358, 376 (1961) (quoting *In re Hackensack Water Co.*, 41 *N.J. Super.* 408, 418 (App. Div. 1956)). The term has also been defined as "evidence furnishing a reasonable basis for the agency's action." *McGowan v. N.J. State Parole Bd.*, 347 *N.J. Super.* 544, 562 (App. Div. 2002).

Here, the Commissioner finds that the record—including the documents in evidence as well as the credible testimony of the ABS—contains substantial credible evidence providing a reasonable basis to support the Board's HIB determination. As emphasized by petitioner in his exceptions, the evidence may leave room for two opinions. However, that is an insufficient reason for the Commissioner to overturn the Board's decision so long as the Board has not acted dishonestly or in bad faith. *Bayshore Sewerage Co.,* 122 *N.J. Super.* at 199. The Commissioner finds no reason to substitute his judgment for that of the Board. The Commissioner is also in accord with the ALJ's determination—for the reasons thoroughly explained in the Initial Decision—that all requisite elements of the statutory definition of HIB, codified at *N.J.S.A.* 18A:37-14, were satisfied in this case.

Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 8, 2024
Date of Mailing: March 11, 2024

[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 03078-23
AGENCY DKT. NO. 61-3/23

R.R. ON BEHALF OF MINOR CHILD A.R.,

Petitioner,

v.

BOARD OF EDUCATION OF THE BOROUGH OF RAMSEY, BERGEN COUNTY,

Respondent.

R.R., petitioner appearing pro se

Eric L. Harrison, Esq. for Respondent (Methfessel & Werbel, attorneys)

Record Closed: January 4, 2024 Decided: January 29, 2024

BEFORE: **NANCI G. STOKES**, ALJ

STATEMENT OF THE CASE

R.R. challenges a determination that A.R. engaged in Harassment, Intimidation, and Bullying (HIB) against an African-American fifth-grade classmate by telling her that "Black is bad." Should the HIB conclusion stand, even though the victim did not hear A.R.'s complete comment and A.R. denied saying it? Yes. A Board of Education's

decision will stand if it is not arbitrary, capricious, or unreasonable. Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960).

PROCEDURAL HISTORY

On March 8, 2023, R.R. filed a Petition of Appeal with the Commissioner of Education (Commissioner) on behalf of his son A.R. challenging the Ramsey Board of Education's (Board) HIB determination against A.R. R.R. largely disputes that the Board based its determination on inadequate evidence and seeks to set aside the Board's decision.

On March 27, 2023, the Board answered the petition denying the petitioner's allegations, maintaining it followed all required procedures and requesting that this tribunal and the Commissioner uphold the Board's HIB determination.

The Department of Education (DOE) transmitted this case to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to-15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to-13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On April 10, 2023, the OAL received and filed the transmittal.

On August 4, 2023, the R.R. and the Board filed cross-motions for summary decision. On August 24, 2023, the parties filed responses to the motions. On September 11, 2023, I denied the motions, finding that disputed material facts existed concerning the evidence the investigator relied upon in making her HIB determination and how the event caused a substantial disruption in the school's operations or the rights of other students.

On November 17, 2023, I held the hearing and allowed the parties to present post-hearing summations. The parties submitted their summations on January 4, 2024, and I closed the record.

FINDINGS OF FACT

The parties present a stipulation of facts and exhibits, which I incorporate, and I **FIND** the following as **FACT** after considering the sufficiency of the documents and weighing the credibility of the witnesses:

In October 2022, A.R. was a fifth-grade student at John Y. Dater School (Dater) in Ramsey, New Jersey. A.R. had no trouble at school or acted racially insensitively before events on October 20, 2022.

On October 20, 2022, the alleged victim's parents emailed the school stating that A.R. told their daughter that she is "black and black is bad" multiple times during recess.

Under N.J.S.A. 18A:37-15, the Board issued Policy #5512 concerning HIB, which essentially mirrors the State HIB law and the process a school must follow when investigating HIB claims. See Exhibit R-1.

The school's anti-bullying specialist, Ann Fishman, investigated the complaint and testified at the hearing.

In evaluating the evidence, a trier of fact must assess and weigh the credibility of the witnesses to make factual findings as to the disputed facts. Credibility contemplates an overall assessment of a witness's story considering its rationality, internal consistency, and the "manner in which it hangs together" with other evidence. Carbo v. U.S., 314 F.2d 718, 749 (9th Cir. 1963). A fact-finder must base credibility determinations on their common sense, intuition, and experience. Barnes v. U.S., 412 U.S. 837 (1973).

Based on those principles, I **FIND** that Ms. Fishman credibly testified on behalf of the Board. She was straightforward in her testimony about the steps she took to investigate the playground incident and why she concluded that A.R. committed a HIB against his classmate. She showed no hostility or bias towards A.R. in her recount of the investigation or her responses to questions by R.R. at the hearing.

As the anti-bullying specialist at Dater for eleven years, Ms. Fishman was responsible for implementing the HIB law, investigating any reports of HIB, and drafting reports of her investigations. In that role, Ms. Fishman receives annual HIB training, including making credibility determinations about the students that she interviews during an investigation. Ms. Fishman also served as the school counselor for twelve years. In other words, Ms. Fishman has considerable experience with children and investigating HIB claims.

To investigate the alleged HIB, Ms. Fishman spoke to A.R., the victim, and five students on the playground during the incident. Ms. Fishman determined that the five student witnesses she interviewed on October 21, 2022, gave credible statements in response to open-ended questions, to which the students responded without hesitation. The investigation forms indicate that the incident occurred on the playground when the alleged victim attempted to interrupt a game where other students were kicking around a soccer ball. None of the five witnesses overheard the interaction between A.R. and the victim.

Specifically, Witness One stated that the alleged victim stated that A.R. "was being rude to her and racist." The alleged victim wanted to give the ball to another student, her crush. The alleged victim told Witness One that when she tried to get the ball, A.R. said "black, black" to her. Witness One then confronted A.R. and told him that comment was "pretty rude." A.R. replied that he didn't make a racist comment.

Witness Two told Ms. Fishman that the alleged victim was playing the big red ball game, and she left the game crying. The alleged victim told witness two that A.R. said something rude, like "black, black." Witness Two also confronted A.R., and A.R. denied saying anything racist. Instead, A.R. responded, "What did I say?" and reported that, "I just told her that she stinks." Witness Two confirmed that A.R. asked the alleged victim what he said that was racist, and the alleged victim replied, "You know what you said."

Witness Three reported seeing the alleged victim join the game and get the ball. After the game, the alleged victim said, "A.R. was being racist." The alleged victim acknowledged that she did not hear A.R.'s entire sentence, but she heard "something like black people are bad" or "black, black."

Witness Four was playing the game with A.R. and other students. He said the alleged victim joined them and tried to get the ball. The alleged victim stated that A.R. said something racist. At the end of recess, A.R. noted that "all he said to her was you smell." Witness Four also reported that the alleged victim looked upset at the end of recess.

Similarly, Witness Five was also playing the game with the ball. He was passing the soccer ball to another student, and the alleged victim took the ball and ran away with it. A.R. went to get it back. At the end of recess, the alleged victim was crying. Witness Five stated that he spoke with A.R., and A.R. told him that the alleged victim said that A.R. said something bad to her. However, A.R. wouldn't tell Witness Five what "the bad thing was" that he said.

During her interview on October 25, 2022, the victim reported that A.R. said, "black, black is bad." Further, the victim reported that A.R. had made fun of her previously. The victim also told Ms. Fishman that after recess, she "felt off" the rest of the day but did not leave school. The victim's interview about the incident reflects that A.R. made only one comment to her, not that he repeated the statement as her parents reported. Indeed, Ms. Fishman concluded that A.R. only made one comment during the interaction.

Still, A.R. denied making a racial comment to the victim, stating that he said, "You smell," and four days later indicated he also said, "You're bad." A.R. acknowledged that he was annoyed that she interfered with the game. When confronted by others on the playground after the incident, A.R. responded by asking, "What did I say that was racist?" and told Ms. Fishman that he did not understand how telling someone that they stink was racist. A.R. reported asking the alleged victim the same question, who responded, "You know what you said."

R.R. testified at the hearing on behalf of A.R., but A.R. did not. R.R. was sincere in his testimony but relied on what his son told him happened. Further, R.R. perceives Ms. Fishman's investigation as an unfair assessment that lacks sufficient evidence, especially given the victim's report that she did not hear A.R.'s complete sentence. Still, R.R. does not dispute that the alleged victim was upset or hurt by what she believed his

son said to her or that an incident occurred between A.R. and the alleged victim. To be sure, if the alleged victim believed A.R. said the words she accused him of uttering, it would flow that she would be upset. Instead, R.R. maintains that the evidence does not support that A.R. said what the alleged victim thinks she heard on a busy playground. In other words, the victim misheard A.R. R.R. highlights that A.R. denied saying it, the alleged victim acknowledged she did not fully hear A.R.'s comment, and no one else heard his conversation. Thus, R.R. questions the lack of evidence Ms. Fishman and the Board relied upon in concluding that A.R. committed a HIB.

R.R. highlights that his wife complained of bullying against A.R. that the school did not investigate. Yet, a different incident or failure to investigate is not an issue in this case.

Undeniably, Ms. Fishman agrees that the event presents a difficult "he-said-she-said" situation, which can be the case in HIB investigations. However, in making her HIB determination, Ms. Fishman found the victim to be more persuasive in her version of the incident than A.R. At no time during the investigation did A.R. assert that the victim misheard him. Still, her HIB report confirms that A.R. maintained that he said something different than the victim stated. Ms. Fishman acknowledges that witnesses reported that the victim was unclear about the whole sentence A.R. said and that others did not overhear what A.R. said. In other words, she considered those factors in her analysis.

Ultimately, Ms. Fishman believed the victim more than A.R. Ms. Fishman highlighted what swayed her. Initially, the victim was consistent when she immediately told her peers that A.R. commented about her skin color, which upset her, and she cried. Indeed, the victim immediately reported to her friends that A.R. said something like "black is bad" and that he was being "rude" and "racist." She was sufficiently distressed to report the incident to her parents that day. Ms. Fishman analyzed the victim's demeanor and significant emotional response when describing the incident to her at the October 25, 2022, interview, which Ms. Fishman found genuine. Her experience with school-aged children was a reluctance to tattletale. Indeed, the victim expressed worry that her classmates would get in trouble and be upset with her over the incident.

On October 26, 2022, Ms. Fishman and the school principal, Courtney Rejent, met with R.R. to discuss the incident. R.R. expressed his concerns about the lack of a standard or evidence to support the fact that A.R. committed an act of HIB.

On October 31, 2022, Ms. Fishman submitted her final report to the Principal, who provided it to the Superintendent.

The final HIB report found that A.R.'s HIB behavior was a single "insulting and demeaning comment," resulting in "insulting and demeaning" the victim and "create[d] a hostile education environment." Further, the report considered the incident as "racially, sexually, or religiously motivated." The report further states that "[t]his report and investigation findings must be submitted to the Principal within ten school days" of receiving a written notice of a HIB incident. The report attached the witness, victim, and target investigation reports but offered no further explanation of how Ms. Fishman determined that A.R. committed an act of HIB. Yet, Ms. Fishman explained her reliance on these investigative statements in making her determination and her experience in assessing credibility.

Notably, Ms. Fishman did not report that A.R.'s alleged comment caused a "substantial disruption or interference with orderly operations of the school or the rights of others." Instead, Ms. Fishman determined that the interaction between the victim and A.R. created a hostile educational environment for the victim and that the utterance of a statement that related to the color of the victim's skin created a hostile educational environment sufficient to constitute a HIB.

A.R.'s discipline for the HIB act was a parent conference, in-school counseling, and two lunch detentions.

In sum, I **FIND** that Ms. Fishman considered A.R.'s version of the interaction before arriving at her HIB conclusion but found that the victim's explanation was more consistent with the evidence. Indeed, I **FIND** that Ms. Fishman explained what she reasonably relied upon in making her decision and that evidence exists to support her determination.

The Board of Education reviewed the HIB report and affirmed the decision that a HIB occurred. Subsequently, A.R.'s parents appeared before the Board on December 6, 2022, appealing the decision.

On December 21, 2022, the Board wrote to R.R., advising that the Board affirmed the conclusion that A.R. committed an act of HIB. This appeal followed.

DISCUSSION AND CONCLUSIONS OF LAW

The Legislature designed the Anti-Bullying Rights Act (ABRA), N.J.S.A. 18A:37-13 to -37, "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises." N.J.S.A.18A:37-13.1(f). Each school district must adopt a policy that prohibits HIB and provides "a procedure for prompt investigation of reports of violations and complaints." N.J.S.A. 18A:37-15(b)(6).

Under the ABRA, "harassment, intimidation or bullying" (HIB) is defined as:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or

> pervasively causing physical or emotional harm to the student.
>
> [N.J.S.A. 18A:37-14]

Thus, a HIB finding requires demonstrating three elements, assuming the alleged incident or incidents occurs on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in N.J.S.A. 18A:37-15.3. First, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic, and second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County, EDU 10981-18, Initial Decision (December 29, 2019), http://njlaw.rutgers.edu/collections/oal, rejected and remanded Comm'r Decision No. 51-20 (February 4, 2020), 2020 N.J. Agen. Lexis. 50.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness that will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). To overcome that presumption, the petitioner must prove by a preponderance of the evidence that the board "acted in either bad faith or in disregard to the circumstances." T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07 (February 6, 2008), aff'd, Comm'r (April 25, 2013) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966)). In other words, the burden is a heavy one. Indeed, the Commissioner recognizes that Boards should "have the discretion to operate their schools in a manner that best serves their unique communities," the Commissioner will not interfere with that discretion concerning HIB matters unless the Board acted arbitrarily, capriciously, or unreasonably. G.H. & E.H. o/b/o K.H. v. Franklin Lakes Bd. of Educ., EDU 13204-13 (Feb. 24, 2014), aff'd, Comm'r (Apr. 10, 2014), n.4. Further, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]" the Commissioner will not substitute his judgment for that of the Board. Bayshore

Sewerage Co. v. Dep't. of Envtl. Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974).

Still, the Board's factual determinations require such deference only when supported by substantial credible evidence, e.g., having a rational basis. Quinlan v. Board of Ed. of North Bergen Tp., 73 N.J. Super. 40 (App. Div. 1962); Schinck v. Board of Ed. of Westwood Consol. School Dist., 60 N.J. Super. 448 (App. Div. 1960). Additionally, the reviewing tribunal may reject the findings of fact if the evidentiary record does not support them. In re Suspension of License of Silberman, 169 N.J. Super. 243, 255-56 (App. Div. 1979), aff'd, 84 N.J. 303 (1980).

Undeniably, the incident took place on school grounds and is subject to the HIB statutory directives. Regarding the first element, the statute defines HIB is an action "that is reasonably perceived as being motivated either by any actual or perceived characteristic." N.J.S.A. 18A:37-14. Here, the statute requires an analysis of the victim's perception of the actor's motivation and whether that perception is reasonable. Yet, an analysis of the actual motivation of the actor is not required. Webbeh, at *8. Here, I **CONCLUDE** it was not arbitrary, capricious, or unreasonable for the Board to conclude that a reasonable person would consider A.R.'s comment using the term "black," directed at an African-American victim, was racially motivated.

The second element is arguably less clear because the HIB report did not state that the incident created a "substantial interruption in the ordinary operation of the school or in the disruption of the victim's education or the rights of other students." However, the school maintains that A.R.'s conduct not only created a hostile educational environment for the victim, but to its students, meeting this prong of the statutory analysis. The incident was a limited one-time comment and did not begin a series of events at the school. However, the victim was crying at the time and "felt off" the rest of the day. Other students became involved after the unsettling incident took place in response to the victim's distress. In D.D.K. o/b/o D.K v. Board of Education of the Township of Readington, Hunterdon County, EDU 07682-15 (October 6, 2016), adopted, Comm'r Decision (November 11, 2016), https://njlaw.rutgers.edu/collections/oal/, the Commissioner discussed those situations where the Board's HIB determination satisfied the second prong, explaining that:

> [C]onduct has been determined to substantially disrupt the orderly operation of the school when students are so upset or embarrassed that they are "not fully available for learning. " G.H. and E.H. on behalf of K.H. v. Board of Education of the Borough of Franklin Lakes, Bergen County, OAL Dkt. No. EDU 13204-13, decided February 24, 2014, adopted Commissioner Decision No. 157-14, April 10, 2014. Additionally, when other students are "so affected" by behavior that they report it, the orderly operation of the school may be substantially disrupted. T.R. and T.R. on behalf of E.R. v. Bridgewater-Raritan Regional Board of Education, OAL Dkt. No. EDU 10208-13, decided September 25, 2014, adopted Commissioner Decision No. 450-14, November 10, 2014.
>
> Id.

Thus, I **CONCLUDE** that the Board satisfied the second requirement necessary to conclude that A.R. committed a HIB.

The third element under N.J.S.A. 18A:37-14(a) requires a conclusion that the HIB act is one that "a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student," "has the effect of insulting or demeaning a student," or "creates a hostile educational environment." In Wehbeh, the Commissioner highlighted that "none of these criteria require the actor to have actual knowledge of the effect that their actions will have, or to specifically intend to bring about that effect." Id. Further, any one of the three criteria satisfies the third element. Here, the Board found that A.R.'s comments demeaned and insulted the victim and created a hostile environment. There is no doubt that a reasonable person should know that a racist comment would result in emotional harm or insult. Hence, I **CONCLUDE** the Board was not arbitrary, capricious, or unreasonable in reaching that conclusion, meeting the third prong of the analysis.

Here, R.R. presented no credible evidence that the Board acted arbitrarily or that its decision did not have a rational basis. I am mindful of R.R.'s strong desire to protect his son from harm and determinations with which he disagrees. Still, I found that the Board's HIB conclusion had a rational basis and that evidentiary support existed to

support its conclusion. Thus, I **CONCLUDE** that the Board's decision that A.R. committed a HIB should stand.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the petitioner's appeal 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 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 29, 2024

DATE

NANCI G. STOKES, ALJ

Date Received at Agency: January 29, 2024

Date Mailed to Parties: January 29, 2024

ljb

APPENDIX

Testimony

For Petitioner

R.R.

For Respondent

Ann Fishman

Exhibits

Joint

J-1 Petition of Appeal dated March 8, 2023
J-2 Harassment, Intimidation and bully Report dated October 21, 2022
J-3 Ramsey Board of Education's Answer dated March 20, 2023
J-4 Correspondence from Principal Courtney Regent to R.R. dated October 24, 2022
J-5 Correspondence from Principal Regent to R.R. dated December 5, 2022
J-6 Correspondence from Thomas O'Hern to R.R. dated December 21, 2022
J-7 Email from R.R. to Dr. Matthew Murphy dated December 21, 2022
J-8 Correspondence from Dr. Murphy to R.R. dated December 22, 2022
J-9 Correspondence from Donna Ryan to R.R. dated December 23, 2022
J-10 Email from R.R. to Dr. Murphy dated December 23, 2022
J-11 Email from R.R. to Dr. Andrew Matteo dated January 3, 2023
J-12 Email from Dr. Matteo to R.R. dated January 3, 2023
J-13 Joint Stipulations of Fact

For Petitioner

P-1 Notes on Meeting with Courtney Rejent and Annemarie Fishman
P-2 Email to Molly dinning and Annemarie Fishman dated June 8, 2022
P-3 Email Correspondence with Superintendent's Office, December 21, 2022 – January 19, 2023

For Respondent

R-1 Board's Harassment, Intimidation and Bullying policy #5512

R-2 Email from Lauren Tango to Molly Dining dated November 2, 2022

R-3 Correspondence to Parents of Target from Courtney Rejen, dated December 5, 2022

R-4 Email from Laura Tango to Annemarie Fishman dated November 2, 2022

R-5 Email from Laura Tango to Annemarie Fishman dated October 31, 2022

137-24

New Jersey Commissioner of Education

Final Decision

Lisa Cerchio,

Petitioner,

v.

Board of Education of the Scotch Plains-Fanwood Regional School District, Union County,

Respondent.

Synopsis

In this matter, petitioner – a high school gymnastics coach formerly employed by the respondent, Board of Education of the Scotch Plains-Fanwood Regional School District (Board) – challenged the determination of the Board that she had committed an act of harassment, intimidation and bullying (HIB) when – during an awards banquet – petitioner singled out A.J., a tenth-grade member of the gymnastics practice team, for not returning her gymnastics leotard in a timely fashion. The matter was the subject of a contested hearing at the Office of Administrative Law (OAL), after which the Administrative Law Judge (ALJ) made findings of fact and legal conclusions and issued an Initial Decision.

The ALJ found, *inter alia*, that: the statutory elements of a HIB violation are set forth in the Anti-Bullying Bill of Rights Act, at *N.J.S.A.* 18A:37-14; the testimony of Board administration and staff members who conducted the HIB investigation in this matter was based on "hearsay" evidence, to such a degree that the Board's entire case was built solely on hearsay evidence; hearsay statements collected during the Board's HIB investigation cannot serve as the basis upon which to decide any "finding of ultimate fact in this matter"; furthermore, the Board's HIB team asked irrelevant questions and failed to thoroughly interview petitioner about details of how she transferred the leotard to A.J. at the awards banquet; the HIB team should not have considered general derogatory comments from those interviewed about petitioner's personality, coaching style, and character because those comments were not relevant to the HIB allegation and "tainted the decision-making process"; further, such comments provided "a compelling reason to reverse the substantiation of the HIB charge"; and the undisputed testimony and evidence presented by the petitioner was highly credible. Accordingly, the ALJ held that petitioner's conduct did not meet the statutory definition of HIB and recommended that the petition of appeal be granted.

Upon review, the Commissioner adopted the Initial Decision of the OAL with modification. The Commissioner, *inter alia*, rejected the ALJ's criticism of the Board's HIB investigation, finding that it was thorough and properly included eyewitness accounts of what occurred at the awards banquet. However, because the record is devoid of evidence to establish that petitioner's conduct substantially disrupted or interfered with the orderly operation of the school or the rights of other students, as required by *N.J.S.A.* 18A:37-14, the Commissioner found that the Board's HIB determination was arbitrary, capricious, and unreasonable. Accordingly, the Initial Decision was adopted as modified herein, and the petition was granted.

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.

137-24
OAL Dkt. No. EDU 05472-20
Agency Dkt. No. 111-5/20

New Jersey Commissioner of Education

Final Decision

Lisa Cerchio,

Petitioner,

v.

Board of Education of the Scotch Plains-Fanwood Regional School District, Union County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the respondent Board pursuant to *N.J.A.C.* 1:1-18.4, have been reviewed and considered. Petitioner did not file a reply.

This matter involves the Board's determination that petitioner, a high school gymnastics coach formerly employed by the Board, committed an act of harassment, intimidation, or bullying (HIB) when she singled out A.J., a tenth-grade member of the gymnastics practice team, during an awards banquet for not returning her gymnastics leotard in a timely fashion. Initial Decision at 28. Following a contested hearing at the OAL, the Administrative Law Judge (ALJ) rendered findings of fact and legal conclusions. After discrediting both the Board's HIB investigation and the testimony of Board witnesses regarding the investigation, the ALJ held that hearsay statements obtained during the Board's HIB investigation from A.J., petitioner, and

other witnesses could not be used "to decide any finding of ultimate fact in this matter." *Id.* at 50. Relying solely on testimony and evidence presented by petitioner, the ALJ held that petitioner's conduct did not meet the statutory definition of HIB and recommended that her petition of appeal be granted. *Id.* at 50-51.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. Bd. of Educ. of W. Orange*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]" and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't of Env't Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff'd*, 131 *N.J. Super.* 37 (App. Div. 1974). Regarding HIB determinations, this standard has been explained as requiring a petitioner to "demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." *G.H. and E.H. o/b/o K.H. v. Bd. of Educ. of Borough of Franklin Lakes, Bergen Cty.*, EDU 13204-13 (Initial Decision Feb. 24, 2014), *adopted* Commissioner Decision No. 157-14 (Apr. 10, 2014).

In its exceptions, the Board asserts that the ALJ erred when he found that petitioner did not commit an act of HIB because he failed to apply the applicable legal standard for adjudication of HIB matters or even cite the appropriate standard of review in the Initial Decision. Additionally, the Board argues that the ALJ inappropriately applied the hearsay and residuum rules to analyze and discredit the Board's HIB investigation. The Board maintains

that there is nothing improper about the Board's consideration of hearsay during its HIB investigation. Furthermore, the Board emphasizes that the ALJ substituted his own judgment for that of the Board in contravention of law, as evidenced by his criticism of how the Board conducted its investigation and questioned witnesses.

Upon careful review of the record in its entirety, the Commissioner adopts the Initial Decision, with modification. As will be explained herein, the Commissioner concurs with the Board that the ALJ inappropriately discredited the Board's investigation and the testimony of its witnesses and substituted his judgment for that of the Board. The Commissioner agrees with the Board that there is nothing improper about the Board's consideration of hearsay during its HIB investigation. Nevertheless, the Commissioner holds that it was arbitrary, capricious, and unreasonable for the Board to have concluded that petitioner committed an act of HIB because the evidence in the record fails to establish that petitioner's conduct—even assuming it occurred exactly as determined by the Board—substantially disrupted or interfered with the rights of other students or the orderly operation of the school as is required by *N.J.S.A.* 18A:37-14.[1]

The 16-page HIB Incident Report reflects that during its investigation, the Board interviewed A.J., petitioner, four gymnastics team members, and Assistant Gymnastics Coach Tara Bozetarnik—all of whom witnessed the incident at the awards banquet. A.J. said that petitioner "went on and on about the leos" and how they were supposed to be dropped off at her house and that "one student did not" follow instructions. Exhibit R-1, at 3. Then, according to A.J., petitioner stated: "...that being said, A.J. come get your leo." *Ibid.* A.J. said that the

[1] The ALJ did not address this statutory factor in the Initial Decision.

incident regarding the leotard was "very uncomfortable for [her] and [her teammates]" and that her reaction was, "Oh my god, I can't believe [petitioner] did that." *Ibid.* Four other team members confirmed that petitioner "called out" A.J. "in front of everyone" regarding the leotard and agreed that it was an embarrassing moment. *Id.* at 5, 7-9. Bozetarnik said that petitioner took the leotard out "and threw it" at A.J. "in the middle of [petitioner's] speech." *Id.* at 11.

A.J. also disclosed to investigators how petitioner reassigned her, and a few other athletes, from the junior varsity team to the practice team that season. *Id.* at 3. A.J. disagreed with her placement on the practice team; petitioner claimed that A.J. had "more to work on" but did not provide her with specifics. *Ibid.* A.J. expressed her belief that petitioner is "rude" and "not nice" and "picks favorites" among the athletes, particularly those who train at a certain private gymnastics facility. *Ibid.* Four other team members, plus Bozetarnik, said that petitioner favored certain gymnasts, including the varsity gymnasts as well as those who trained at a certain private gymnastics facility. *Id.* at 5, 7-11. A.J. acknowledged that during the awards banquet, petitioner gave her a certificate. *Id.* at 4. A.J. added that she "was going to quit [the team] anyway" before the leotard incident because she "didn't like the team environment." *Ibid.*

During her interview, petitioner explained that one gymnast, A.J., did not follow protocol regarding the return of the leotards at the end of the season. *Id.* at 12. Petitioner said that A.J. "had over two weeks" to return her leotard to a box on petitioner's front porch. *Ibid.* From there, petitioner planned to return the leotards to the high school athletic director, who had advised her that he needed them by a certain date. *Ibid.* The day after petitioner had

returned the leotards to the high school, A.J.'s leotard was belatedly dropped off at petitioner's front porch. *Ibid.* Petitioner sent A.J. text messages asking her to pick it up and bring it to the high school herself. *Ibid.* Since A.J. did not retrieve the leotard from her porch, petitioner brought it to the awards banquet. *Ibid.* Per petitioner, at the end of the banquet when everyone was leaving and getting their jackets, she walked over to where A.J. was seated, gave her the leotard, and told her to bring it to the athletic office. *Ibid.*

At the contested case hearing, the following witnesses testified: petitioner; Megan Whitney, an acquaintance of petitioner; Superintendent Dr. Joan Mast; Assistant Principal Brooke Esposito; and Assistant Principal and Athletic Director Ryan Miller.[2]

The ALJ found that petitioner testified credibly. According to the Initial Decision, petitioner explained that Scotch Plains-Fanwood High School has one of the largest high school gymnastics programs in the state. She testified that she, Bozetarnik, and Miller divided the twenty-eight gymnasts into three levels: varsity, junior varsity, and practice teams. They utilized the New Jersey State Interscholastic Athletics Association (NJSIAA) Handbook to compose a rubric of objective criteria to rank each gymnast and considered the points earned by each gymnast during competitions. Petitioner added that gymnasts on the practice team were given multiple opportunities to compete at the junior varsity level during the 2019 season. Per petitioner, A.J. was afforded eight opportunities to compete at the junior varsity level but only availed herself of two of these opportunities.

Regarding the awards banquet, petitioner testified that she called each gymnast up to the front of the room and presented her with a certificate or award. She stated that when she

[2] The parties did not provide the Commissioner with transcripts of the hearing testimony.

called A.J. up to receive her certificate, they hugged, and she "praised A.J. for working hard during the season, for doing work with her peers to make them better gymnasts, and for being a good gymnastic dancer." Initial Decision at 29. Petitioner acknowledged that A.J. was the only person to whom she returned a leotard at the banquet. Whitney, whom the ALJ found to be credible, corroborated petitioner's version of events. She testified that after petitioner's remarks had concluded and the guests were getting up to leave, petitioner picked up a leotard and said to one of the gymnasts: "Oh, by the way, you need to return this to the school or to the athletic office." *Id.* at 31. According to Whitney, petitioner handed the leotard to the gymnast, who was seated.

Mast, Esposito, and Miller testified on behalf of the Board. None of them attended the awards banquet. However, Mast completed the HIB Incident Report upon learning of the HIB allegations from A.J.'s mother, and Esposito and Ryan conducted the interviews during the HIB investigation. Mast testified that when she initially completed the HIB Incident Report, the distinguishing characteristic that motivated the act of HIB was listed as "not determined." *Id.* at 27. Mast assigned Esposito and Miller to conduct the HIB investigation and ultimately adopted their factual findings and conclusions. She explained that, at the conclusion of their investigation, Esposito and Miller changed the distinguishing characteristic from "not determined" to "lack of athletic ability." *Ibid.*

During her testimony, Esposito summarized the content of the interviews that she documented in the HIB Incident Report. Miller testified that he agreed with Esposito's summaries of each interview. He explained that he told petitioner that he needed the leotards returned by a certain date to send them to a vendor for refurbishing. He further testified that

he believed petitioner's conduct regarding the return of the leotard to A.J. at the awards banquet was motivated by A.J.'s "lack of athletic ability." *Id.* at 26. He explained that after conducting the interviews of A.J. and other gymnasts, he "ascertained 'a very strong divide' between who was perceived as better, Varsity, and who was perceived [as] lower, JV and Practice Squad." *Ibid.* He testified that he identified "an issue within the program of treating athletes who had more athletic skill differently than athletes who did not." *Id.* at 26-27.

The ALJ discredited the testimony of Mast, Esposito and Miller regarding the interviews conducted during the HIB investigation as "hearsay" and determined that the Board's "case is built only on hearsay evidence." *Id.* at 36-37, 50. Significantly, the ALJ held that "the hearsay statements" collected during the Board's HIB investigation "cannot be used to decide any finding of ultimate fact in this matter." *Id.* at 50.

On the other hand, the ALJ found petitioner's account of the leotard exchange (corroborated by Whitney) to be credible, i.e., that "after the banquet guests' attention was no longer on [petitioner], she approached A.J. with the leotard in her hand, leaned over a few seated students, told A.J. to . . . bring the leotard to Mr. Miller's office, and handed the leotard to A.J., who took it from [her] hand." *Id.* at 35. The ALJ found as fact that petitioner spoke to A.J. "in a normal conversational voice, not in a raised voice" and that "the manner in which [petitioner] returned the leotard to A.J. was not in a way (in terms of volume or sight) that could have attracted the attention of people who were more than an arm's length distance away." *Ibid.* Citing petitioner's "unrefuted" testimony, the ALJ disagreed that A.J. was "singled out" by petitioner to humiliate or intimidate her. *Id.* at 36. The ALJ further found that petitioner publicly recognized A.J.'s "gymnastic prowess" at the awards banquet, thereby

negating any possibility that petitioner's conduct was motivated by A.J.'s lack of athletic ability. *Ibid.*

Furthermore, the ALJ criticized various aspects of the Board's HIB investigation, finding that Esposito and Miller asked irrelevant questions and failed to thoroughly interview petitioner about the manner of the leotard transfer. *Id.* at 32-39. The ALJ also faulted Esposito and Miller for considering general derogatory comments from those interviewed about petitioner's personality, coaching style, and character because those comments were not relevant to the HIB allegation. *Ibid.* Moreover, the ALJ reasoned that their consideration of these comments "tainted the decision-making process" and provided "a compelling reason to reverse the substantiation of the HIB charge." *Id.* at 48.

In the end, the ALJ concluded that petitioner's conduct did not satisfy the statutory definition of HIB set forth at *N.J.S.A.* 18A:37-14. Specifically, the ALJ determined that the evidence failed to establish that petitioner's conduct: (1) could have been reasonably perceived as being motivated by any distinguishing characteristic possessed by A.J., including an alleged lack of gymnastics ability; or that (2) a reasonable person would have known or should have known that the conduct would have the effect of physically or emotionally harming a student, insulting or demeaning a student, or creating a hostile educational environment for the student. *Id.* at 49-50.

At the outset, the Commissioner holds that the ALJ's discrediting of the Board's investigation, including the witness statements it obtained via interviews, and the testimony of Mast, Esposito, and Ryan based upon hearsay concerns, was erroneous. The Commissioner therefore declines to adopt the ALJ's findings and conclusions in that regard, which appear on

pages 32 through 34, 36 through 39, and 47 through 50 of the Initial Decision. The ALJ improperly substituted his own judgment for that of the Board when he scrutinized the procedures used by district staff during the investigation and discredited relevant evidence presented by the Board.

The Act neither instructs boards how they must question those interviewed during HIB investigations nor defines acceptable sources of information for boards to consider when investigating HIB allegations. Specifically, the Act does not prohibit board reliance upon hearsay evidence. *See L.K. and T.K., on behalf of minor child, A.K. v. Board of Education of the Township of Mansfield, Burlington County*, Commissioner Decision No. 318-21 (Dec. 9, 2021) at 5, *aff'd*, 2023 *N.J. Super.* Unpub. LEXIS 1788 (App. Div. Oct. 17. 2023). Moreover, the ALJ's finding that the board's investigation was somehow tainted by its consideration of negative comments made by those interviewed about petitioner is speculative and has no basis in law.

In this case, district staff conducted a thorough HIB investigation and interviewed A.J., petitioner, and several eyewitnesses. All individuals interviewed had firsthand knowledge of the leotard incident as they were present at the awards banquet when it occurred. It was entirely reasonable for the Board to consider and evaluate these eyewitness accounts of what happened, alongside the statements from A.J. and petitioner, in rendering a HIB determination. By concluding that the district's investigation was flawed, the ALJ wrote requirements into the Act that the Legislature did not include and erroneously allowed that conclusion to influence the outcome of this matter. For these reasons, the Commissioner rejects the ALJ's finding on page 50 of the Initial Decision that petitioner's testimony and evidence was "unrefuted." *See Hayes v. Gulli*, 175 *N.J. Super.* 294, 301 (Ch. Div. 1980) (holding that an ALJ's "recommended

findings of fact and conclusions of law must be based upon a complete and fair review of all the relevant evidence").

That said, because the record is devoid of evidence to establish that petitioner's conduct—even assuming it occurred exactly as the Board determined it to have occurred—substantially disrupted or interfered with the orderly operation of the school or the rights of other students as is required by *N.J.S.A.* 18A:37-14, the Commissioner holds that the Board's HIB determination is arbitrary, capricious, and unreasonable. Thus, the Commissioner agrees with the ALJ's recommendation to grant the petition of appeal, but for reasons other than those expressed in the Initial Decision.

The Act defines HIB as:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L. 2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the

> student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
>
> [*N.J.S.A.* 18A:37-14.]

In sum, a finding of HIB requires three elements under the Act. First, the conduct must be reasonably perceived as being motivated by any actual or perceived characteristic expressly identified in the statute, or by any other distinguishing characteristic. Second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. Third, one of the three conditions set forth in subsections (a), (b), and (c) must be satisfied. *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex Cnty.*, Commissioner Decision No. 510-20 (Feb. 4, 2020).

The Board made no findings in its HIB Incident Report regarding the second element, i.e., a substantial disruption or interference with the rights of other students or the orderly operation of the school. Yet, in its exceptions, the Board claims that petitioner's actions regarding the leotard at the awards banquet caused A.J. to suffer emotional harm which "substantially interfered with A.J.'s rights to safely and comfortably attend school, focus on learning, and participate in school activities and events with her peers, receiving the educational, social, and emotional benefits offered by the District's programs unobstructed by the emotional impact and distraction of acts of HIB committed by her gymnastics coach." Exceptions, at 13. However, the record fails to support this conclusory assertion.

Even assuming that the first element under the Act is satisfied, the Commissioner finds that nothing in the record indicates that A.J. was unable to comfortably attend school, focus on learning, and participate in school activities and events with her peers following the incident regarding the leotard. While A.J. was understandably embarrassed by what occurred, no

substantial disruption or interference with her rights, the rights of other students, or the orderly operation of the school followed. There is no evidence in the record to suggest that the isolated incident involving the leotard carried over to subsequent school days or team events.

In conclusion, because the record fails to establish that petitioner's conduct as alleged by A.J. substantially disrupted or interfered with the rights of other students or the orderly operation of the school, the second element under the Act is not satisfied. Therefore, the Commissioner holds that petitioner's actions at the awards banquet regarding the leotard—while clearly inappropriate and unprofessional—did not constitute a HIB violation under the Act.[3] Consequently, it is unnecessary to analyze whether one of the three conditions set forth in subsections (a), (b), and (c) of *N.J.S.A.* 18A:37-14 was satisfied.

Accordingly, the petition of appeal is hereby granted. The Board is directed to remove any references to the HIB investigation and findings from petitioner's personnel file.[4]

IT IS SO ORDERED.[5]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 15, 2024
Date of Mailing: March 20, 2024

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[3] The Commissioner in no way condones petitioner's conduct or minimizes A.J.'s feelings regarding the incident. Petitioner demonstrated poor judgment in bringing the leotard to the awards banquet and singling out A.J. to make a point in front of others on an evening meant to celebrate the athletes.

[4] If the incident is included in petitioner's personnel file for other reasons, such as violations of Board policies other than its HIB policy, this decision does not extend to those references. The only issue before the Commissioner is the HIB finding.

[5] 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 DOCKET NO. EDU 05472-20
AGENCY REF. NO. 111-5/20

LISA CERCHIO,

Petitioner,

v.

SCOTCH PLAINS-FANWOOD REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION, UNION COUNTY,

Respondent.

Richard J. Kaplow, Esq. , for petitioner

Douglas M. Silvestro, Esq., for respondent (The Busch Law Group, LLC, a attorneys)

Record Closed: December 26, 2023 Decided: December 29, 2023

BEFORE: **JOHN P. SCOLLO,** ALJ:

STATEMENT OF THE CASE

This matter arises out of allegations brought under N.J.S.A. 18A: 37-14, the "Anti-Bullying Bill of Rights Act" (hereinafter, the "statute"). Appellant, Lisa Cerchio (hereinafter

"Cerchio"), filed for a Fair Hearing seeking to reverse the Scotch Plains-Fanwood Board of Education's affirmance of the School Superintendent's determination that Cerchio engaged in an act of HIB on December 16, 2019. The Respondent-BOE seeks an affirmance of the HIB determination.

PROCEDURAL HISTORY

The determination of the HIB investigators and Superintendent Joan Mast, Ph.D. (Dr. Mast) was delivered to the BOE on January 23, 2020. In that determination, Dr. Mast concluded that Lisa Cerchio engaged in a single act of HIB against A.J., a female student athlete, on December 16, 2019 at a school-related athetic Awards Banquet. The BOE held a hearing on February 20, 2020 and on that same date voted to affirm its prior action, i.e., affirming Superintendent Mast's determination. The Appellant filed her Petition of Appeal to the Commissioner of Education on May 19, 2020. The Commissioner transmitted the matter to the Office of Administrative Law on June 10, 2020, where it was filed on June 17, 2020 as a contested case pursuant to N.J.S.A. 52:14B-1, et seq. and N.J.S.A. 52:14F-1 et seq.

An initial telephone conference was held on August 20, 2020 and a Pre-Hearing Order was issued on August 20, 2020. In that Order the parties were directed to conduct discovery and to engage in telephone status conferences. On April 14, 2021, Attorney Silvestro filed a Motion for Summary Decision in favor of his client, the Scotch Plains-Fanwood Board of Education; and on the same date, Attorney Kaplow filed a Cross-Motion for Summary Decision in favor of his client, Lisa Cerchio. Additional papers were filed on May 4, 2021. The Tribunal denied both motions on September 9, 2021.

In the months following the September 9, 2021 Order Denying Summary Decision, the hearing dates were established and settlement talks took place, specifically following a Tribunal-sponsored Zoom conference on February 7, 2022. On February 7, 2022, the parties agreed to submit new Summary Decision Motions focusing on the following issues: (1) whether "lack of athletic ability" is a distinguishing

characteristic under the Anti-Bullying Statute; (2) whether "[Student's] lack of ability (or lesser ability to her peers)" is a distinguishing characteristic under the Anti-Bullying Statute; and (3) whether the response "Not Determined" on the initial HIB Incident Report form dated December 18, 2019 is a significant factor in establishing or not establishing the charge of HIB. Appellant Cerchio filed her Motion for Summary Decision on February 7, 2022 and the Respondent BOE filed its Cross-Motion for Summary Decision on the same date. Both sides filed Opposition papers on March 9, 2022. The Respondent filed a Reply on March 14, 2022. The Petitioner did not file a Reply but filed a Sur-Reply on March 16, 2022. On March 18, 2022, the Respondent filed its own Sur-Reply.

Since the parties did not adequately address certain questions posed by the Tribunal in its February 8, 2022 correspondence (regarding the identification of certain documents), the Tribunal subsequently asked both counsel on April 1, 2022 to clarify matters by answering said questions. On April 1 and 4, 2022 both counsel submitted their responses to the Tribunal's questions.

The Motion and Cross-Motion were supported by Certifications and attachments. Both sides submitted their arguments regarding legal principles in light of the evidence and their interpretations of the existing case law.

The Tribunal asked both counsel to address the following legal issues: (A) whether "lack of athletic ability" is a distinguishing characteristic under the Anti-Bullying Statute; (B) whether "[Student's] lack of ability (or lesser ability to her peers)" is a distinguishing characteristic under the Anti-Bullying Statute; and (C) whether the response "Not Determined" on a certain document (i.e., (page 2 of the Incident Report Form signed by Dr. Mast on December 18, 2019) was a significant factor in establishing or not establishing the charge of HIB.

The Tribunal asked counsel, for purposes of this set of motions, to refrain from arguing facts and to solely address the legal issues set forth above. While the attorneys did argue their interpretations of existing case law regarding these legal issues, their

arguments involved factual distinctions between the cited cases and the case at bar, and they also argued facts peculiar to the case at bar.

The BOE maintained that the HIB investigation, the determination of the School Superintendent and the subsequent February 20, 2020 BOE hearing were conducted in accordance with the procedures set forth in the statute. Having examined the factual evidence derived from witnesses and documents and having demonstrated that the existing case law encompasses "lack of athletic ability" and "[Student's] lack of ability (or lesser ability to her peers)" as distinguishing characteristics cognizable under the statute, the BOE reached a determination that Cerchio engaged in an act of HIB. (This argument assumed that the BOE heard all relevant testimony, which presented a fact question.) The BOE maintained that whether the categories of "lack of athletic ability" and "[Student's] lack of ability (or lesser ability to her peers)" were no longer issues, Cerchio's only recourse was to bear her burden to somehow demonstrate that the BOE's decision was arbitrary and capricious.

Cerchio argued that the statute recognizes several traditional suspect classifications as distinguishing characteristics (e.g. race, religion, gender, etcetera) and recognizes that the statute is to be interpreted broadly. Despite the BOE's citation of C.C. o/b/o S.C. v. Jefferson Twp. Bd. of Educ., EDU-10872-2014, Initial Decision (April 6, 2015), adopted, Comm'r (May 12, 2015), where Judge Jesse Strauss, A.L.J. found "sports proficiency" to be within the meaning of the statute, Cerchio argued that there is no basis for including "lack of athletic ability" or "lesser ability" than one's peers to be a valid categorization of distinguishing characteristics under the statute. Moreover, Cerchio pointed to what she claimed was a total lack of any evidence that she ever stated or categorized A.J. as a person who was "lacking athletic ability" or as a person who had "less ability" than her peers. (This latter point, of course, was a fact question.)

Cerchio noted that on December 18, 2009 (one day after the first phone call from A.J.'s mother (M.J.) complaining that A.J. was a victim of HIB), in the section of the Incident Report Form where the actual or perceived characteristics were to be identified,

Dr. Mast checked a blank box on the Incident Report Form and wrote "Not Determined". Cerchio argued that when Dr. Mast checked this box and typed-in the words "Not Determined", it could only be interpreted as an admission that the School District had no idea of how or why Cerchio could have violated the HIB statute. The BOE's position was that the entry of "Not Determined" simply reflected that the matter was still under consideration. (This presented questions of fact and of law.) Ryan Miller and Brooke Esposito (the HIB Investigators) amended the Incident Report Form by adding the words "lack of athletic ability" to the category "Other Distinguishing Characteristic". The final version of the Incident Report Form was signed by Ryan Miller and Brooke Esposito (the HIB Investigator) and by Dr. David Heisey (School Principal) on January 13, 2020. It was signed by Dr. Mast (Superintendent) on January 23, 2020, the date on which she submitted the final version of the Incident Report Form to the BOE.

Cerchio argued that on the day (February 20, 2020) of its vote to affirm Dr. Mast's January 23, 2020 determination that Cerchio engaged in an act of HIB, the BOE refused to hear the testimony of witnesses who would have testified favorably on her behalf and that this worked against her interests. (This presented fact questions.)

I found that there were unresolved issues of material fact, and therefore, on April 19, 2022, I denied both the motion and the cross-motion for summary decision.

The matter was heard on the following dates: October 7, 12, 13, 14, and 17, 2022.

This writing is the undersigned's Initial Decision.

ANALYSIS OF FACTUAL ISSUES

The following is not intended to be a verbatim recitation of the content of documents, the testimony of witnesses, or of the arguments presented. Rather it is a summary of the contents of documents which I found particularly relevant, a summary

of the testimony of witnesses, and a summary of allegations and facts used to support arguments, which I found significant and helpful to my understanding of the matter.

Summary and Analysis of the Exhibits Presented by Respondent and Appellant
Respondent's Exhibits

R-1

The following is taken from the summary of the testimony of Dr. Joan Mast, *infra.* and an examination of R-1 itself. The HIB Incident Report Form dated 12/18/2019 contains the initial information reported on December 17, 2019 by M.J. (A.J.'s mother) to Superintendent Dr. Joan Mast. On December 18, 2019, Dr. Mast, as the person who first learned of the alleged incident of HIB from A.J.'s mother (M.J.), wrote an Incident Report Form and submitted it to High School Principal David Heisey on December 19, 2019. There is no indication on the form or in any of the testimony that Dr. Mast verbally reported the alleged December 16, 2019 incident of HIB to the principal on December 17 or 18, 2019. Dr. Mast stated in the Incident Report Form that the perceived characteristic that motivated the act of HIB was "Not Determined". The HIB Incident Report Form was subsequently amended by the HIB investigators, Athletic Director Ryan Miller ("Miller") and Assistant Principal Brooke Esposito (Esposito") on 1/13/2020.

According to her testimony, on December 18, 2019, Dr. Mast spoke with Assistant Principal Brooke Esposito and Athletic Director Ryan Miller and assigned them to conduct an HIB Investigation. According to the Incident Report Form (R-1), on December 19, 2019, Principal Heisey assigned a case number and asked the Anti-Bullying Specialists to start an HIB investigation.

Dr. Mast testified that Mr. Miller and Ms. Esposito decided to interview the following people: A.J. (the alleged victim of HIB); K.P.; K.G.; T.S.; E.G.; Tara Bozetarnik; and Lisa Cerchio. These people were interviewed between December 18, 2019 and December 20, 2019, except for Lisa Cerchio, who was interviewed on January 13, 2020. They did not interview anyone else. The HIB Incident Report Form was subsequently amended by the

HIB investigators, Athletic Director Ryan Miller ("Miller") and Assistant Principal Brooke Esposito (Esposito") on January 13, 2020. Besides adding additional information from the interviews, Miller and Esposito, on January 13, 2020, changed the "perceived characteristic" box from "Not Determined" to "lack of athletic ability".

A summary of each interview conducted by Brooke Esposito and Ryan Miller follows:

Interview of A.J. (a Tenth Grader)

A.J.'s interview consisted of eight paragraphs. A.J. mentions the leotard in the second, third and eighth paragraphs. A.J. claimed that at the Awards Banquet Cerchio "went 'on and on' about the leotards"; that "everyone had to return the leotards to Cerchio's house, but one student did not"; that Cerchio "went on about that"; and that Cerchio said, "That being said, A.J., come get your leotard." A.J.'s interview contains her statement, "After I took the leotard, I was like, 'Oh my god, I can't believe she did that.'" A.J. further stated that her friend, S.K., and S.K.'s mother also said that they couldn't believe that Cerchio "did that". (Neither S.K. nor S.K.'s mother were interviewed.) A.J. further stated that Tara Bozetarnik (Assistant Coach) also said that it was inappropriate. A.J. stated that Cerchio gave her the leotard and told her to bring it back to the high school.

In the first paragraph of her interview, A.J. complained that in October, 2018, "some girls" started a rumor about her (i.e., A.J.). A.J. went on to say that Cerchio "didn't try to quiet it, but instead talked to all of the team members and asked them about it." A.J. went on to say that Cerchio "didn't listen to my side of the story"; and "didn't listen to anything I said"; and that Cerchio "interviewed everyone and then believed the other girl (T.S.)." A.J. stated that because of this incident she "felt very targeted."

A.J. mentioned the Awards Banquet in the second and seventh paragraphs of her interview. The content of the second paragraph has been set forth above. In the seventh paragraph, A.J. stated that Cerchio called A.J. up to accept a certificate, which was

something that surprised A.J. Then A.J. went on to say that when Cerchio called her up to receive her certificate, Cerchio "didn't say anything bad about me."

A.J. stated that Cerchio was "harassing the team captains" because she emailed them saying that "someone" had left a leotard. A.J. noted that the leotard had her name on it and so Cerchio should have known to whom it belonged. A.J. claimed that she was not included on an email sent by Cerchio instructing the team members that if they returned their leotards late, they would have to bring them to Ryan Miller's office.

In the fourth, fifth and sixth paragraphs of A.J.'s interview, A.J. complained that Cerchio "picks favorites" (i.e., she favors certain members of the team whom she likes) and is mean to those whom she does not like (like team members K.P. and K.G.). A.J. stated that Cerchio likes team members who work-out at a gym called Sergeants and dislikes those who work-out at the YMCA. In the sixth paragraph, apparently in response to a question about Cerchio texting team members, A.J. specifically stated, "It is common for coaches to text individuals" and explained that Cerchio does so because she does not work at the school.

In the fifth paragraph of A.J.'s interview, A.J. complained that Cerchio "never gave me the chance to compete". A.J. stated that after she was moved down from the Junior Varsity Team to the Practice Team, she met with Cerchio to say that she did not agree with Cerchio's decision. A.J. recalled that Cerchio's explanation was "I think you have more to work on", but A.J.'s statement gave no further specifics about their conversation. A.J. admitted that there were several people besides her who had been moved down from Junior Varsity to the Practice Team. A.J. stated that she suffered a back injury and went on to complain that Cerchio "wasn't understanding" about it.

Interview of K.P. (a Twelfth Grader)

K.P.'s interview consists of four paragraphs. K.P. mentions the banquet, the leotard, and Cerchio's statements about the return of the leotards in the first paragraph

of her interview; and she briefly mentions her account of reactions to Cerchio's statement in the second paragraph of her interview.

In the first paragraph, K.P. says that Cerchio stated that all but one of the team members returned their leotards. K.P. claims that "she" (presumably she means A.J.) was "called-out" in front of "everyone". K.P. does not state that Cerchio identified A.J. as the person who did not return her leotard. K.P.'s statement also does not reference the timing of Cerchio's statement (during her address to the assembled parents while the banquet was ongoing, or at the end of the banquet while people were getting ready to leave).

In the second paragraph, K.P. immediately stated her own unequivocal dislike of Cerchio. K.P. stated that she did not get along with Cerchio. She gave her opinion that Cerchio is "mean" and that "everything out of her mouth is mean." K.P. re-focused her interview on her own subjective experiences with Cerchio, accusing Cerchio of calling her and K.G. "cancer to the team" and accusing Cerchio of encouraging her and K.G. to quit the team.

In the third paragraph (the longest in the notes of her interview), K.P. says nothing about A.J., the banquet, the return of the leotard, or Cerchio's conduct. Instead, she focuses on Cerchio's supposed unexplainable dislike of K.P. and K.G. (despite K.P.'s claim that they were "two of the best people on the team"). K.P. stated that because she and K.G. did not like Cerchio, they quit the team during their 11th grade, but nonetheless returned in their 12th grade. K.P. stated that everyone complained about Cerchio to the Assistant Coach (Tara Bozetarnik), whom she described as "great".

The Fourth paragraph seems to be a quotation, but it is not attributed to anyone. It is simply impossible to understand or interpret.

Interview of K.G. (a Twelfth Grader)

K.G.'s interview consists of five paragraphs. K.G. mentioned the Awards Banquet

only in the first and second paragraphs and mentioned the process for returning the leotards only in the second paragraph. The third, fourth and fifth paragraphs contain no information about the dinner or the return of the leotards.

In the first paragraph, K.G. recounted how Cerchio called each team member's name one at a time for each of them to come forward while she recognized each of them for what each girl had brought to the team.

In the second paragraph, K.G. stated her recollection of the return of the leotards. K.G. recalled that, while thanking the parents (apparently at the end of the evening), Cerchio "... said loudly, 'A.J., here is your leotard. I've been waiting for you to come and get it and bring it to Mr. Miller'". K.G. also stated in paragraph two that Cerchio texted the team captains asking them to send a group chat out advising that someone brought her leotard late and needed to get it and bring it (to the school) herself.

In the third paragraph, K.G. described her relationship with Cerchio and her interactions with her since 9th grade. In regard to the frequency of competing in meets, K.G. stated that in 9th grade and 10th grade Cerchio gave her a lot of opportunities to compete. K.G. did not mention how often she competed in 11th grade and 12th grade, but indicated that because the team had numerous "good" freshman members, she did not compete as much in her 12th grade as she did previously.

In the third paragraph, K.G. also spoke about the relationship and interactions that she and her mother had with Cerchio. K.G. plainly stated, "I strongly dislike her (i.e., Cerchio)." She stated that she and her mother avoid Cerchio and only speak with Tara Bozetarnik, the Assistant Coach. K.G. explained that she believes that Cerchio is "condescending" and "thinks that she is above everyone". K.G. stated that in her sophomore year (10th grade), "I gave her (Cerchio) attitude and a hard time."

In the fourth paragraph, K.G. spoke about her belief that Cerchio treats people differently based on their level of talent or experience. (This was apparently in response

to a question about favoritism and the creation of three levels of teams, Varsity, Junior Varsity, and Practice.) K.G. stated, "It's me and K.P. she (Cerchio) doesn't really like." K.G. then expressed her opinion that Cerchio treated the Varsity, Junior Varsity, and Practice people "like separate teams" and that Cerchio left the Junior Varsity and Practice team members to be handled by Tara Bozetarnik. In regard to differential treatment by Cerchio of girls who were members of the Sergeants versus the YMCA (two outside gymnastics clubs), K.G. explained, "It's not true that she (Cerchio) makes them go to Sergeants." K.G. further explained that girls who attended Sergeants (herself included) had more fun. However, K.G. expressed her opinion that "[t]hey (the girls who attended the YMCA) may have been treated differently, but not as good."

In the fifth paragraph, K.G. gave her opinion about Assistant Coach, Tara Bozetarnik. K.G. said that she would have quit the team if she were not the Assistant Coach. K.G. described Bozetarnik as "a genuinely nice person" and "a good addition", who on one occasion "did a compliment circle" during which she and team members recognized girls who don't usually get recognition. The last statement attributed to K.G. on the interview form concerned her account of an event where the Town's mayor planned to recognize the gymnastics team. K.G. explained that she heard from two team members that Tara Bozetarnik had told them that Cerchio, before the event, texted her telling her not to attend the event.

Interview of T.S. (a Tenth Grader)

The interview of T.S. contains four paragraphs. The first and second paragraphs contain general information, including T.S's. information about the Awards Banquet and the return of the leotards. The first and third paragraphs contain information from T.S. about her interactions with Cerchio. The fourth paragraph contains T.S's. opinion about favoritism.

In the first paragraph T.S. stated that she was nervous about what Cerchio was going to say about her at the Awards Banquet. T.S. gives no indication about why she

was anxious. She does not indicate whether she was concerned about being recognized for her good performances or whether she was concerned that Cerchio might say something derogatory about her. Her statement is simply not clear on this point. In the first paragraph, T.S. spoke about "the way things ended" at the close of her freshman year (ninth grade). (Apparently, T.S. was referring either to Cerchio's investigation of whether A.J. body-shamed T.S. or she was referring to an event when Cerchio counselled her for having performed an unauthorized and dangerous gymnastic move.) In the second paragraph of her interview, T.S. stated that Cerchio was talking to the dinner attendees about the fact that the team members had been given a certain amount of time to return their leotards and mentioned that she (Cerchio) had made telephone calls at night concerning the return of the leotards. T.S. stated that during this portion of her speech, Cerchio asked A.J. to come get her leotard.

In the first and third paragraphs of her interview, T.S. explained more about the unauthorized gymnastic move she had performed, which Cerchio had discouraged her from performing. T.S. also said that she is more comfortable dealing with Tara Bozetarnik than Lia Cerchio. T.S. also said that as a freshman she won the MVP plaque, that she loved gymnastics, and that she loved being with her teammates.

In the fourth paragraph of her interview, T.S. expressed her opinion (apparently in response to a question about favoritism) that there is some favoritism, but she never felt it. Finally, T.S. said that someone named S.__. won the MVP. However, T.S. expressed her opinion that another team member named C.__. also received votes for the MVP award. When Cerchio announced that S.__. had won the MVP award by a unanimous vote, T.S. disagreed and told the interviewer that this was not the truth.

Interview of E.G. (a twelfth grader)

The interview of E.G. consists of nine paragraphs. The only information provided by E.G. about the Awards Banquet is in the first paragraph. The only information about Cerchio's return of the leotard to A.J. is in the second paragraph. Paragraphs three

through nine contain information and opinions not relevant to the issue of the time, place or manner of the return of A.J.'s leotard.

In the first paragraph of her interview, E.G. says that Cerchio called upon each and every girl on the team to come forward to receive recognition and that she said nice things about each of them.

In the second paragraph, E.G. says that when the seniors or the captains were standing, Cerchio reached into her bag and said to A.J., "[T]his is for you", and *threw* the leotard *at* A.J. (apparently in front of everyone at the Awards Banquet). E.G. also said that there had been "bad blood" between Cerchio and A.J. in the past.

In paragraphs three through nine, E.G. mentioned: that Tara Bozetarnik told the team members that Cerchio had told her that she was excluded from a town meeting (apparently the day of the Mayor's recognition of the team); that there was an incident during A.J.'s freshman year (Ninth Grade) involving A.J. and T.S., which E.G. believed was mishandled by Cerchio; that K.P. and K.G. intentionally did things to get Cerchio mad and that Cerchio seemingly retaliated by placing them on the Junior Varsity team when they were seniors; that Cerchio made J.V. and Practice Squad members observe the Varsity practice, but only worked with the Varsity; that Cerchio excluded the Practice Squad from attending non-home (i.e., "away") meets claiming falsely that there was no room for them on the team bus; and, that Cerchio was spiteful to the J.V. and Practice Squad members by giving team tee-shirts only to the Varsity.

Interview of Tara Bozetarnik (Assistant Coach)

The interview of Tara Bozetarnik consists of five paragraphs. Tara Bozetarnik mentions the Awards Banquet and the return of the leotard in paragraphs one and three of her interview. In the first paragraph, Bozetarnik said that during the Awards Banquet Cerchio was making a speech about the members of the team, but then shifted to the topic of the return of the leotards. Cerchio asked a rhetorical question to the parents

(banquet guests) about the number of times that she emailed them about the return of the leotards. Bozetarnik then said that Cerchio took the leotard out and *threw* it *at* A.J. Bozetarnik said that she looked at A.J.'s face after this happened and felt terrible for her. Bozetarnik related how she later called A.J. and offered her kind words. Bozetarnik said that this was Cerchio's personality and offered her opinion that she did not believe that Cerchio did it with any premeditation. In the third paragraph, Bozetarnik stated that Cerchio "put me down at the banquet". She did not specify what Cerchio said or did that constituted "putting her down". Bozetarnik added that she considered that part of her job was "to pick up the underdogs, the kids who were labelled". She did not specify what she meant by "underdogs" or identify which kids had been "labelled" or by whom they had been "labelled". Bozetarnik said that A.J. was "an underdog".

In the second paragraph, Bozetarnik said that Cerchio "told me not to go [to the Town Mayor's recognition]"and "that I didn't need to be there." Bozetarnik stated that team members had texted her asking why she was not present at the Town's Mayor's recognition event and she felt bad because she was not there. Bozetarnik stated that Cerchio referred to the Town recognition event in her speech at the Awards Banquet.

In the fourth and fifth paragraphs, Bozetarnik said that Cerchio "has favorites", namely those athletes who perform well and are "at the top". Bozetarnik stated that Cerchio "parents" (i.e., raises her own children) the same way, saying, "Her kids have to be the best."

Interview of Lisa Cerchio (The alleged perpetrator of HIB)

Lisa Cerchio's interview consists of four paragraphs. In paragraphs one, two and three Cerchio mentions the banquet, the process for the return of the leotards, and A.J. In the fourth paragraph, apparently in response to a questions inquiring why she (Cerchio) did not return the leotard to the school, she simply responded that, "It wasn't a matter of "utmost importance" and "[A.J.] did not follow the right protocol for returning [the leotard]".

In paragraphs one, two, and three, Cerchio recounted the evening of the December 16, 2019 Awards Banquet for the interviewers. Apparently in response to the questions she was asked, she focused particularly on the issue of the returning of the leotard. Cerchio explained that Ryan Miller, the Athletic Director, had told her that the leotards had to be returned by a certain date. (During her testimony, Cerchio explained that Miller needed to send the leotards for re-furbishing by a certain upcoming date and needed them soon.) Cerchio stated that her job made it inconvenient for the girls to drop the leotards off at her home after the end of her workday. Cerchio explained that she sent group texts to the team captains for them to tell the team members to drop off their leotards in a box on the porch of her house. She explained that the girls had over two weeks to comply with the drop-off request. In her last group text, she told the girls that 9:00 a.m. on Wednesday was the last time for dropping the leotards to her house and that if the leotards were not there by 9:00 a.m. on Wednesday, then the girls would have to drop the leotards off at the school. Cerchio said that she took the leotards she had and dropped them off at the school at 3:00 p.m. on Wednesday. However, A.J. or her mother returned her leotard after she had already dropped off the leotards at the school. Therefore, Cerchio sent two messages to A.J. instructing her to come to her house, pick up the leotard, and deliver it to Mr. Miller. Since neither A.J. nor her mother picked up the leotard, Cerchio brought it to the banquet. (Cerchio's in-court testimony was that Mr. Miller told her to bring the leotard to the Awards Banquet to give it to A.J.)

In the second paragraph of her interview, Cerchio stated that she brought the leotard to the Awards Banquet. By 6:30 p.m. Cerchio had not seen A.J. Cerchio said that she spoke from 7:00 p.m. to 8:30 p.m. talking about the season and recognizing all the student athletes. She recalled that she spoke the highest she could about anyone on the team. At the end of her speech, Cerchio recalled that she had forgotten to thank the parents. She thanked the parents and apologized to anyone whom she had to text about returning leotards on short notice. She added that the girls had had a lot of notice about returning the leotards. Her speech was finished and the parents were already in the process of getting up to leave. She then remembered that she had the leotard in her

coaching bag. She told the interviewer that she took the leotard out of her coaching bag and walked it over to where A.J. was sitting with fellow team members and told her to bring it to the Athletic Office. (During her testimony, Cerchio stated that the location where she had been speaking to the parents was in the front of the room and was about six to ten feet from where A.J. was sitting with her friends. She testified that there was no raised platform or "stage". Cerchio testified that when she spoke to the gathering of parents, she had to speak in a higher voice to address the entire room. However, when she walked over to A.J. and told her to bring the leotard to Mr. Miller's office, she did so in a normal conversational voice, (i.e., a lower volume than when she spoke to the assembled parents) since she was only an arm's length away from A.J.)

According to the interviewer (Bates Stamp R0012 and R0013) Cerchio said that her intent was to give A.J. the leotard, not to harass her. (During her in-court testimony, Cerchio stated that she leaned-over several students and handed the leotard to A.J. instructing her to bring it to Mr. Miller's office. She also mentioned that Ryan Miller told her to bring the remaining leotard to the Awards Banquet.)

R-2 & 3

These are the Interrogatories sent to Cerchio by the Respondent and Cerchio's answers to same. The notable responses made by Cerchio include the following information:

(1) In response to Interrogatory Questions 3, 4 and 5, Cerchio denied that she ever harassed or otherwise bullied A.J. in any way at any time. Cerchio added that she walked over to A.J., leaned over several seated girls and handed the leotard to A.J. while instructing her to return the leotard to the office of Mr. Ryan Miller (the Athletic Director), who would be expecting it.

(2) In response to Interrogatory Question 6, inquiring about what evidence or facts the BOE failed to investigate or failed to consider during the HIB investigation, Cerchio responded that the BOE did not give certain persons who

were present at the BOE's meeting the opportunity to provide factual information to the BOE, which would have demonstrated that Cerchio was not guilty of an HIB violation.

Moreover, Cerchio claimed that Athletic Director Ryan Miller knew that there were witnesses who were biased against her, yet he hand-picked these witnesses to be interviewed by the HIB investigators. The nature of the bias was that these witnesses had previously been disciplined by Cerchio. Cerchio had disciplined one of these people arising out of a prior incident wherein A.J. had allegedly body-shamed an African-American student. Cerchio claimed that and that the report of same was in Miller's possession, yet he never mentioned the report to the HIB investigators. Cerchio claims that the report would have revealed to the HIB investigators the bias that some of these witnesses had against her. Cerchio explained the counselling of T.S. for performing a dangerous move.

Moreover, Cerchio claimed that the husband of Assistant Coach Tara Bozetarnak told Mr. Cerchio that Tara Bozetarnak claimed that she had been mis-quoted in her statement to the BOE's Investigators and that Tara Bozetarnik wanted to withdraw or correct that statement.

(3) In response to Interrogatory Question 7, inquiring into whether the BOE violated any procedural requirements of the Anti-Bullying Bill of Rights Act, Cerchio responded that she was not formally notified of the HIB allegations (arising out of the December 16, 2019 Awards Banquet) against her until January 7, 2020, which violated the time deadlines provided in the Act.

(4) In response to Interrogatory Question 8, inquiring into what "close relationships' existed between the "HIB accuser" and certain BOE members and / or Administrators, Cerchio responded in several ways. Cerchio stated that during the investigation, while she was being interviewed by Esposito and Miller, she asked about the specific acts of HIB of which she was being accused. Cerchio

stated that Esposito responded with a litany of facts (including allegations that Cerchio threw the leotard at A.J. while they were on a *stage* in front of the parents and that Cerchio continually berated A.J. in front of everyone for not returning her leotard as directed). Cerchio noted that there was no stage and that these facts as recited by Esposito were not true and, more importantly, were not noted in any of the interviews of the witnesses. Cerchio noted that this means that Esposito must have learned of these allegations outside of the investigative process.

Esposito is an Assistant Principal and HIB Specialist (an Investigator of the HIB alleged to have occurred herein). Cerchio alleges that Esposito's secretary is named Jill Rebuth and that Ms. Rebuth is the Aunt and Godmother of A.J. It appears that Cerchio believes that this close working relationship between Esposito and Rebuth may have been an improper source of information, which may have improperly affected the investigation process.

Cerchio alleges that Ryan Miller, should have, but never did reveal to his fellow HIB Investigator that he ordered Cerchio to return the leotard to A.J. at the Awards Banquet.

Cerchio alleges that Tanya Williams was present during the HIB investigation and took part in discussions related to the charge of HIB. Mandy (A.J.'s mother) initiated the HIB charges when she called Principal Joan Mast on December 18, 2019. Cerchio believes that Tanya Williams should have recused herself from any participation in the HIB process because she is a close personal friend of Mandy (A.J.'s mother).

(5) In response to Interrogatory Question 9, inquiring into what contacts Ms. Cerchio, her husband or her attorney had with any witnesses who were interviewed during or after the HIB investigation was conducted, Cerchio responded with the names of people who were present at the Awards Banquet and who saw what transpired at the Awards Banquet, but who were never interviewed by the HIB

Investigators. Cerchio alleges that if these witnesses had been interviewed by the HIB Investigators, each of these witnesses would have exonerated her.

R-6

R-6 begins with an email dated December 19,2019 at 11:06:58 p.m. sent by the Team Parent, Ellen Zimmerman to Lisa Cerchio. The email contains the draft of a letter, which Zimmerman intended to send to Athletic Director Ryan Miller as a testimonial to Lisa Cerchio. Zimmerman later sent the letter to Miller. The details of the letter are discussed in the summary of Lisa Cerchip's testimony, particularly in the discussion of Attorney Silvestro's cross-examination of Lisa Cerchio. The remainer of R-6 is a series of emails transmitting a copy of the December 19, 2019 email among several people on October 12, 2022, on October 13, 2022, and on October 14, 2022.

Petitioner's Exhibits

P-6 & P-7

These are correspondences between counsel. They do not contain information or evidence that is necessary to the outcome of this matter.

P-8

This is a cover letter dated February 13, 2020 from Douglas M. Silvestro, Esq., the BOE's attorney, to Cerchio's former attorney, A. John Blake, Esq. enclosing redacted copies of the HIB Investigators' Interviews of seven people.

P-9

This is a letter dated February 24, 2020 from Attorney Silvestro to Attorney Blake. It does not contain information or evidence that is necessary to the outcome of this

matter.

P-11

A set of Requests for Admissions propounded by the BOE's attorney with responses made by Petitioner, Lisa Cerchio. These contain only routine information.

P-15

A set of text messages between A.J. and Lisa Cerchio, regarding the return of A.J.'s uniform.

P-17

A five-page set of texts between Lisa Cerchio and four team captains about "clean-up", uniforms, and leotards.

P-20

A list of the 2019 Varsity, J.V. and Practice Squad Gymnastic Team members and a three-page evaluation of Coach Lisa Cerchio.

The December 16, 2019 Awards Banquet Video

The video was not marked and was not used by either party.

Joint Stipulation of Facts

Routine information from the stipulated facts has already been adequately addressed herein.

Summary and Analysis of the Testimony of the Various Witnesses at the Hearing
Summary of the Testimony of Brooke Esposito

Assistant Principal Brook Esposito (Esposito) was one of two people chosen by Superintendent Joan Mast on December 18, 2019 to serve as an HIB Investigator in the matter of Lisa Cerchio. She stated that she had conducted approximately 100 HIB investigations before conducting the Cerchio investigation.

Esposito and Athletic Director Ryan Miller conducted interviews of A.J., K.P., K.G. T.S., E.G., Tara Bozetarnik (Assistant Gymnastics Coach) and Lisa Cerchio (Gymnastic Coach and the Target of the HIB Investigation). Each interviewee was questioned separately and Esposito wrote a separate report for each of them. Esposito stated that her method was to pose a general question to the interviewee that did not direct the interviewee's attention to any one topic. Each initial question was something like "Did anything unusual occur during the season?" Esposito stated that as she and Miller questioned the interviewees, she rapidly typed what they stated, trying to obtain their exact responses, but admitted that she had to "go back and clean it up".

The first interview conducted was that of the alleged victim, A.J. Esposito stated that when conducting an HIB investigation, she always starts with an interview of the alleged victim. When asked the initial general question, A.J. immediately started talking about the December 16, 2019 Awards Banquet, particularly focusing on the end of Cerchio's speech to the assembled banquet guests. A.J. focused on Cerchio going 'on and on' about the fact that some girls returned their leotards in a timely manner, but one girl did not. She went on to say that Cerchio then looked at her and said, "A.J., here is your leotard", in front of everyone, which made A.J. feel embarrassed. A.J. went on to tell Esposito that Cerchio "picks favorites" and "didn't give her a chance to compete". Esposito stated that A.J. mentioned a few names of gymnasts, and that she and Miller decided to interview these people.

The second interview was that of K.P. Esposito stated that she wanted to interview K.P. because A.J. indicated that K.P.'s experiences with Cerchio were similar to hers. Starting again with a general question, K.P. responded by saying that Cerchio spoke to the assembled guests at the banquet about how all the team members returned their leotards except one girl. K.P. stated that Cerchio immediately called for A.J. to come forward to receive her leotard. K.P. then offered her personal opinions about Cerchio, which included her statement that she did not get along with Cerchio; that everything that comes out of Cerchio's mouth was mean; that Cerchio continually asked her if she was quitting the team; and that Cerchio called her a "cancer" to the team. Esposito testified that A.J.'s and K.P.'s information was important because it indicated that Cerchio's behavior made these girls feel that they were not part of the team.

The third interview was that of K.G. Esposito stated that K.G. was interviewed because she was mentioned by A.J. and K.P. Starting with the same type of general question, K.G. responded by focusing on Cerchio's texting the team captains regarding the return of the leotards warning that if they were brought to her late the girl would have to return them to the school themselves. K.G. said that at the Awards Banquet Cerchio said in front of everyone in a loud voice to A.J., "Here's your leo. I've been waiting for you to come get it and bring it to Mr. Miller." In response to a question from the BOE's counsel, Mr. Silvestro about whether Esposito thought A.J., K.P. ad K.G. were being truthful to her, Esposito responded that she had no reason to suspect that they were being less than honest and she also stated that their accounts of the evening of December 16th were the same (i.e., consistent).

Esposito quoted K.G. as saying, "It's me and K.P. she (Cerchio) doesn't like." Esposito also quoted K.G. as saying, "She (Cerchio) doesn't pay attention [to the] J.V. or Practice [teams]" and "She treated us like a separate team." Esposito testified that "it wasn't until this student [K.G.] that I realized that there was such a staunch difference between JV and Varsity." She added, "[T]his student spoke to how there was the group that got all the attention ... but then the JV kids were kind of left to Tara."

The fourth interview was that of T.S. Esposito stated that T.S. was interviewed because A.J. referenced her as the person with whom she had a conflict during the 2018 season. Esposito reasoned that T.S. should be interviewed because she was not one of A.J.'s friends and because A.J. felt that the incident between her and T.S. may have been part of the origins of A.J.'s difficulties with Cerchio.

Starting with the same type of general question, T.S. responded by talking about her attendance at the Awards Banquet. T.S. said that she was nervous about attending the banquet because Cerchio was going to speak. T.S. then shifted her testimony to talk about Cerchio's alleged favoritism towards the girls who attended the gym named Sargent's over those who attended the YMCA. However, T.S. concluded that although there may have been favoritism, she never experienced it.

The fifth interview was that of E.G., a team captain. Esposito stated that she wanted to interview a captain since captains were selected by Cerchio and because she believed that a captain would be unbiased. Starting with the same type of general question (whether there was anything out of the ordinary during the 2019 season) Esposito reported that E.G. went directly to the topic of the return of the leotards and how Cerchio took the leotard out of her bag and threw it at A.J. Esposito followed-up by relating that E.G. said the Cerchio "holds grudges"; that she thinks that Cerchio, as an adult leader, had acted inappropriately; that Cerchio segregated the teams more than necessary; and that at practices Cerchio only paid attention to the Varsity, leaving the J.V. and Practice Team members to think that they didn't belong there.

The sixth interview was that of Tara Bozetarnik. In this interview, Esposito did not start with a general question, but rather questioned Bozetarnik about what she heard and saw at the Awards Banuet. Esposito reported that Bozetarnik responded by saying that Cerchio was talking about individual kids, but then shifted her speech to the subject of the return of the leotards. Esposito reported that Bozetarnik related that a girl returned her leotard late leaving, it on her porch; that Cerchio texted the girl several times; and then Cerchio asked the assembled parents, "How many times did I email you?", after

which Cerchio picked up the leotard and threw it at A.J. Bozetarnik told Esposito that A.J. was embarrassed by what Cerchio did and that Bozetarnik, feeling sorry for A.J., told A.J. afterwards that she was "beautiful" and that she "mattered". Esposito reported that Bozetarnik commented that this event was due to Cerchio's personality, but she did not think the throwing of the leotard was premeditated. Esposito reported that Bozetarnik also explained that Cerchio's personality was such that she favors those at the top and that "winning is everything". Esposito reported that gave an example of favoritism was when Cerchio would let T.S. get away with bad conduct because T.S. was a very good gymnast and was Cerchio's favorite for a time. Esposito reported that Bozetarnik also volunteered information about how Cerchio raises her children saying, "Her (Cerchio's) kids have to be the best." Esposito reported that Bozetarnik claimed that Cerchio "put me down at the banquet" (but did not say what, in particular, Cerchio had said or done to diminish Bozetarnik). Esposito reported that Bozetarnik believed her role with the team was "to pick up the underdogs, the kids who were labelled" and she described A.J. as "an underdog".

The seventh interview was that of Lisa Cerchio, the person accused of the HIB violation. Esposito's report starts with Cerchio stating that there was a gymnast who had not returned her leotard for two weeks. Esposito reported that Cerchio explained that Mr. Miller had set a due date for the return of the leotards, which she tried to implement by sending texts to the girls through the captains and by her own efforts. Esposito reported that Cerchio said that when the girl's mother returned it, she returned it after the deadline. Despite additional texts to the girl, the girl still failed to pick it up and bring it to the Athletic Office. Espositio reported that Cerchio brought the leotard to the Awards Banquet.

Esposito's report then shifts to Cerchio's account of the Awards Banquet. She reports that Cerchio described how she spoke to the assembled parents from 7:00 p.m. to 8:30 p.m., calling upon each girl on the team to be recognized and praising the achievements of each girl. Esposito then reported that Cerchio stated that at the end of her speech, as people were getting up from their seats ready to leave, she realized that

she had not thanked the parents for their help during the season., So Cerchio began speaking again giving her thanks to the parents and also apologizing for the fact that she had sent them so many emails about the need to return the leotards. She added that the girls had a lot of notice about the need to return the leotards. Esposito reported that in Cerchio's account of the return of the leotard to A.J., Cerchio said, "I walked over to where the gymnast was sitting and told her to bring it to the Athletic Office" and that Cerchio told her. "My intent was to get her the leotard – not to harass her." In addition, Esposito reported that Cerchio described the circumstances of the venue at the time she transferred the leotard to A.J. as, "People were moving and getting their jackets." The last entry of Esposito's report is where Esposito reported that she asked Cerchio why she did not return the leotard to the high school herself. Esposito reported that Cerchio's response was that the return of the leotard was not of utmost importance and also that A.J. had not followed the right protocol for returning it.

Summary of the Testimony of Ryan Miller

Ryan Miller testified that he is an Assistant Principal and the high school's Athletic Director, and he has supervisory responsibilities over the school's coaches. He testified that he, along with Assistant Principal Brooke Esposito, were assigned by Superintendent Joan Mast to conduct the HIB investigation of Lisa Cerchio regarding the occurrence at the December 16, 2023 Awards Banquet. He testified that neither he nor Ms. Esposito attended the Awards Banquet.

Miller testified that Esposito wrote the Interview Report Summaries for each interviewee and then he reviewed and signed them agreeing with their content. Miller signed them on January 13, 2020 and testified that between January 13, 2020 and the day of his court testimony he did not acquire any knowledge that would change his belief regarding the accuracy of the interviewees' statements.

Among the statements of the interviewees that Miller agreed with were the following:

E.G.'s statement that Cerchio made the teams (Varsity, Junior Varsity and Practice) "more segregated" than they needed to be during practices and concerning bus rides to "away" meets. In regard to the accusation that Cerchio held back the distribution of team tank tops from the J.V. and Practice teams and only gave them to the Varsity, Miller clarified that it was he, not Cerchio, who had ordered fewer tank tops than required. Miller admitted that that he told Cerchio to only distribute the tank tops to the Varsity. He confirmed that afterwards, additional tank tops arrived. When asked if he had any knowledge about whether Cerchio distributed the later-acquired tank tops, he responded that he did not know the answer to that question. On cross-examination, Miller stated that he never discussed the subject of the tank tops with Cerchio when she was interviewed.

Another statement of an interviewees that Miller agreed with was Tara Bozetarnik's statement that Cerchio told her not to attend an event where part of the festivities included recognition of the SP-F High School gymnastics team by the Mayor and Town Council. On cross-examination, Miller stated that he never discussed this accusation with Cerchio.

Miller made another statement wherein he stated that he considered it intimidating for a coach (Cerchio) to ask her team members to return their leotards to her front porch and to later text them, when all leotards had not yet been returned, to return them as requested. Miller admitted that he told Cerchio that he needed the leotards by a certain date in order to send them to a vendor for re-furbishing.

During his direct testimony, Miller testified that he believed that Cerchio's conduct regarding her public return of the leotard to A.J. (which he emphasized was "a single incident") was motivated by A.J.'s "lack of athletic ability". He explained that after hearing the interviewees, he ascertained "a very strong divide between who was perceived as better, Varsity, and who was perceived [as] lower, JV and Practice Squad." He added, "[I]t became very apparent that there was an issue within the program of treating athletes

who had more athletic skill differently than athletes who did not." Miller admitted that neither he nor Esposito bothered to question Cerchio on the issue of whether A.J. "lacked" athletic ability. They did not question Cerchio about their perception of a "strong divide" among the teams, about favoritism, and about how the division of the team into three levels (which Miller, Bozetarnik and Cerchio all previously agreed was the right thing to do) might have had unintended results.

During his re-cross-examination testimony, Ryan Miller stated that A.J. suggested that K.P. and K.G. had relevant information about the alleged HIB, and so, he and Esposito decided to interview them.

Summary of the Testimony of Dr. Joan Mast

Dr. Joan Mast, Superintendent of Schools, testified as follows. She filled-out an HIB Incident Report Form dated December 18,2019. It includes the initial information reported to her on December 17, 2019 by M.J. (A.J.'s mother) regarding her allegations of HIB that occurred at the Awards Banquet of December 16, 2019. On December 18, 2019, Dr. Mast, as the person who first learned of the alleged incident of HIB from A.J.'s mother (M.J.), wrote an Incident Report Form and submitted it to High School Principal David Heisey on December 19, 2019. There is no indication on the form or in any of the testimony that Dr. Mast verbally reported the alleged December 16, 2019 incident of HIB to the principal on December 17 or 18, 2019. Dr. Mast stated in the Incident Report Form that the perceived characteristic that motivated the act of HIB was "Not Determined".

Dr. Mast testified that on December 18, 2019, she spoke with Assistant Principal Brooke Esposito and Athletic Director Ryan Miller and assigned them to conduct an HIB Investigation. According to the Incident Report Form (R-1), on December 19, 2019, Principal Heisey assigned a case number and asked the Anti-Bullying Specialists to start an HIB investigation. The HIB investigators made findings of fact after they interviewed several people and they changed the distinguishing characteristic from "not determined" to "lack of athletic ability".

Based only upon her reading of the content of the interviews conducted by Mr. Miller and Ms. Esposito, Dr. Mast adopted the factual findings and conclusions made by Mr. Miller and Ms. Esposito. Those findings of fact and conclusions included the following:

(1) that Cerchio held onto A.J.'s leotard for three weeks and used the opportunity of the banquet to single-out A.J. in front of all the people present to publicly intimidate and humiliate her for not returning her team leotard in a timely fashion;

(2) that Cerchio "dropped" the leotard "at" A.J.;

(3) that A.J. reasonably perceived that Cerchio's motivation for doing so was to highlight a distinguishing characteristic of A.J, namely her "lack of athletic ability";

(4) that Cerchio sent "harassing" texts to A.J.;

(5) that Cerchio knew or should have known that by publicly calling attention to A.J.'s failure to return her leotard she would emotionally harm (i.e., embarrass) A.J.; and

(6) that the best description of the HIB behavior was that it was "Intimidating Conduct".

Summary of the Testimony of Lisa Cerchio

During Cerchio's testimony, Cerchio testified that Scotch Plains-Fanwood High School has one of the largest gymnastics programs in New Jersey and that it was one of the first programs to have a Junior Varsity Team in addition to the Varsity team. This contributed to the decision by her, Assistant Coach Boztarnik, and Athletic Director Ryan Miller to break the 28 girls down to three levels, Varsity, Junior Varsity and Practice Teams. Cerchio testified that she and Tara Bozetarnik used the NJSIAA Handbook to come up with objective criteria (and composed a rubric) to rank each girl involved with Gymnastics for the purpose of placing them on the Varsity, Junior Varsity and Practice Teams. The gymnasts themselves filled-out paperwork using the rubric that was based on NJSIAA criteria. The coaches also totalled the points which each girl earned during competitions. The coaches decided the team on which each girl would be placed and

met with each girl to explain the placements. Cerchio testified that A.J. came to her to question why she went down from the Junior Varsity Team to the Practice Team. They discussed the rubric and A.J. said, "Okay". Cerchio testified that during the course of the 2019 season, girls on the Practice Team were given the opportunity to compete on the Junior Varsity level. Cerchio testified that A.J. was afforded eight opportunities to compete on the Junior Varsity level, but A.J. decided to avail herself of only two of these Junior Varsity opportunities.

During her testimony, Cerchio described the events of the Awards Banquet. She called each athlete up to the front of the room where she was standing and she told the guests about each girl's accomplishments during the just-concluded season. Cerchio then presented each girl with a certificate or an award. In response to particular questioning about A.J., Cerchio recalled that when A.J. came forward to the front of the room, they hugged. Cerchio praised A.J. for working hard during the season, for doing work with her peers to make them better gymnasts, and for being a good gymnastic dancer. She then presented A.J. with her certificate.

Cerchio testified that Ryan Miller told her that there was a deadline for return of the leotards because they had to be refurbished. Cerchio discussed with Miller the fact that A.J. had not responded to her communications to come to her house to retrieve her leotard and to bring it to Miller's office herself. Around November 27, 2019, Miller told Cerchio to bring the leotard to the Awards Banquet and to give it to A.J. there. Cerchio testified that she followed Miller's directive to bring the leotard to the banquet. During her testimony, Cerchio agreed that Miller did not tell her to give the leotard to A.J. in front of the banquet guests, but only to return it to her at the banquet.

Cerchio testified that's she received a telephone call from Miller on December 19, during which he generally stated that a parent had called the school complaining about the return of a leotard at the December 16, 2019 Awards Banquet, but he did not say anything about the filing of an HIB complaint or that Cerchio was the target of an HIB complaint. Cerchio testified that when Miller told her that she was entitled to have a union

representative present, she wondered whether an HIB charge might be possible. Cerchio testified that she suspected that the complaint involved A.J. because A.J. was the only person to whom she returned a leotard at the banquet.

Cerchio testified that after speaking with Mr. Miller, she placed a telephone call to the Team Parent, Ellen Zimmerman, asking her if she noticed anything unusual occurring on the evening of the Awards Banquet as it was coming to a close. Cerchio testified that Zimmerman said that she did not notice anything unusual. As they discussed Miller's call, they suspected that M.J. and A.J. might be upset about the return of the leotard at the banquet. Cerchio testified that Ellen Zimmerman drafted a letter to Miller praising Cerchio for the successful gymnastics season and expressing concern that someone was upset about the return of a leotard at the Awards Banquet. Upon Attorney Silvestro's cross-examination, Cerchio, at first, denied that she had seen such a letter. However, during the cross-examination process it was convincingly demonstrated that Ellen Zimmerman sent a draft of the letter to Cerchio late on the evening of December 19, 2019. Cerchio was forced to admit that she had indeed seen the letter, but she explained that she had forgotten that she had seen it.

Summary of the Testimony of Megan Whitney

Attorney Kaplow called Megan Whitney (Whitney) to the stand to testify on behalf of Lisa Cerchio in regard to the HIB charge brought against her. Whitney testified that she is an acquaintance of Lisa Cerchio and that this came about because her daughter was a part of the Scotch Plains-Fanwood High School gymnastics team three years earlier, when she was a freshman. Whitney testified that she attended the December 16, 2019 Awards Banquet at the Darby Road Restaurant and was present throughout the entire event. She received emails from a man named Frank Manilla and also spoke with Cerchio about showing support for her. She learned that bullying charges had been brought against Cerchio arising out of the banquet and, wanting to show support for Cerchio, she attended the February 20, 2020 BOE meeting along with about half a dozen other parents. She recalled that after the definition of HIB was presented to the parents,

a group statement was made from the parents to the BOE which was favorable to Cerchio. At that meeting, she stated that she had not seen any actions by Cerchio that would be considered bullying under the definition.

Whitney testified that on the evening of December 16, 2019, she saw and heard Cerchio speak about the gymnasts individually and saw her make presentations to them for their accomplishments during the season. She testified that Cerchio spoke positively about each girl, that the girls presented her with flowers, and that she did not hear or see anything negative that evening. Specifically, she recalled that after Cerchio's remarks were concluded and the attendees were getting up to leave, she heard and saw Cerchio put down her flowers and picked up a leotard. Cerchio said. "Oh, by the way you need to return this to the school or to the athletic office" to one of the gymnasts. Upon questioning from the judge, Whitney described what she saw and heard in finer detail, saying that she recalled that the girls were taking photographs of themselves, that she was in the process of standing up and that she saw Cerchio lean over and hand the leotard to a girl who was seated. The girl accepted it from Cerchio's hand. Whitney did not know the identity of the girl who received the leotard. Whitney indicated that she was in close enough proximity to see and hear the entire transfer. That was all that Whitney recalled about the subject of leotards. On cross-examination, the only probing question was about whether or not Whitney had ever received formal training on the subject of the HIB Statute, to which she replied that she had not.

FINDINGS OF FACT

A.J.'s statement that "it is common for coaches to text individuals", is in contrast to Brook Esposito's statement that it is against Board Policy for school staff to text individual students. A.J.'s statement indicates, and I so **FIND**, that the Board should have been aware of the fact that it was a common practice for coaches and students to be texting one another about the athletic programs of the school. I **FIND** that the texting by Cerchio (who did not work at the high school aside from her coaching duties) to the team members about the return of the leotards, was in furtherance of the deadline for the return

of the leotards set by Athletic Director Ryan Miller.

In her statement to the interviewers, A.J. complained about (1) how Cerchio "picks favorites" and "likes" the girls who attend the Sergeant's gym and "dislikes" those who attend the YMCA (i.e., that Cerchio shows favoritism); (2) how Cerchio "never gave me a chance to compete" and (3) that Cerchio unfairly moved her down from the Junior Varsity Team to the Practice Team. Cerchio addressed these accusations during her testimony. I **FIND** that A.J. was afforded eight opportunities during the 2019 season to compete on the Junior Varsity level, but decided to avail herself of only two of these eight opportunities.

In regard to A.J.'s complaint about being treated unfairly by Cerchio in regard to the October, 2018 investigation of the "body-shaming incident between A.J. and T.S., A.J. accused Cerchio of "not listening to her side of the story", of ultimately "believing the other girl (T.S.)", and of feeling "very targeted". Cerchio addressed this during her testimony. During Cerchio's testimony, Cerchio testified that she investigated a body-shaming incident during which A.J. allegedly targeted the team's only African-American member, T.S., and that she questioned all team members in order to arrive at the truth about the incident. Cerchio testified that ultimately there were no HIB charges filed against A.J. and that Athletic Director Ryan Miller ended the incident by "sweeping it under the rug." I **FIND** that the alleged October, 2018 body-shaming incident and investigation of same by Cerchio provides background information about Cerchio's awareness of, and handling of, possible HIB matters and provides background information indicating that A.J. had a retaliatory motive to accuse Cerchio of an HIB offense. However, I **FIND** that the October, 2018 incident does not directly provide information about whether Cerchio committed an act of HIB on December 16, 2019.

I **FIND** that most of the statements made by A.J. during her interview were general complaints. The only statement made by A.J. during her interview which was relevant to the HIB charge are found in the second paragraph of her interview. In essence, A.J. accused Cerchio of publicly calling upon her to take her leotard and return it to Mr. Miller

in order to embarrass her.

I **FIND** that in K.P.'s interview does not sound like a personal account of what she perceived with her own senses. K.P. report that A.". was "called out", but does not state by whom, or in what manner; nor does she state any of the words used against A.J. Moreover, K.P.'s statements lack time references. I **FIND** that K.P. gives no information about the transfer of the leotard or about Cerchio's actions at the Awards Banquet that can be useful in determining whether an act of HIB occurred. I **FIND** that most of the content of K.P.'s statement to the interviewers is vitriol against Cerchio.

K.G. stated her feelings about Cerchio when she, in no uncertain terms, told the interviewer, "I really strongly dislike her". K.G. admitted that she intentionally sought to annoy Cerchio starting in the tenth grade saying, "I gave her attitude and a hard time." K.G.'s feelings about Cerchio apparently still persist since she stated to the interviewer in the present tense, "I have a problem respecting someone who doesn't respect me" and that she and her mother only talk to Tara Bozetarnik, not Cerchio. K.G. also accused Cerchio of intentionally excluding Tara Bozetarnik from a Town recognition event based solely on a hearsay accusation whereby Bozetarnick allegedly told E.G. and __.D. that Cerchio texted Bozetarnik instructing her not to attend the Town recognition event. I **FIND**, aside from her statement that Cerchio threw the leotard at A.J. in front of people, K.G.'s interview did not contain information that is relevant to the inquiry about the pending HIB charges against Cerchio. Instead, K.G.'s interview revealed that she strongly dislikes Cerchio and believes that Cerchio dislikes her and K.P. I **FIND** that the interview of K.G. demonstrated that she is prejudiced against Cerchio and therefore her testimony about Cerchio should have been evaluated in light of that prejudice. However, I **FIND** that Esposito accepted K.G.'s testimony without question and I **FIND** that this biased testimony affected Esposito's determination of an ultimate issue of fact.

I **FIND** that the only statement made by T.S. regarding the time, place and manner of Cerchio's return of the leotard to A.J. is found in the second paragraph, where she states that Cerchio, while speaking to the banquet guests, told A.J. to "come get your

leotard". I **FIND** that all the other information from T.S. refers to topics not at issue in this matter. Her information and / or opinions deal with topics not relevant to the disposition of this matter. The inclusion of such irrelevant matter in the interview is not improper, but I **FIND** that it indicates that Miller and Esposito asked questions about irrelevant topics and I **FIND** that the witness was concerned with expressing her own feelings about general matters rather than with focusing on supplying information relevant to the issue of whether Cerchio bullied A.J. when the leotard was returned.

I **FIND** that Paragraphs three through nine contain no information that is relevant to the time, place, or manner of Cerchio's return of the leotard to A.J.

I **FIND** that E.G.'s information and opinions expressed in paragraphs three to nine are irrelevant to the HIB charge under consideration. The inclusion of such irrelevant matter in the interview is not improper, but I **FIND** that it indicates that Miller and Esposito asked questions about irrelevant topics and I **FIND** that the witness was concerned with expressing her own feelings about general matters rather than with focusing on supplying information relevant to the issue of whether Cerchio bullied A.J. when the leotard was returned.

I **FIND** that Paragraph One is relevant because there, Bozetarnik unequivocally states that Cerchio took the leotard and threw it at A.J. in front of the dinner guests.

I **FIND** that Paragraphs two, four and five contain no information that is relevant to the time, place, or manner of Cerchio's return of the leotard to A.J.

I **FIND** that Bozetarnik's information and opinions expressed in paragraphs two, four, and five are irrelevant to the HIB charge under consideration. The inclusion of such irrelevant matter in the interview is not improper, but I **FIND** it indicates that Miller and Esposito asked questions about irrelevant topics and I **FIND** that the witness was concerned with expressing her own feelings about general matters rather than with focusing on supplying information relevant to the issue of whether Cerchio bullied A.J.

when the leotard was returned.

Even considering the hearsay accounts of the interviewees (as well as Cerchio's testimony), I **FIND** that Cerchio's mentioning of the overall return of the leotards by the team members to the banquet guests was brief and that she did not, as A.J. characterized it, "go on and on". I **FIND** that Mr. Miller had a time limit for returning the leotards (which he had to send for re-furbishing by a certain date) and that he informed Cerchio about the importance of the time limit. I **FIND** that A.J. did not take responsibility for her failure to follow instructions regarding the time limit for returning her leotard. I **FIND** that A.J. did not return Cerchio's phone calls regarding her late return of the leotard. I **FIND** that A.J. knew that her leotard was returned late, but made no effort to retrieve it and take it to the high school Athletic Office (Mr. Miller's Office) herself. I **FIND** that A.J. made a false statement when she accused Cerchio of "harassing the team captains" about the need to return the leotards. I **FIND** that A.J. made a false statement when she accused Cerchio of leaving her name off an email that informed the girls that if their leotards were dropped off at her house late, the girls would have to retrieve them and bring the leotards to the school.

I **FIND** that when Cerchio spoke to the banquet attendees, she spoke in a raised voice (a higher volume than normal, conversations, person-to-person volume). I **FIND** that after Cerchio finished addressing the gathering of banquet attendees, the attendees' attention shifted to their preparations for leaving the event. I **FIND** that after the banquet guests' attention was no longer on Cerchio, she approached A.J. with the leotard in her hand, leaned over a few seated students, told A.J. to give bring the leotard to Mr. Miller's office, and handed the leotard to A.J., who took it from Cerchio's hand. I **FIND** that when Cerchio spoke to A.J., she did so in a normal conversational voice, not in a raised voice. I **FIND** that the manner in which Cerchio returned the leotard to A.J. was not public, but rather was semi-private, that is to say, personally and at arm's length. I **FIND** that the manner in which Cerchio returned the leotard to A.J. was not in a way (in terms of volume or sight) that could have attracted the attention of people who were more than an arm's length distance away. I **FIND**, from the sum total of the statements in the interviews, from

the documents submitted in discovery, and from all of the testimony given at the hearing, that the most complete, consistent and credible evidence demonstrates nothing that leads me to believe that Cerchio publicly "singled-out" A.J. at the Awards Banquet in order to humiliate her or to intimidate her, or to diminish her, or to harm her in any way. I **FIND** that the opposite is true because the unrefuted testimony of Cerchio is that she called A.J. to the front of the room (as she had done with other student gymnasts) to recognize her good work, to praise her, and to give her a certificate; they even hugged. I **FIND** that Cerchio returned the leotard to A.J. after the conclusion of the event in the least public way possible. I **FIND** that Cerchio's public recognition of A.J.'s gymnastic prowess and her praise for A.J.'s work with less experienced team members demonstrates that Cerchio did not consider A.J. as "lacking in athletic ability" or as "having less athletic ability than her peers".

I **FIND** that, in ascertaining matters of fact and in making their conclusions, the HIB interviewers (Brooke Esposito and Ryan Miller), and Dr. Mast relied heavily on the unverified, not-subject-to-cross-examination, statements of A.J., K.P., K.G., T.S., E.G., Tara Bozetarnik, (and M.J., to the extent that Dr. Mast received information from A.J.'s mother). None of the BOE's testifying witnesses, Esposito, Miller, or Mast, were present at the Awards Banquet, where the HIB allegedly took place. The testimony presented to this Tribunal by Esposito, Miller, and Mast regarding the gestures, words, or actions of Cerchio, which supposedly constituted HIB, came not from their own perceptions, but entirely from the accounts related to them by A.J., K.P., K.G., T.S., E.G., Tara Bozetarnik, and Lisa Cerchio. I **FIND** that the testimony of Esposito, Miller, and Mast about the interviewees' accounts of the process of the return of the leotards before and including the December 16, 2019 Awards Banquet was hearsay. While the testimony of Esposito or Miller, regarding their interviewing of Cerchio, is arguably within the "admission" hearsay exception, I **FIND** that none of the testimony of Esposito or of Miller concerning their interview of Cerchio contains evidence of a violation of the Anti-Bullying Statute by Cerchio in relation to the return of the leotards before or at the December 16, 2019 Awards Banquet. I **FIND** that the testimony of Esposito, Miller, or Mast and the documents received in discovery (i.e., those in evidence) do not contain competent evidence that

could support the hearsay statements offered by the BOE to make findings of ultimate facts. I **FIND** that the BOE's case is built only on hearsay evidence.

I **FIND** that from her interviews of A.J., K.P,. and K.G., regarding their personal interactions with Cerchio long before the "leotards issue" arose and long before the 12/16/2019 Awards Banquet took place, Esposito decided as a matter of fact that Cerchio's personality, attitudes, and actions made these girls feel that "they were not part of the team".

I **FIND** that Esposito decided as a matter of fact that Cerchio wrongly "segregated" the athletes and wrongfully paid more attention to some while paying less or no attention to others. I **FIND** that none of the testimony of AJ., K.P., or K.G. regarding "segregating" the team into Varsity, Junior Varsity, or Practice Teams, or whether Cerchio paid more attention or less attention to these teams proves that Cerchio decided that anyone "lacked athletic ability" and bullied anyone on account of a "lack of athletic ability". When Cerchio and her Assistant Coach (Tara Bozetarnik) made decisions to place various girls on the three levels of teams, they did so using standardized criteria, supplemented by information from the girls themselves, and using the girls' point totals earned from prior competitions, I **FIND** that none of the girl's testimonies prove that Cerchio considered anyone as "having less athletic ability than her peers" and then bullied anyone on account of "having less athletic ability than one's peers".

Regarding the issue of whether or not Cerchio violated the Anti-Bullying Statute at or before the December 16, 2019 Awards Banquet, I **FIND** that Brooke Esposito relied heavily on the statements of A.J., K.P., K.G., T.S., E.G., and Tara Bozetarnik and then presented her testimony, which is hearsay, in court.

I **FIND** that when Miller admitted that he was responsible for ordering fewer tank tops, that he told Cerchio to give the tank tops to the Varsity first, and that did not know if Cerchio distributed the later-acquired tank tops to the J.V. and Practice teams, it demonstrated that he was responsible for the distribution of the tank tops and that the

accusation against Cerchio (that she deliberately withheld the tank tops in order to segregate the teams or for some discriminatory motive) was unsupported and false.

I **FIND** that it is contradictory for Miller to urge Cerchio to tell the girls to return their leotards by a certain date and then, after she takes steps to collect the leotards for him, to accuse Cerchio of intimidating the girls when she was carrying-out his request.

Miller and Esposito failed to question Cerchio about statements and accusations made by the interviewees, such as the accusations of discrimination related to the distribution of the tank tops, the accusation that Cerchio intentionally excluded Bozetarnik from the Town Council's recognition event, an accusation stated by several interviewees that that Cerchio treated groups of athletes differently because she considered some athletes as "lacking" in athletic ability, and an accusation that Cerchio showed "favoritism" to certain athletes. Moreover, after hearing K.G. openly state that she "really disliked" Cerchio, Esposito and Miller failed to question Cerchio about whether she had any recollection of problems with K.G. Had they done so, they might have uncovered information that might possibly reveal K.G.'s bias and perhaps lead them to question K.G.'s veracity. Esposito and Miller testified that the issue of whether Cerchio "threw", "tossed" or "handed" the leotard to A.J. was of secondary importance and they therefore did not question Cerchio about it. They testified that the fact that Cerchio transferred the leotard to A.J. publicly was the primary issue. I **FIND** that a thorough interview of Cerchio should have included questions about both the *manner of the transfer* (handing the leotard over, tossing it or throwing it, or throwing it *at* someone) and *whether the transfer was made in public, in semi-public, or in private circumstances*. According to Cerchio's testimony, she walked six to ten feet in A.J.'s direction to where she was sitting and in a normal speaking (i.e., not as one would speak before an audience) told her to bring the leotard to Mr. Miller's office as she handed it to her at close range. I **FIND** that Esposito and Miller would have acquired crucial information about the nature of the transfer, i.e., a friendly hand-off of the leotard versus a rude throwing of the leotard *at* someone). I **FIND** that Esposito and Miller would have acquired crucial information about the public / non-public nature of the transfer and of the manner of the transfer had they properly and

thoroughly questioned Cerchio. I **FIND**, from Miller's own testimony during questioning by the Tribunal, that he admitted that he was speculating about Cerchio being "caught up in the moment" and about the manner of how she transferred the leotard. I also **FIND** that Esposito's and Miller's failure to pose the above-mentioned questions to Cerchio demonstrates that they did not perform their investigation thoroughly. I **FIND** that the failure to question Cerchio about the interviewees' statements and accusations deprived Cerchio of the opportunity to give her side of the story. I also **FIND** that Esposito's and Miller's failure to pose these questions to Cerchio strongly indicates that they, with only partial evidence, formed the belief that Cechio created a hostile environment and that this belief led them to reach a hasty conclusion that Cerchio was guilty of the specific HIB accusation made against her regarding the events leading up to and at the Awards Banquet.

I **FIND** that most of the statements and accusations related by the interviewees to Esposito and Miller were general in nature and did not relate to the specific issue of whether the facts surrounding Cerchio's return of the leotard to A.J. on December 16, 2019 was in any way violative of the Anti-Bullying Statute.

I **FIND** that Attorney Silvestro's cross-examination exposed that Cerchio knew about Zimmerman's letter on December 19, 2019. I **FIND** that Zimmerman, with Cerchio's knowledge and consent, were attempting to engaging in pre-emptive damage control in case M.J.'s and A.J.'s grievance were to develop into something more than an angry telephone call to the school's officials. However, it must be remembered that Miller testified that during his December 19th telephone call to Cerchio, he merely told Cerchio that someone had complained about the return of a leotard at the Awards Banquet; and that during that same phone call, he did not mention anything to Cerchio about the filing of an HIB charge against her or about his selection as a member of the HIB investigation panel. Upon hearing Miller mention her right to consult her union representative, Cerchio wondered whether she might be facing an HIB charge, but I **FIND** that in this regard she only had a mere suspicion and I **FIND** that Miller did not explicitly say to Cerchio that she could be facing an HIB charge. When Zimmerman sent the aforementioned "damage

control letter", Cerchio was had not been explicitly or formally told that she was facing possible or actual HIB charges, and so, I **FIND** that Cerchio's knowledge of the contents of the letter does not constitute an explicit or implicit admission of having committed an HIB offense. I also **FIND** that Cerchio's knowledge of the contents of the letter does not suggest in any way that she was on notice that HIB charges were about to be levelled against her based on Miller's limited conversation with her about a telephone call to the school about the return of a leotard and based on her own reasoning that, since A.J. was the only person who received a leotard at the dinner, it must have something to do with her. I **FIND** that Attorney Silvestro's October 14, 2022 impeachment of Cerchio in regard to her knowledge of Ellen Zimmerman's letter dated December 19, 2019 does not affect the issue of whether Cerchio did or did not commit an act of HIB on December 16, 2019.

I **FIND** that had Miller told Cerchio on December 19,2019 that he had been selected to take part in an HIB investigation, she would have had the ability to attempt to retrieve the video from the Arby Road Restaurant (which was taped-over every two weeks) to use in her defense.

APPLICABLE LAW

In 2002 the New Jersey Legislature enacted L. 2002, c. 83, this State's first harassment, intimidation and bullying (HIB) law. In 2007 the Legislature amended the law L. 2007, c. 129, to cover cyber-bullying. In 2010 the Legislature enacted the Anti-Bullying Bill of Rights Act, L. 2010, c. 122, which revised and supplemented the prior laws chiefly to cover incidents that occur off school grounds under special circumstances. The legislature also enacted L. 2012, c.1 which permits a school district to implement bullying prevention and training programs.

Definition of Harassment, Intimidation and Bullying (H.I.B.)

The 2010 law refined the definition of H.I.B. to include [bracketed numbers added]:

"[A]ny gesture, any written, verbal or physical act, or any

> electronic communication, whether it be a single incident or a series of incidents, that is [1] **reasonably perceived** as being **motivated** either by any **actual or perceived characteristic** such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, [2] that takes place on school property, at any school-sponsored function, on a school bus, or takes place off school grounds as provided for in N.J.S.A. 18A:37-15.3, [3] that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. **a reasonable person should know**, under the circumstances, will have the effect of physically or emotionally **harming a student** or damaging a student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or **demeaning any student** or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or be severely or pervasively causing physical or emotional harm to the student." [N.J.S.A. 18A:37-14 (emphasis added).]

Comprehensive regulations promulgated by the Department of Education further assist districts in complying with these statutory requirements. N.J.A.C. 6A:16-7.9. Local Control of Policy and Required Contents of H.I.B. Policy The anti-bullying law provides that "[e]ach school district shall adopt a policy prohibiting harassment, intimidation and bullying on school property, at a school-sponsored function or on a school bus." N.J.S.A. 18A:37-15(a). Pursuant to N.J.S.A. 18A:37-15(b) each school district has "local control over the content of the policy" but the policy must include twelve enumerated components including a definition of harassment, intimidation, and bullying at least as inclusive as the one provided (see above) in N.J.S.A. 18A:37-14. The twelve required components of the policy are set forth in N.J.S.A. 18A:37-15 and are summarized below.

The twelve required components of a policy prohibiting H.I.B. are:

(1) a statement prohibiting H.I.B. of a student;

(2) a definition of H.I.B. no less inclusive than that set forth in N.J.S.A. 18A:37-13;

(3) a description of the type of behavior expected from each student;

(4) consequences and appropriate remedial action for a person who commits an act of HIB;

(5) a procedure for reporting an act of H.I.B., including a provision that permits a person to report an act of H.I.B. anonymously;

(6) a procedure for prompt investigation of violations and complaints, which procedure shall at a minimum provide that

[(a) the investigation be initiated within one school day of the report and be completed within ten days of receipt of the written report,

(b) the results of the investigation be reported to the superintendent within two days of completion,

(c) the investigation and reports be reported to the board of education no later than the date of the next board of education meeting,

(d) the parents or guardians of the students who are parties to the investigation be entitled to receive certain information and request a hearing within five days after the results of the investigation are reported to the board,

(e) the board must issue a written decision affirming, rejecting or modifying the superintendent's decision, which can be appealed to the Commissioner of Education, and

(f) a complaint can be filed with the Division on Civil Rights within 180 days of an incident of H.I.B. based on membership in a protected group.][;]

(7) the range of ways in which a school will respond once an incident of H.I.B. is identified, which shall be defined by the principal in conjunction with the school anti-bullying specialist, but shall include an appropriate combination of services that are available within the district such as counselling, support services, intervention services and other programs, as defined by the commissioner. In the event that the necessary programs and services are not available within the district, the district may apply to the Department of Education for a grant from the

"Bullying Prevention Fund" established pursuant to [N.J.S.A. 18A:37-28] to support the provision of out-of-district programs and services;

(8) a statement that prohibits reprisal or retaliation against any person who reports an act of H.I.B. and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation;

(9) consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of H.I.B.;

(10) a statement of how the policy is to be publicized, including notice that the policy applies to participation in school-sponsored functions;

(11) a requirement that a link to the policy be prominently posted on the home page of the school district's website and distributed annually to parents and guardians who have children enrolled in a school in the school district; and

(12) a requirement that the name, school phone number, school address and school email address of the district anti-bullying coordinator be listed on the home page of the school district's website; and that on the home page of each school's website the name, school phone number, school address and school email address of the school anti-bullying specialist and the district anti-bullying coordinator be listed. The information concerning the district anti-bullying coordinator and the school anti-bullying specialists shall also be maintained on the department's website. [N.J.S.A. 18A:37-15(b).]

H.I.B. on School Grounds versus Off School Grounds

In regard to the location of acts of H.I.B. (on school grounds versus off school grounds), the enactment of the Anti-Bullying Bill of Rights Act now requires that each school district's policy "include provisions for appropriate responses to harassment, intimidation or bullying ... that occurs off school grounds, in cases where a school employee is made aware of such actions." N.J.S.A. 18A:37-15.3. A school district's responses to harassment, Intimidation or bullying occurring off school grounds must "be consistent with the board of education's code of student conduct or other provisions of

the board's policy on harassment, intimidation, or bullying. N.J.S.A. 18A:37-15.3. Pursuant to the rules [N.J.A.C. 6A:16-7.5] governing a board of education's code of student conduct, N.J.A.C. 6A:16-7.5 (a) states:

> "School authorities have the right to impose a consequence on a student for conduct away from school grounds that is consistent with the district board of education's code of student conduct, pursuant to N.J.A.C. 6A:16-7.1.
>
> 1. This authority shall be exercised only when it is reasonably necessary for the student's physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds, pursuant to N.J.S.A. 18A:25-2 and 18A:37-2.
>
> 2. This authority shall be exercised only when the conduct which is the subject of the proposed consequence materially and substantially interferes with the requirements of appropriate discipline in the operation of the school.
>
> 3. The consequence pursuant to (a) above shall be handled in accordance with the district board of education's approved code of student conduct, pursuant to N.J.A.C. 6A:16-7.1, and as appropriate, in accordance with N.J.A.C. 6A:16-7.2, 7.3, or 7.4.
>
> (b) School authorities shall respond to harassment, intimidation,
> or bullying that occurs off school grounds, pursuant to N.J.S.A.
> 18A:37-14 and 15.3 and N.J.A.C. 6A:16-1.3, 7.1, and 7.7."

Reporting of H.I.B.

In regard to the reporting of alleged H.I.B. incidents and the investigation of same, N.J.S.A. 18A:37-16 (a) forbids a member of a board of education, a school employee, a student or a volunteer from engaging in acts of reprisal, retaliation or false accusation against a victim of H.I.B. or a witness who reports acts of H.I.B.

N.J.S.A. 18A:37-16 (b) requires that acts of H.I.B. must be reported and states:

> "A member of a board of education, school employee, Contracted service provider, student or volunteer who has witnessed, or has reliable information that a student has been subject to, harassment, intimidation, or bullying shall report the incident to the appropriate school official designated by the school district's policy, or to any school administrator or safe schools resource officer, who shall immediately initiate the school district's procedures concerning school bullying."

N.J.S.A. 18A:37-16 (c) provides that any school official who promptly complies with the reporting requirement of the law is immune from a cause of action for damages arising from any failure to remedy the reported incident.

N.J.S.A. 18A:37-16(d) provides that a school administrator who fails to investigate the allegation of H.I.B. or fails to take sufficient action to minimize or eliminate the HIB may be subject to disciplinary action.

H.I.B. Prevention

Pursuant to N.J.S.A. 18A:37-17(a) schools and school districts are required to annually assess their HIB prevention programs, or approaches and other initiatives so as to create school-wide conditions to prevent and address H.I.B. Grants are available from the Department of Education if needed.

N.J.S.A. 18A-37 (b) obligates school, districts to provide training related to the district's H.I.B. policies to its employees and volunteers emphasizing the importance of the definition of H.I.B. and of the protected categories found in N.J.S.A. 18A:37-14.

N.J.S.A. 18A-37-17 (c) obligates individual schools to include the school district's policies against H.I.B. in its employee training, including full and part-time employees, volunteers and anyone who may have significant contact with students.

Comprehensive regulations promulgated by the Department of Education further assist districts in complying with these statutory requirements. N.J.A.C. 6A:16-7.7.

The Residuum Rule

N.J.A.C. 1:1-15.1 contains the General Rules of Evidence Rules of the OAL. N.J.A.C. 1:1-15.1(c) provides:

> All relevant evidence is admissible except as otherwise provided herein. A judge may, at his or her discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will either:
>
> (1) Necessitate undue consumption of time: or
>
> (2) Create substantial danger of undue prejudice or confusion.

N.J.A.C. 1:1-15.5 governs the use of hearsay evidence and states the OAL's "residuum rule". N.J.A.C. 1:1-15.5(a) allows the admission of hearsay and provides as follows:

> Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, *hearsay evidence shall be admissible* in the trial of contested cases. Hearsay evidence which is admitted *shall be accorded whatever weight the judge deems appropriate taking into account* the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, *its reliability.* [Italics supplied.]

N.J.A.C. 1:1-15.5(b) provides, however, that hearsay may not be the sole basis for any ultimate finding of fact. N.J.A.C. 1:1-15.5(b) provides:

> Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

The text of N.J.A.C. 1:1-15.5(b) prohibits the judge from making an ultimate finding of fact that is based solely on hearsay evidence. To make an ultimate finding of fact, the

judge must base that finding of fact on "some legally competent evidence". In the Matter of Tanelli, 194 N.J. Super. 492 (App. Div. 1984), certification denied 99 N.J. 181 (1984). Once some legally competent evidence is presented as the basis for a judge's ultimate finding of fact, then and only then may hearsay evidence be used to support that ultimate finding of fact. In re Villano, OAL Dkt. No. TYP-11482-08, 2010 N.J. AGEN LEXIS 765, Final Decision,(January 25, 2010) ; In re Pagano, OAL Dkt. No. TYPPE-03404-2006N, 2007 N.J. AGEN LEXIS 83,Final Decision (February 23, 2007) ; N.J. Dep't of Health & Senior Services v. Turner, OAL Dkt. No. HLT-02091-06, 2006 N.J. AGEN LEXIS 872, Final Decision (September 20, 2006).

CONCLUSIONS

I have found that the October, 2018 body shaming incident does not provide information about whether Cerchio committed an act of HIB on December 16, 2019. To the extent that the HIB investigators relied upon A.J.'s and any other interviewees' statements and accusations against Cerchio referencing the October, 2018 body-shaming incident in connection with Cerchio's supposed disparate treatment of A.J. in 2019, I **CONCLUDE** that there should have been no reliance on such statements and accusations because they are irrelevant to the question of whether Cerchio committed an act of HIB on December 16, 2019.

I have found that the testimonies of various interviewees disclosed general, personal accusations against Cerchio. Among such generalized accusations against Cerchio were that Cerchio was "mean", showed "favoritism", neglected the J.V. and Practice teams members, excluded Bozetarnik from a Town-sponsored recognition event, and that she demanded high standards of performance from her own children. I have found that these generalized and personal allegations do not indicate whether or not Cerchio committed an act of HIB on December 16, 2019. To the extent that such allegations were entertained by the HIB investigators, and were considered by the HIB investigators in their determination that Cerchio committed an act of HIB on December 16, 2019, I **CONCLUDE** that reliance on such evidence is inherently suspect, is irrelevant

to the question of whether Cerchio committed an act of HIB on December 16, 2019, and should not have been considered in the investigators' and the BOE's sustaining of the HIB charge. I **CONCLUDE** that the HIB investigators should not have utilized any such statements or accusations in their decision-making process regarding the HIB charges brought against Cerchio because they are general derogatory comments about Cercho's personality, coaching style, and character; because the purpose of these comments is not directed to the gathering of information about the pending HIB charge; and because the comments are not relevant to determining whether there is competent evidence which supports or casts doubt upon the veracity of the HIB charge against Cerchio in the pending case. I further **CONCLUDE**, that based upon the testimony of the BOE's own witnesses, the statements and accusations referenced above were considered by the HIB investigators and did indeed affect their decision-making process. I further **CONCLUDE** that the inclusion of the aforementioned statements and accusations tainted the decision-making process, unduly affected the fairness of the decision-making process, and provides not only good cause, but a compelling reason to reverse the substantiation of the HIB charge.

Having found that A.J. availed herself of only two of eight opportunities to compete on the Junior Varsity level during the 2019 season, I **CONCLUDE** that A.J.'s statement that Cerchio did not give her the chance to compete is not true and I **CONCLUDE** that her statement that Cerchio's decision-making was based on her having "favorites" is also untrue. I **CONCLUDE** that Cerchio and Bozetarnik made their decisions regarding the placement of the girls on the Varsity, Junior Varsity or Practice Team levels were made on the basis of accepted standards and objective criteria. I **CONCLUDE** that A.J. was given a fair opportunity to question her placement on the Practice Team and that Cerchio's response that she needed to do more work reflected a fair evaluation of her skills and was not affected by any bias. I **CONCLUDE** A.J.'s accusation that Cerchio treated her unfairly was unwarranted.

Having found that the manner of Cerchio's transfer of the leotard to A.J. (including the content of the words stated, the normal volume of her voice, and the handing of the

leotard to A.J.) was not public and was not such that it could have attracted undue attention from bystanders, as well as having found many facts that refute the versions of the facts and that refute the accusations presented by the interviewees and the BOE's witnesses, I **CONCLUDE** that the BOE has failed to present a preponderance of evidence that supports its contention that Cerchio singled-out A.J. in public, humiliated A.J., held A.J. up to ridicule and scorn due to her supposed "lack of athletic ability", or committed any other acts of HIB against A.J. I **CONCLUDE** that Cerchio's public recognition of A.J.'s athletic prowess, especially her dancing prowess, absolutely refutes the allegation that Cerchio believed that A.J. was "lacking in athletic ability".

I **CONCLUDE** that there is no evidence in this matter that supports the idea that A.J. lacked athletic ability or that Cerchio believed that A.J. lacked athletic ability. I **CONCLUDE** that Cerchio and her Assistant Coach, Tara Bozetarnick, with the full knowledge of Ryan Miller, ranked all of the gymnasts in an objective way using the standards set forth in the NJSIAA and with information submitted by the gymnasts themselves. I **CONCLUDE** that Cerchio and Bozetarnik believed that certain team members had more or less *developed* athletic ability (as opposed to raw, not-yet developed ability) than others, and fairly assigned them to the Varsity Team, the Junior Varsity Team and the Practice Team. I **CONCLUDE** that there is no evidence that supports the idea that Cerchio, given the results of the ranking system, used it in a way to *improperly* decide that A.J. had less raw athletic ability than her peers or less developed athletic ability than her peers. I **CONCLUDE** that the BOE has failed to present any evidence to demonstrate that the ranking system developed by Cerchio and Bozetarnik was unfair or that it was in any way prejudicial to A.J. I **CONCLUDE** that there is no evidence that the ranking system that Cerchio and Bozetarnik developed was used by anyone in a way that could possibly be violative of the New Jersey Anti-Bullying Bill of Rights Act. I **CONCLUDE** that it is necessary for a coach to fairly assess the talent of his or her athletes and to rank them accordingly based on objective criteria as was done in the matter at hand. I **CONCLUDE** that the facts, as determined by this Tribunal, do not support the proposition that A.J. reasonably perceived Cerchio's words, gestures, verbal or physical acts, were motivated by any distinguishing characteristic possessed by A.J.

Having considered all of the evidence presented in this matter, and weighing it objectively and carefully, I **CONCLUDE** that there was nothing in Cerchio's public speech at the Awards Banquet or in her after-banquet private (or at most semi-public) conversation with A.J. at the table where she was sitting at the time of the transfer of the leotard that a reasonable person knew or should have known would have the effect of physically or emotionally harming a student; or that that conversation could have the effect of insulting or demeaning a student; or that the conversation could create a hostile educational environment.

Having searched for competent evidence to serve as a basis for considering the hearsay statements offered as evidence to support the BOE's case, I have found no such competent evidence and I therefore must **CONCLUDE** that the hearsay statements cannot be used to decide any finding of ultimate fact in this matter. Having found that the testimony of Assistant Principal Brook Esposito, the testimony of Athletic Director Ryan Miller, and the testimony of Superintendent Dr. Joan Mast all rely on hearsay evidence, I **CONCLUDE** that their testimony is insufficient to sustain the substantiation of the HIB charges against Cerchio. Having considered the testimony of Lisa Cerchio and of Megan Whitney as well as the documents submitted in discovery (i.e., those marked in evidence), having found that said testimony has been comprehensive, coherent, and unrefuted and that said evidence is credible, I **CONCLUDE** that the Petitioner, Lisa Cerchio has presented sufficient evidence and compelling reasons for this Tribunal to reverse the substantiation of the HIB charges brought against her.

I **CONCLUDE** that the substantiation of the HIB charge against Lisa Cerchio must be, and hereby is, **REVERSED**.

ORDER

This matter having been considered by the Tribunal, and the Tribunal having considered the testimony of the witnesses, the exhibits in evidence, and having read the

arguments of counsel, and for good cause:

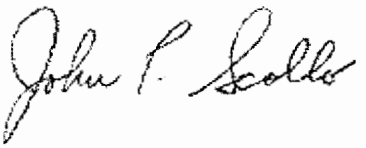
It is on this Twenty-Ninth (29th) day of December, 2023,

ORDERED that the substantiation of the HIB charge brought against Lisa Cerchio by the Scotch Plains-Fanwood Board of Education is hereby **REVERSED**. It is further **ORDERED** that any reference to the substantiation of said HIB charge in the records of the Scotch Plains-Fanwood School District shall be stricken. And it is further **ORDERED** that a copy of this Initial Decision shall be immediately sent to the New Jersey Department of Education and to each of the parties herein. And it is further **ORDERED** that upon receipt of this Initial Decision, counsel for the parties shall acknowledge receipt thereof by email to this Tribunal.

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.



December 29, 2023
DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

List of Witnesses

For Petitioner:

Lisa Cerchio, petitioner

Megan Whitney, Acquaintance of Lisa Cerchio

For Respondent:

Brooke Esposito, Assistant Principal

Ryan Miller, Athletic Director

Dr. Joan Mast, Superintendent

List of Exhibits

For Petitioner:

P-6 Correspondences between counsel.

P-7 Correspondences between counsel.

P-8 A cover letter dated February 13, 2020 from Douglas M. Silvestro, Esq., the BOE's attorney, to Cerchio's former attorney, A. John Blake, Esq.

P-9 This is a letter dated February 24, 2020 from Attorney Silvestro to Attorney Blake.

P-11 A set of Requests for Admissions propounded by the BOE's attorney with responses made by Petitioner, Lisa Cerchio.

P-15 A set of text messages between A.J. and Lisa Cerchio.

P-17 A five-page set of texts between Lisa Cerchio and four team captains.

P-20 A list of the 2019 Varsity, J.V. and Practice Squad Gymnastic Team members and a three-page evaluation of Coach Lisa Cerchio.

For Respondent:

R-1 The HIB Incident Report Form dated 12/18/2019.

R-2 Interrogatories sent to Cerchio by the Respondent and Cerchio's answers to same.

R-3 Interrogatories sent to Cerchio by the Respondent and Cerchio's answers to same.

R-6 Email dated December 19,2019 at 11:06:58 p.m. sent by the Team Parent, Ellen Zimmerman to Lisa Cerchio.

138-24

New Jersey Commissioner of Education

Final Decision

K.P., on behalf of minor children, K.P. and K.P..,

Petitioner,

v.

Board of Education of the Township of Hamilton, Mercer County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that his minor child, Ky.P., was not entitled to a free public education in Hamilton schools during the 2022-2023 school year. (This matter pertains solely to Ky.P.; in the within decision, the Commissioner refers to K.P.'s minor children – both of whom share the initials K.P. – as Ky.P. and Ka.P., for purposes of clarity; the Board explained in its March 23, 2023, determination letter that it did not take any action with respect to Ka.P. as he remained eligible to attend school in Hamilton.) The Board contended that Ky.P. did not live with her father in Hamilton, but rather resided in Princeton Township, and demanded payment of tuition in the amount of $4,456.65 for Ky.P.'s ineligible attendance in the district.

The ALJ found, *inter alia*, that: after participating in a prehearing telephone conference on August 1, 2023, petitioner failed to appear at all other scheduled proceedings in this matter; petitioner, Ky.P.'s father, is undisputedly domiciled in Hamilton Township and, therefore, Ky.P. is also domiciled in Hamilton Township; absent sufficient proof that Ky.P. does not live with her father or that he does not have custody, *N.J.A.C.* 6A:22-3.1(a)(1) applies; and the fact that Ky.P. spent a few nights in December 2022 at a non-parental residence in Princeton is of "little weight." The ALJ concluded that Ky.P. was entitled to a free public education in Hamilton Township. Accordingly, petitioner's appeal was granted and the Board's counterclaim for tuition was denied.

Upon review, the Commissioner rejected the Initial Decision of the OAL, finding that: the record is devoid of evidence that the petitioner and Ky.P. are domiciled in Hamilton; petitioner failed to appear at the hearing and did not supply the ALJ with any evidence in support of his appeal; and petitioner failed to satisfy the requisite burden of proof in this case. The Commissioner, therefore, rejected the ALJ's conclusion that Ky.P. is entitled to a free public education in Hamilton as unsupported by the record, and further rejected the ALJ's denial of the Board's counterclaim for tuition. Accordingly, the Commissioner dismissed the petitioner's unprosecuted residency appeal and remanded the matter to the OAL for further proceedings on the counterclaim in order to develop the factual record, i.e., to establish the number of days of Ky.P.'s ineligible attendance and the per diem cost of tuition in the school district during the period of her ineligible attendance.

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.t

138-24
OAL Dkt. No. EDU 04952-23
Agency Dkt. No. 137-5/23

New Jersey Commissioner of Education

Final Decision

K.P., on behalf of minor children, K.P. and K.P.,

Petitioner,

v.

Board of Education of the Township of Hamilton, Mercer County,

Respondent.

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

This matter concerns the Board's March 23, 2023, determination that Ky.P. does not reside in Hamilton Township and its demand for payment of tuition in the amount of $4,456.65 for Ky.P.'s ineligible attendance at school in the district.[1] On May 17, 2023, petitioner appealed the Board's residency determination to the Commissioner. The Board filed an answer and counterclaim seeking payment of tuition.

[1] Because they share the same initials, in this decision, the Commissioner refers to K.P.'s minor children as Ky.P. and Ka.P for purposes of clarity. In its March 23, 2023, determination letter, the Board explained that it did not take any action with respect to Ka.P. and confirmed that he remained eligible to attend school within the Hamilton Township School District. Therefore, this matter pertains only to Ky.P., despite both children being named in the case caption.

After the matter was transmitted to the OAL, petitioner participated in one prehearing telephone conference on August 1, 2023. He then failed to appear for all subsequent telephone conferences. On November 9, 2023, the OAL sent notice to the parties, via regular mail and email, regarding the January 5, 2024 hearing, to be conducted via Zoom. The notice advised that if the parties failed to appear, the file would be returned to the transmitting agency for appropriate action, which could include the granting of the relief requested by the other party.

Petitioner failed to appear for the scheduled hearing on January 5, 2024. The Board appeared and called one witness, Dr. James Altobello, Director of Operations, to testify.[2] The Board determined that Ky.P. resided in Princeton Township with her brother's mother and was therefore ineligible to attend school in the Hamilton Township district. A third-party surveillance company hired by the Board observed Ky.P. at the Princeton Township address on four occasions in December 2022 before school. On January 9, 2024, Board counsel submitted a letter to the ALJ in support of its counterclaim detailing the Board-approved tuition rate for the 2022-2023 school year and the per diem rate. The letter sought reimbursement for 55 days of ineligible attendance by Ky.P. Having received no explanation from petitioner regarding his failure to appear, the Administrative Law Judge (ALJ) closed the record on January 16, 2024.

In her Initial Decision, the ALJ found, among other things, that it was undisputed that petitioner, Ky.P.'s father, is domiciled in Hamilton Township and that, therefore, Ky.P. is also domiciled in Hamilton Township. The ALJ reasoned that "[i]n the absence of sufficient proof that K[y].P. does not live with her father or that he does not have custody, the relevant Code

[2] The parties have not provided the Commissioner with a transcript of the January 5, 2024, hearing.

provision is clear. That K[y].P. spent a few nights in December 2022 at a non-parental residence in Princeton bears little weight in this regard." Initial Decision at 6. Accordingly, the ALJ concluded that Ky.P. was entitled to a free public education in Hamilton Township and denied the Board's counterclaim for tuition.

In their exceptions, the Board contends that the Commissioner should reject the Initial Decision because: (1) petitioner failed to appear and presented no evidence regarding his domicile or Ky.P.'s domicile; (2) absent evidence from petitioner, there is no factual basis for the ALJ's reversal of the Board's residency determination or the ALJ's conclusion that both petitioner and Ky.P. are domiciled in Hamilton Township; (3) the ALJ misconstrued the burden of proof, as it is petitioner that must sustain the burden of demonstrating the student's right to attend school in the district; and (4) the district fully complied with its obligation under *N.J.A.C.* 6A:22-4.2 to determine whether students are eligible to attend school in its district.

"*N.J.S.A.* 18A:38-1(a) mandates that public schools are free to any person, [over age five and] under twenty years of age, 'who is domiciled within the school district.'" *K.K-M., on behalf of A.W. v. Bd. of Educ. of City of Gloucester City*, 463 *N.J. Super.* 24, 31 (App. Div. 2020). A child's parents "'shall have the burden of proof by a preponderance of the evidence' to prove domicile in the school district." *D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist.*, 366 *N.J. Super.* 269, 273 (App. Div. 2004) (quoting *N.J.S.A.* 18A:38-1(b)(2)).

Upon review, the Commissioner rejects the Initial Decision in its entirety. In particular, the Commissioner rejects the ALJ's finding that petitioner and Ky.P. are domiciled in Hamilton Township because the record is devoid of evidence to establish those facts. As noted, petitioner failed to appear at the hearing and did not supply the ALJ with any evidence in

support of his petition of appeal. Therefore, he did not satisfy the requisite burden of proof. In short, the ALJ assumed facts not in evidence. For these reasons, the Commissioner rejects the ALJ's conclusion that Ky.P. is entitled to a free public education in Hamilton Township as unsupported by the record.

Additionally, the Commissioner rejects the ALJ's denial of the Board's counterclaim. *N.J.A.C.* 6A:22-6.2(a) provides that if "petitioner does not sustain the burden of demonstrating the student's right to attend the school district, or the petitioner . . . fails to prosecute [the appeal] . . . the Commissioner may assess tuition for the period during which the hearing and decision on appeal were pending, and for up to one year of a student's ineligible attendance in a school district prior to the appeal's filing and including the 21-day period to file an appeal."

Because petitioner failed to prosecute the appeal, the Commissioner shall assess tuition against petitioner for the time period during which Ky.P. was ineligible to attend school in the district. *N.J.S.A.* 18A:38-1(b). The statute provides that the Commissioner may order tuition "computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance." *N.J.S.A.* 18A:38-1(b). It appears that the ALJ made factual findings regarding the annual per pupil cost and daily tuition rate based upon the letter submitted by Board counsel dated January 9, 2024. However, because the record lacks a certification from the Board verifying the approved tuition rate for the 2022-2023 school year, the per diem cost of tuition, and Ky.P.'s period of ineligible attendance, the Commissioner is unable to assess tuition against petitioner at this time.

Accordingly, petitioner's residency appeal is hereby dismissed, and the Board's determination that Ky.P. was not entitled to a free public education in Hamilton Township

remains in effect. This matter is remanded to the OAL for further proceedings on the counterclaim to develop the factual record regarding the number of days of Ky.P.'s ineligible attendance and the per diem cost of tuition.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 15, 2024
Date of Mailing: March 20, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. EDU 04952-23

AGENCY DKT. NO. 137-5/23

K.P. ON BEHALF OF K.P AND K.P.,

Petitioner,

v.

TOWNSHIP OF HAMILTON BOARD OF EDUCATION, MERCER COUNTY,

Respondent.

K.P., petitioner, pro se

Michael Pattanite, Esq., for respondent (Lenox, Socey, Formidoni, Giordano, Carrigg, Lang & Casey, LLC, attorneys)

Record Closed: January 16, 2024 Decided: February 6, 2024

BEFORE **NICOLE T. MINUTOLI**, ALJ:

STATEMENT OF THE CASE

Petitioner K.P. (petitioner[1]) appeals the determination of respondent, Township of Hamilton Board of Education (Board), that his daughter K.P.[2] is not domiciled in the Township of Hamilton School District (District) and should be disenrolled and assessing back tuition in the amount of $4,456.65 for the days of illegal attendance.

PROCEDURAL HISTORY

Petitioner filed an appeal with the Department of Education on May 17, 2023. The Board filed an answer on June 5, 2023. The matter was transmitted to the Office of Administrative Law, where on June 5, 2023, 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.

A prehearing telephone conference was scheduled for June 20, 2023, but both parties failed to appear.

On July 12, 2023, notice was sent to the parties of the rescheduled conference on August 1, 2023, through email, and both parties appeared for this conference, during which the parties discussed K.P.'s domicile and agreed to appear at a subsequent conference.

On August 7, 2023, notice was sent to the parties of a telephone conference on September 5, 2023, through regular mail and email. A dial-in number was provided.

Petitioner failed to appear for the September 5, 2023, telephone conference. Petitioner failed to notify my office in advance or to request an adjournment. Petitioner then failed to appear for four subsequent telephone conferences.

---

[1] Petitioner K.P. (father) will hereinafter be referred to as "petitioner"; K.P. (daughter) will be referred to as "K.P."

[2] The pleadings should only have named K.P. daughter. There is no residency issue with K.P. son.

On November 9, 2023, notice was sent to the parties of a hearing, by regular mail and email, on January 5, 2024. The notice stated:

> If you do not attend the hearing, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.

On January 5, 2024, the Board appeared for the proof hearing, but petitioner failed to appear and failed to notify my office in advance or to request an adjournment. The Board presented its proofs for its counterclaim and the record remained open for petitioner to explain his nonappearance and for the Board to provided additional information supporting its counterclaim. The Board made its submission on January 9, 2024. When no explanation was received from petitioner regarding his failure to appear, the record closed on January 16, 2024.

FACTUAL DISCUSSION

Based on the testimony of Dr. James Altobello, District director of operations, and the documentary evidence submitted by respondent, I **FIND** the following as **FACTS**:

1. Petitioner is a resident of Hamilton Township.

2. Petitioner's daughter, K.P., began attending school in the District in September 2022, as a third-grade general-education school student for the 2022–2023 school year.

3. Thereafter, the respondent received information that K.P. was not residing in Hamilton Township but was residing in Princeton Township.

4. The Board engaged the services of Tri-Shield Security and Protection to conduct an investigation into K.P.'s actual residence.

5. Surveillance was conducted at the Princeton Township address, and after a complete investigation it was determined that K.P. resided at the Princeton Township address with her brother's mother and did not reside in Hamilton Township.

6. On February 6, 2023, a residency hearing was conducted before the Board. Petitioner did not attend the residency hearing or claim that he did not receive notice.

7. On February 22, 2023, the Board determined that K.P was not domiciled in or a resident of the Township of Hamilton, which would have entitled her to attend a school within the District without a tuition obligation for school year 2022–2023.

8. By letter dated March 23, 2023, the Board notified petitioner of its decision that K.P. was ineligible to attend the District schools and of his right to appeal. This letter was sent to petitioner at both the Hamilton Township and Princeton Township addresses, via regular mail and certified mail, return receipt requested.

9. Between March 23, 2023, and June 21, 2023, K.P. attended school in the District for fifty-five days.

10. The annual per-pupil cost for a general-education school student in third grade in the District is $14,586.

11. The District was in session during the 2022–2023 school year for 180 days; the daily tuition rate for a general-education school student is $81.03. The Board assessed K.P. $4,456.65, for fifty-five days of ineligible attendance.

12. K.P. is not registered in the District for the 2023–2024 school year, and did not attend school in the District during the 2023–2024 school year.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

At issue is whether K.P. (daughter) was entitled to a free education under N.J.S.A. 18A:38-1, which provides that public schools shall be free to persons over five and under twenty years of age who are "domiciled within the school district." See V.R. ex rel A.R. v. Hamburg Bd. of Educ., 2 N.J.A.R. 283, 287 (1980), aff'd, State Bd., 1981 S.L.D. 1533, rev'd on other grounds sub nom. Rabinowitz v. N.J. State Bd. of Educ., 550 F. Supp. 481 (D.N.J. 1982) (New Jersey requires local domicile, as opposed to mere residence, in order for a student to receive a free education).

A person who meets age requirements and is domiciled within a school district may attend its public schools free of charge. N.J.S.A. 18A:38-1(a). A person may have many residences but only one domicile. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000), aff'd, 167 N.J. 55 (2001). A child's domicile is normally that of his or her parents. Ibid. Therefore, to determine whether K.P. was eligible to attend the Hamilton Township public schools, it is necessary to determine whether one or both of her parents are domiciled in Hamilton.[3]

"[T]he domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning, and from which he has no present intention of moving." In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991) (quoting Kurilla v. Roth, 132 N.J.L. 213, 215 (Sup. Ct. 1944), aff'd, 311 N.J. Super. 589 (App. Div. 1998), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051 (1999).

Eligibility under the education laws and regulations is framed as, in relevant part:

> A student is eligible to attend a school district if he or she is domiciled within the school district. . . A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district.

[3] There was no evidence presented as to the domicile of K.P.'s mother, whether her parents are divorced, and/or whether they entered a custody agreement determining domicile for the purpose of education.

[N.J.A.C. 6A:22-3.1(a)(1). Emphasis added.]

It is not disputed that petitioner is domiciled in the District. In the absence of sufficient proof that K.P. does not live with her father or that he does not have custody, the relevant Code provision is clear. That K.P. spent a few nights in December 2022 at a non-parental residence in Princeton bears little weight in this regard.

Accordingly, I **FIND** that petitioner (K.P.'s father) is domiciled in the Township of Hamilton School District. I further **FIND** that, for purposes of N.J.A.C. 6A:22-3.1, K.P. is domiciled in the Township of Hamilton School District. Based on this, I **CONCLUDE** that K.P. is entitled to a free public education in the Township of Hamilton School District pursuant to N.J.A.C. 6A:22-3.1.

DECISION AND ORDER

Based on the foregoing findings of fact and conclusion of law, it is **ORDERED** that the relief is **GRANTED**. The decision of the Township of Hamilton School District Board is **REVERSED**. It is further **ORDERED** that respondent Hamilton Township Board of Education's counterclaim for tuition reimbursement is **DENIED**.

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.

February 6, 2024
DATE

NICOLE T. MINUTOLI, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

NTM/dw

APPENDIX

WITNESSES

For petitioner:

None

For respondent:

Dr. James Altobello

EXHIBITS

For petitioner:

None

For respondent:

R-1 Petition of Appeal
R-2 Cross-Petition
R-3 March 23, 2023, letter from Board
R-4 Published Tuition Rates for 2022–2023 school year
R-5 Letter of January 9, 2024

139-24

New Jersey Commissioner of Education

Final Decision

K.W. and S.W., on behalf of minor child, A.W.,

Petitioners,

v.

Board of Education of the School District of the Chathams, Morris County,

Respondent.

Synopsis

Petitioners appealed the decision of the respondent Board that their son, a ninth grader at Chatham High School during the 2022-2023 school year, committed an act of harassment, intimidation, and bullying (HIB), pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 *et seq,* against a fellow classmate. Petitioners contended, *inter alia*, that the Board's determination of HIB against their son was arbitrary, capricious, and unreasonable; they sought an order reversing the decision and removal of any mention of the HIB finding from A.W.'s school record. A hearing in the matter was held on February 14, 2024 in the Office of Administrative Law (OAL).

The ALJ found, *inter alia*, that: an action by a board of education is entitled to a presumption of correctness and will not be undermined unless it can be shown that the decision was arbitrary, capricious or unreasonable; here, the HIB complaint at issue resulted from A.W.'s posting of the word "NIGERs" to a SnapChat chat group using a Chat Bot artificial intelligence app (AI) that could create words; the chat group consisted of several ninth grade boys, one of whom is black; although A.W. contends that he quickly deleted the post, a few of the other boys screenshot the post, thereby preserving its content; this electronic communication occurred on school property during school hours, disrupted the orderly operation of the school and triggered the HIB investigation; the posting of the word "NIGERs" was an intentional act that could not be accidently generated; A.W. should have known that posting the word "NIGERs" to a group chat where one of the members is black could have the effect of emotionally harming that student or placing him in reasonable fear of harm to his person; and the chat post was insulting and demeaning to the black member of the group. The ALJ concluded that petitioners failed to demonstrate that the Board's determination of HIB was arbitrary, capricious, or unreasonable in this case. Accordingly, the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination in this case. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

139-24
OAL Dkt. No. EDU 10064-23
Agency Dkt. No. 241-9/23

New Jersey Commissioner of Education

Final Decision

K.W. and S.W., on behalf of minor child, A.W.,

Petitioners,

v.

Board of Education of the School District of the Chathams, Morris County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that petitioners failed to demonstrate that respondent's determination that A.W. committed an act of harassment, intimidation, or bullying (HIB) was arbitrary, capricious, or unreasonable.

Accordingly, the Commissioner adopts the Initial Decision as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 15, 2024
Date of Mailing: March 20, 2024

[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 10064-23
AGENCY REF. NO.: 241-09/23

K.W. AND S.W. ON BEHALF OF MINOR CHILD A.W.,
Petitioners,

v.

BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CHATHAMS, MORRIS COUNTY,
Respondent.

Charles F. Clark, Jr., Esq., for Petitioners (Clark & Noonan, LLC, attorneys)

Janice Arellano, Esq., for Respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC, attorneys)

Record Closed: February 14, 2024 Decided: February 15, 2024

BEFORE **THOMAS R. BETANCOURT,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a Petition of Appeal with the New Jersey Department of Education, Office of Controversies and Disputes, dated December 8, 2023, challenging the Board's harassment, intimidation, and bullying (HIB) determination.

The Office of Controversies and Disputes transmitted the contested case to the Office of Administrative Law (OAL) as a contested matter, where it was filed on September 28, 2023.

A prehearing conference was held on October 13 and 17, 2023, and a Prehearing Order was entered on October 17, 2023.

A hearing on the matter was held on February 14, 2024, whereupon the record closed.

ISSUE

Did Respondent err in determining that the minor child A.W. committed an act of HIB within the meaning of the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13.2 et seq.

FINDINGS OF FACT

1. The incident that led to the HIB investigation occurred on April 21, 2023, a Friday. (R-1, P-2, Hendersen testimony)
2. A.W. posted the word "NIGERs" to a SnapChat chat group using a Chat Bot artificial intelligence app (AI) that could create words. A.W. used this to create the word "NIGERs" multiple times. (R-1, P-2, Hendersen testimony)
3. There are several members of the chat group called the "Nice Fellers". A.W. was a member of this group. S.R., the alleged HIB victim, was also a member. (R-1, P-2, Hendersen testimony)

4. Other members of this chat group, not A.W., posted the word "NIGGA" and tagged S.R. with the post. (R-1, P-2, Hendersen testimony)

5. Tagging is when the person you tag is notified of the post so he or she can see it immediately. (Hendersen testimony and S.R. testimony)

6. All posts to SnapChat are deleted within 24 hours. The only way to save a post is to take a screen shot. (Hendersen testimony)

7. The incident was reported by a schoolteacher who overheard S.R. and another member of the chat group talking about what was posted to the chat. (Hendersen testimony)

8. The school's anti bullying specialist, Conner Hendersen, commenced an investigation. He spoke with A.W. on April 21, 2023. He also spoke with S.R. the same date. (R-1, P-2, Hendersen testimony)

9. Several other members of the chat group were also interviewed that date. They were: C.N., S.D., and S.N. (R-1, P-2, Hendersen testimony)

10. On the following Monday, April 24, 2023, S.R. was again interviewed and revealed he had spent the weekend with the group chat members and reported they had apologized and said he felt "fine". (R-1, P-2, Hendersen testimony and S.R. testimony)

11. Also interviewed again on April 24, 2023 were S.D. and S.N. B.R. was interviewed for the first time on this date.

12. All participants in the chat group, other than S.R., offered various explanations as to why they posted the two versions of the N word. No one admitted it was done to target S.R.

13. S.R. told Mr. Hendersen at his April 21, 2023, interview that the use of the N word bothered him. Mr. Hendersen admitted that he did not so state in his HIB report. S.R. confirmed he advised Mr. Hendersen that he stated so during the April 21, 2023 interview. (R-1, P-2, Hendersen testimony and S.R. testimony)

14. S.N., S.D. and B.R. tagged S.R. with the post of the word Nigga. A.W. did not tag S.R. with his post of the word NIGERs. (R-1, P-2, Hendersen testimony)

15. In order for the AI Chat Bot app to generate a word must enter words which the app will use the first letters of to generate an acronym. The words are not generated by the app without input. (R-1, P-2, Hendersen testimony)

16. Based on the above, the only logical conclusion is that the words were purposely generated, and not attributable to some accident. This was an intentional act. (R-1, P-2, Hendersen testimony)

17. Mr. Hendersen concluded in his HIB report that A.W. committed an act of HIB by posting the word NIGERs into the chat group. (R-1, P-2, Hendersen testimony)

18. After the completion of his initial HIB report, Mr. Hendersen received additional information from petitioners in the form of a screen shot of a message from S.R. to A.W. wherein he used the N word to refer to A.W. (R-2, P-3 and Hendersen testimony)

19. Mr. Hendersen then completed a supplemental report dated May 18, 2023, wherein he concluded that the additional information did not alter his conclusion that an act of HIB was committed by A.W. (R-2, P-3 and Hendersen testimony)

20. S.R. admitted to using the N word in addressing A.W. in a text. He maintained he could use this word as he is black. He further stated A.W. could not use the word as he is white.

21. Petitioners contested that determination and appealed to the Board of Education. A hearing was held on June 5, 2023, and considered the HIB report, a statement by A.W. read into the record by his father and arguments of counsel. The Board upheld the HIB determination. (P-1 and Daquila testimony)

22. There was a second addendum to the HIB report dated June 7, 2023, regarding additional posts to the chat group from April 21, 2023. Those posts do not involve A.W. and were not part of the HIB finding as to him. (R-2 and P-4)

23. This incident involved an electronic communication that occurred on school property during school hours that substantially disrupted and interfered with the orderly operation of the school or the rights of other students. That disruption was the catalyst for the ABS, Mr. Hendersen, to conduct a HIB investigation. This entailed pulling students out of class to be interviewed. Those students, admittedly the perpetrators of the HIB, should have been in class but for their actions. The disruption continued into the next week as more interviews were required. Other staff such as the teacher who made the initial report were not engaged in their ordinary duties to address this incident. That includes S.R.'s case manager, who had to address his concerns regarding the incident.[i] The incident further disrupted school operations by requiring the Board to conduct a hearing, something but for A.W.'s actions would not have occurred.

24. I find that the posting of the word NIGERs to the group chat was an intentional act as the word could not be accidentally generated. (R-1, P-2, Hendersen testimony)

25. I find that a reasonable person should know that posting the word NIGERs to a group chat where one of the members is a black, under the circumstances, will have the effect of emotionally harming a student. or placing a student in reasonable fear of emotional harm to his person. (R-1, P-2, Hendersen testimony)

26. I find that it had the effect of insulting or demeaning S.R. (S.R. testimony)

27. I find that it created a hostile educational environment for S.R. by interfering with his education by causing him to lose focus and not be able to concentrate on his studies. (R-1, P-2, Hendersen testimony and S.R. testimony)

LEGAL ANALYSIS AND CONCLUSION

The Anti-Bullying Bill of Rights Act ("Act"), N.J.S.A. 18A:37-13 et seq., is designed "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises." N.J.S.A. 18A:37-13.1.(f). Under the Act, "harassment, intimidation or bullying" (HIB) is defined as:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 ofP.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
>
> [N.J.S.A. 18A:37-14.]

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A 18A:37-15. Once an alleged HIB incident is reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A 18A:37-15(b)(6). The investigation shall be conducted by a school anti-bullying specialist, and shall take no longer than ten school

days to be completed. The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. The results shall also be reported to the board of education "no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent." Ibid.

Pursuant to the Act, the parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation and the result of the investigation. The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Any hearing shall be held in executive session to protect the identity of any students involved. The board may hear from the anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents. The board must issue a decision at the first meeting after its receipt of the investigation report. The board may affirm, reject, or modify the superintendent's decision. The board's decision may be appealed to the Commissioner of Education.

An action by a board of education "is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable." Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Thus, in order to prevail, those challenging an HIB decision made by a board of education "must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of the Bor. of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) (citation omitted) <http://njlaw.rutgers.edu/collections/oal/>, adopted, Comm'r (April 10, 2014). Also, a board's decision may be overturned if its determination violates the legislative policies expressed or implied in the governing act. J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556 (1963), 562 (1963)), adopted, Comm'r (April 25, 2013) <http://njlaw.rutgers.edu/collections/oal/>.

There are reported cases in which HIB determinations by boards of education have been both affirmed and overturned. In R.G.B. v. Vill. of Ridgewood Bd. of Educ., EDU 14213-12, Initial Decision (May 15, 2013) <http://njlaw.rutgers.edu/collections/oal/>, adopted, Comm'r (June 24, 2013), the ALJ found that the Board did not act in an arbitrary, capricious, or unreasonable manner in determining that a student engaged in HIB when he repeatedly called a female student "fat," "fat ass," and "horse." According to the ALJ, such verbal statements satisfied all of the necessary elements under N.J.S.A. 18A:37-14. And, in G.H., supra, the ALJ also upheld a Board's finding that a white student who repeatedly called a black student "Kool-Aid" engaged in HIB. The ALJ found that the "use of the word 'kool-aid' was directed at [the other student] because of his race; insulted and demeaned [the other student]; and . . . interfered with [the other student's] education" because "[u]pset and embarrassed children are not fully available for learning." However, in J.A.H., supra, the Board's finding that an incident in which one student stuffed a crumbled piece of paper down the shirt of another student constituted an act of bullying was overturned as arbitrary, capricious, and unreasonable because the incident was merely a prank that was part of an ongoing, mutual conflict between the two boys and did not "contain the more serious and aggravating elements either 'expressed or implied' under [N.J.S.A. 18A:37-14.]" The ALJ found that the incident was not improperly motivated by a distinguishing characteristic and that the facts "only support[ed] a finding of ordinary student conflicts rather than the more serious behavior of bullying."

In the instant matter, there is no question that A.W. posted the word "NIGERs" to a SnapChat group called the NICE FELLERS. This group consisted of A.W., the victim S.W., and several other freshman boys. That act by A.W. was intentional. This was not inadvertent tapping of some buttons. The word could only be generated by prompting the app to do it. Argument that the disruption to the school and to S.R. were only caused by the HIB investigation, and not the act of HIB itself, are completely unconvincing. The only logical conclusion is that it was done intentionally and was directed at S.R. based upon his race; and, that it harmed S.R. and disrupted school functions.

Given the totality of the facts in the instant matter, I cannot conclude that the Board acted in an arbitrary, capricious, or unreasonable manner in determining that an HIB incident did occur. See In Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965); R.G.B. v. Vill. of Ridgewood Bd. of Educ., EDU 14213-12, Initial Decision (May 15, 2013) <http://njlaw.rutgers.edu/collections/oal/>, adopted, Comm'r (June 24, 2013); and, J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556 (1963), 562 (1963)), adopted, Comm'r (April 25, 2013) <http://njlaw.rutgers.edu/collections/oal/>.

While the undersigned may have come to a different conclusion than a finding of HIB, based on the intent of A.W. in making the post to Snap Chat, that does not mean that the Board acted in an arbitrary, capricious or unreasonable manner.

Accordingly, I **CONCLUDE** that Petitioners have failed to sustain the burden of establishing that the Board acted arbitrarily, capriciously, or unreasonably in finding that HIB did occur.

Based upon the foregoing, I **CONCLUDE** that the Petition must be **DISMISSED**.

ORDER

It is hereby **ORDERED** that Petitioner's Amended Petition be **DISMISSED** with prejudice.

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.

February 15, 2024
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:
db

APPENDIX

List of Witnesses

For Petitioner:
Connor Hendersen
Peter Daquila

For Respondent:
J.W., mother of S.W.
S.W.

List of Exhibits

For Petitioner:

P-1 Petition of Appeal
P-2 ABS Hendersen's HIB report, 4/28/23
P-3 ABS Hendersen's HIB Addendum Report, 5/18/23
P-4 ABS Hendersen's HIB Addendum Report, 6/7/23

For Respondent:

R-1 Unredacted Confidential HIB report (Same as P-1)
R-2 Unredacted Confidential HIB report addendums (same as P-3 and P-4)
R-3 letters to family of S.R. and A.W.
R-4 Screenshot of Group Chat regarding HIB incident
R-5 Group Chat talking/Poems about S.R.
R-6 Petition of Appeal (same as P-1)

[1] S.R. receives special education and related services pursuant to his Individualized Education Program or IEP.

140-24

New Jersey Commissioner of Education

Final Decision

H.M., on behalf of minor children, R.M. and H.M.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that his minor children, R.M. and H.M., were not entitled to a free public education in Elizabeth schools during the period between May 19, 2023 and September 15, 2023, contending that he and his children resided at an address on Gibbons Street in Elizabeth during this period. The Board contended that the children were domiciled in Linden with their mother. The Board sought tuition reimbursement for the period of R.M. and H.M.'s alleged ineligible attendance in Elizabeth schools.

The ALJ found, *inter alia*, that: petitioner filed his *pro se* residency appeal in September 2023; thereafter, petitioner failed to appear at three scheduled prehearing telephone conferences, two in November 2023 and one in January 2024, despite having received appropriate notice of same; petitioner subsequently failed to appear at an in-person hearing scheduled for February 8, 2024, and has offered no explanation for his failure to appear; nevertheless, the hearing proceeded on an *ex parte* basis to consider the Board's counterclaim for tuition. The ALJ concluded that petitioner has abandoned his appeal. Accordingly, the ALJ ordered the petition dismissed; further, the ALJ granted the Board's counterclaim for tuition and ordered the petitioner to reimburse the Board in the total amount of $5,981.40 for thirty days of ineligible attendance by R.M. and H.M. during the period in question

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter and dismissed the petition. Petitioner was ordered to reimburse the Board in the total amount of $5,981.40, and the petition was dismissed.

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.

140-24
OAL Dkt. No. EDU 11382-23
Agency Dkt. No. 250-9/23

New Jersey Commissioner of Education

Final Decision

H.M., on behalf of minor children,
R.M. and H.M.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

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's (ALJ) finding that petitioner abandoned his appeal and failed to sustain his burden of establishing that he was domiciled in Elizabeth (District) between May 19, 2023 and September 15, 2023. The Commissioner further concurs with the ALJ's conclusion that petitioner's minor children were therefore not entitled to a free public education in the District during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor children were ineligible to attend school in the District. Therefore, the Board is entitled to tuition reimbursement in the amount of $5,981.40[1]

[1] The tuition reimbursement for R.M. is $2,988.90. This amount is based on the per diem tuition of $99.63 listed in the District's Notice of Final Ineligibility (Exhibit R-7) and 30 days of ineligible attendance as shown on the District's

for the period from May 19, 2023 and September 15, 2023, during which time petitioner's minor children were ineligible to attend school in the District.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of $5,981.40. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 15, 2024
Date of Mailing: March 20, 2024

2022-2023 and 2023-2024 calendars (Exhibit R-12). The tuition reimbursement for H.M. is $2,992.50. This amount is based on the per diem tuition of $99.75 listed in the District's Notice of Final Ineligibility (Exhibit R-7) and 30 days of ineligible attendance as shown on the District's 2022-2023 and 2023-2024 calendars (Exhibit R-12).

[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
OAL DKT. NO. EDU 11382-23
AGENCY DKT. NO. 250-9/23

H.M. ON BEHALF OF MINOR CHILDREN
R.M. and H.M.,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY
OF ELIZABETH, UNION COUNTY,
Respondent.

No appearance by H.M., petitioner, pro se

Brian J. Kane, Esq., for respondent (LaCorte, Bundy, Varady & Kinsella, attorneys)

Record Closed: February 8, 2024 Decided: February 14, 2024

BEFORE: **R. TALI EPSTEIN**, ALJ

STATEMENT OF THE CASE

Petitioner H.M. is the father of minor children R.M. and H.M.[1] who were students in the Elizabeth Public School District ("District") until they transferred to the Linden

[1] Petitioner shares the same initials (H.M.) as one of the children on behalf of whom he brings this appeal. For the avoidance of confusion, the child H.M. will be referred to herein by initials and the father as "petitioner."

Public School District on September 18, 2023. From May 19, 2023 until September 15, 2023, when they were disenrolled, R.M. and H.M. were not domiciled in the District. Should public school be free for R.M. and H.M. in the District for this period? No. Public school shall be free only to a minor who is domiciled within the school district. N.J.S.A. 18A:38-1(a).

PROCEDURAL HISTORY

On April 27, 2023, the Elizabeth Board of Education ("Board" or "respondent") initially determined that R.M. and H.M. were not domiciled within the District, offered to conduct a residency hearing before the Board, and directed petitioner to present residency proofs to its investigator. Petitioner did not seek a residency hearing. (R-6.)

On May 19, 2023, the Board rendered its final decision, advising petitioner that neither child could attend public schools in the District because their domicile was not in the District. (R-7.) The Board further advised petitioner that he had the right to appeal the District's residency determination within twenty-one days of the May 19, 2023, notice. If he abandoned and/or failed to prosecute his appeal, however, the District could seek per diem tuition reimbursement for the period of the children's ineligible attendance. (Id.) The notice also informed petitioner that if he did not appeal within twenty-one days, R.M. and H.M. would be removed from the District schools. (Id.)

On September 12, 2023, the Board advised petitioner that H.M. and R.M. would be transferred out of the District on September 15, 2023. (R-8.)

On or about September 15, 2023, petitioner completed and submitted a Pro Se Residency Appeal form. (R-9.) On October 24, 2023, the Board filed its answer and counterclaim for tuition reimbursement.[2]

[2] A corrected answer dated November 21, 2023, addressed a typographical error in the "wherefore" clause of the initial pleading.

On October 26, 2023, the Department of Education Office of Controversies and Disputes transmitted the matter under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law ("OAL"), N.J.S.A. 52:14F-1 to -23, for a hearing as a contested case under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

I scheduled an initial telephone prehearing conference for November 21, 2023. The Board's counsel appeared, but petitioner did not. I rescheduled the initial prehearing conference for November 27, 2023, and again for January 3, 2024, but petitioner failed to appear on both occasions, despite advance notice. On January 3, 2024, I issued a prehearing order to the parties and set the matter for an in-person hearing on January 24, 2024. Due to a scheduling conflict and at respondent's request, the hearing date was adjourned to February 8, 2024, at 9:30 a.m., and petitioner was notified of same. The parties also received a reminder notification of the hearing on February 7, 2024.

On February 8, 2024, I conducted the hearing. Petitioner failed to appear and did not contact the OAL to explain his absence. After waiting thirty minutes, I opened the record at 10:00 a.m. and proceeded ex parte with the Board's counterclaim for tuition reimbursement. I closed the record following the Board's presentation of its proofs.

FINDINGS OF FACT

Having reviewed and considered the uncontested testimony of the Board's residency investigator, Timothy Kirk ("Kirk"), and based on the documentary evidence presented at the hearing, I **FIND** the following **FACTS** in this matter:

Petitioner did not appear for the hearing, and there is no indication that he did not receive notice of the hearing. Petitioner never called or wrote to the OAL explaining his failures to appear for the prehearing conferences or the hearing. I therefore **FIND** that petitioner has abandoned his appeal.

The Board's residency investigation of R.M. and H.M.'s domicile began in or about April 2023, when it became aware that the younger child, H.M., was routinely picked up late. School staff reported that H.M. waited after school for an older sibling (who previously transferred to and was attending school in Linden) to pick up H.M. and walk together to Linden, where their mother lived. (R-2.) Petitioner admits that R.M. and H.M.'s mother resides in Linden, but he claims that R.M. and H.M. reside with him at 858 Gibbons Court in Elizabeth (the "Elizabeth address"). (Id.)

Kirk, a former police officer and residency investigator for two and one-half years, conducted the residency investigation. Kirk credibly testified regarding the steps he took to investigate the matter. He reviewed the address information provided by R.M. and H.M.'s parents upon their registration and enrollment in the District schools. (R-1.) Kirk also investigated and surveilled the Elizabeth address provided by petitioner and the Linden residence of R.M. and H.M.'s mother. (R-3, R-11.) Kirk further reviewed records of school-issued laptop location information for R.M. and H.M. (R-4, R-5.) and the purported proofs of residence supplied by petitioner.

Kirk's investigation revealed that the Elizabeth address provided by petitioner is a single-family dwelling that was the subject of multiple residency investigations involving several different families and eleven students, including R.M. and H.M. (R-10.) A background search of petitioner shows the family residence at 1826 Essex Avenue, Apt. 1, in Linden, NJ. (R-3.) Similarly, the laptop location information shows that, outside of school locations, the laptops issued to R.M. and H.M. were turned on in the immediate vicinity of the Linden home address. (R-4, R-5.) Over the ten-month period surveyed (while school was in session), there was no record that either of the laptops was turned on at the Elizabeth address. (Id.)

During the course of Kirk's physical surveillance of the Elizabeth address in April and May 2023, he never observed R.M. or H.M. exiting or returning to that location. Kirk did, however, observe both students exiting the Linden address. Kirk photographed R.M. walking from the Linden address on April 24, 2023, a school morning at approximately 7:30 a.m. (R-11.)

The Board sent petitioner notices of initial determination of ineligibility for H.M. and R.M., both dated April 27, 2023 (the "Initial Notices"). (R-6.) The Initial Notices attached a residency verification form directing petitioner to present specific forms of proof. (Id.) Petitioner neither completed the verification form nor did he supply any proof of residency in Elizabeth. Thereafter, the Board sent notices of final eligibility for H.M. and R.M. to petitioner at the Linden address (the "Final Notices"). (R-7.) Among other things, the Final Notices directed petitioner to contact Mr. Kirk with any questions. (Id.) On May 22, 2023, petitioner met with Mr. Kirk. Petitioner provided some documentation but insufficient proof of residency. By letters dated September 12, 2023, the Board advised petitioner that, in light of his failure to provide proof of residency, H.M. and R.M. "will be transferred out of the Elizabeth School District on September 15, 2023." (R-8.) Petitioner then appealed the Board's determination and submitted several documents with his pro se residency appeal dated September 15, 2023. (R-9.) Petitioner, however, failed to submit the requisite number of proofs required by the Board. Petitioner also failed to submit a lease or other verifiable forms of proof that would establish residency in Elizabeth. (Id.)

The per diem rate for tuition at the Elizabeth school R.M. attended is $99.63. (R-7.) The per diem rate at the Elizabeth school H.M. attended is $99.75. (Id.) May 19, 2023, marked the beginning of the period of ineligible attendance for R.M. and H.M. in the District. Based on the District school calendar, there were twenty-two school days from May 19, 2023, until the end of the 2022-2023 school year. (R-12.) During the 2023-2024 school year, R.M. and H.M.'s period of ineligible attendance ran from the first day of the school year, September 5, 2023, until they were disenrolled on September 15, 2023, amounting to eight school days. (Id.) Applying the per diem rates above, the District seeks tuition reimbursement for R.M. and H.M. for thirty days of ineligible attendance for a total of $5,981.40.

CONCLUSIONS OF LAW

Public school shall be free to a person over five and under twenty years of age who is domiciled within the school district. N.J.S.A. 18A:38-1(a). A student is domiciled

in a school district if his parent or guardian has a permanent home in the district such that "the parent or guardian intends to return to it when absent, and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere." N.J.A.C. 6A:22-3.1(a)(1); State v. Benny, 20 N.J. 238, 250 (1955). New Jersey has consistently held that the domicile of the child follows the domicile of the parent. Shim v. Rutgers, 191 N.J. 374, 399 (2007). Establishment of a domicile is an act of volition. Matter of Unanue, 255 N.J. Super. 362, 375 (Law Div. 1991). "[A] choice of domicile by a person, irrespective of the motive, will be honored by the court, provided there are sufficient objective indicia, by way of proofs, supporting the actual existence of that domicile." Id. at 376.

N.J.A.C. 6A:22-6.2 authorizes the Commissioner of Education to assess tuition if a student does not have a right to attend school in the district and/or a residency appeal is abandoned.

Here, petitioner failed to appear for the scheduled hearing, without explanation, and there is no testimony or other evidence challenging the District's residency determination or counterclaim for tuition reimbursement. I, therefore, **CONCLUDE** that because petitioner abandoned his appeal, it is dismissed. Further, based upon the facts adduced at the hearing, I **CONCLUDE** that a preponderance of the evidence demonstrates that petitioner, H.M. and R.M. are not domiciled in Elizabeth, nor were they domiciled in the District when Elizabeth commenced its investigation. Thus, I **CONCLUDE** that the Board is entitled to prevail as a matter of law on its counterclaim for tuition reimbursement in the amount sought.

ORDER

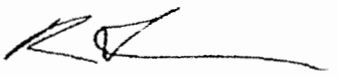
Given my findings of fact and conclusions of law, it is hereby **ORDERED** that petitioner's residency appeal is **DISMISSED**. It is further **ORDERED** that respondent's counterclaim seeking tuition reimbursement is **GRANTED,** and petitioner is **ORDERED** to reimburse respondent the amount of $5,981.40 for the thirty school days of ineligible

attendance by H.M. and R.M. in the District prior to their disenrollment on September 15, 2023.

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.



February 14, 2024
DATE

R. TALI EPSTEIN, ALJ

Date Received at Agency: February 14, 2024

Date Mailed to Parties: February 14, 2024

WITNESSES

For Petitioner

None

For Respondent

Timothy Kirk, Investigator for the Elizabeth Board of Education, Legal Department

EXHIBITS

For Petitioner

None

For Respondent

R-1 PowerSchool Demographics/Transfer Information for Students H.M. and R.M.
R-2 Investigator Timothy Kirk's Summary of Residency File (Attachments Omitted)
R-3 Electronic Background Check for Petitioner
R-4 Elizabeth Public School's Laptop Location Information for Student H.M.
R-5 Elizabeth Public School's Laptop Location Information for Student R.M.
R-6 April 27, 2023, Notices of Initial Determination of Ineligibility
R-7 May 19, 2023, Notices of Final Ineligibility
R-8 September 12, 2023, Notices of Transfer on September 15, 2023
R-9 Petitioner's Pro Se Residency Appeal dated September 15, 2023
R-10 Legal Department Spreadsheet Regarding 858 Gibbons Ct., Elizabeth
R-11 Investigator Timothy Kirk's Surveillance Photographs (Linden Address)
R-12 Elizabeth Public Schools' 2022-2023 and 2023-2024 School Year Calendars

141-24

New Jersey Commissioner of Education

Final Decision

G.G., on behalf of minor child, M.M.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that her minor child, M.M., was not entitled to a free public education in Elizabeth schools during the period between December 1, 2023 and February 12, 2024, contending that she and her child resided at an address on Bond Street in Elizabeth during this period. The Board contended that M.M. resided in Irvington with her grandmother. The Board sought tuition reimbursement for the period of M.M.'s alleged ineligible attendance in Elizabeth schools.

The ALJ found, *inter alia*, that: petitioner filed her *pro se* residency appeal on December 6, 2023; thereafter, petitioner failed to appear at a scheduled in-person hearing on February 12, 2024; petitioner offered no explanation for her failure to appear; the hearing proceeded on an *ex parte* basis to consider the Board's counterclaim for tuition. The ALJ concluded that petitioner has abandoned her appeal. Accordingly, the ALJ ordered the petition dismissed; further, the ALJ granted the Board's counterclaim for tuition and ordered the petitioner to reimburse the Board in the amount of $4,483.35 for forty-five days of M.M.'s ineligible attendance during the period from December 1, 2023 to February 12, 2024.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter and dismissed the petition. Petitioner was ordered to reimburse the Board in the amount of $4,483.35, and the petition was dismissed.

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.

141-24
OAL Dkt. No. EDU 00113-24
Agency Dkt. No. 336-12/23

New Jersey Commissioner of Education

Final Decision

G.G., on behalf of minor child, M.M.,

Petitioner,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

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's (ALJ) finding that petitioner abandoned her appeal and failed to sustain her burden of establishing that she was domiciled in Elizabeth (District) between December 1, 2023 and February 12, 2024. The Commissioner further concurs with the ALJ's conclusion that M.M. was, therefore, not entitled to a free public education in the District during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in the District. Therefore, the Board is entitled to tuition reimbursement in the amount of $4,483.35[1] for the

[1] This amount is based on the per diem tuition of $99.63 listed in the District's Notice of Final Ineligibility (Exhibit R-8) and 45 days of ineligible attendance as testified to by the District's investigator and shown on the District's 2023-2024 calendar (Exhibit R-12). The Commissioner was not provided with a transcript of the testimony.

period from December 1, 2023 and February 12, 2024, during which time M.M. was ineligible to attend school in the District.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of $4,483.35. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 15, 2024
Date of Mailing: March 20, 2024

[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
OAL DKT. NO. EDU 00113-24
AGENCY DKT. NO. 336-12/23

G. G. ON BEHALF OF MINOR CHILD, M.M.,
Petitioner,
v.
ELIZABETH BOARD OF EDUCATION,
UNION COUNTY,
Respondent.

G.G. petitioner, pro se, failed to appear.

Brian J. Kane, Esq, for respondent (LaCorte, Bundy, Varady & Kinsella)

Record Closed: February 12, 2024 Decided: February 14, 2024

BEFORE **JOANN LASALA CANDIDO,** ALAJ:

PROCEDURAL HISTORY

On December 6, 2023, petitioner, G.G., filed a residency appeal on behalf of her child, M.M., grade 12. On January 2, 2024, the City of Elizabeth Board of Education (BOE or respondent) filed an Answer with the State Department of Education (DOE) seeking reimbursement from petitioner for the costs of tuition incurred by the attendance of her minor child in the BOE's school district from December 1, 2023 through February

12, 2024, for a total of forty-five days at the per diem rate of $99.63. The DOE transmitted this matter to the Office of Administrative Law (OAL) on January 2, 2024, for determination as a contested case pursuant to N.J.S.A. 52:14F-1 to -13. The matter was scheduled for an in-person hearing on February 12, 2024. G.G. failed to appear. Notwithstanding, testimony was taken pertaining to the cost of the education provided by the BOE.

FINDINGS OF FACT

Petitioner bears the burden to prove that her child was domiciled in the City of Elizabeth. Failure to sustain that burden leaves in place and affects the findings of BOE at its hearing regarding domicile of the child. Because of the petitioner's failure to appear at the plenary hearing, she fails to prosecute her appeal and there is no basis to consider overturning the finding of BOE.

Timothy Kirk, the district investigator for the district testified on behalf of the BOE in support of its counterclaim for tuition. Kirk was assigned to investigate this matter when the District received a returned mail notice. (R-5) He testified that based upon his investigation, M.M. attended high school in Elizabeth for 45 days from December 1, 2023 to February 12, 2024. (R-2) Kirk testified regarding the results of the investigation supporting the finding that M.M. is not domiciled at the Elizabeth address provided by petitioner, but rather resides with her grandmother in Irvington. Her laptop PINGED to the Irvington address and the school but was never located at the Elizabeth address provided by G.G. G.G. sent a letter to the district on December 6, 2023, referring to a lease that provides the Elizabeth address but never provided the lease. Kirk witnessed M.M. exiting and entering the home in Irvington.

BOE provided certification that the per student tuition rate for the time of the investigation from December 1, 2023 to February 12, 2024 is $4,483.35, the daily cost for the student is at the rate of $99.63. BOE has sustained its burden of proof with

respect to its counterclaim for tuition as to M.M. for the forty-five days of attendance at the public schools of BOE.

LEGAL ANALYSIS AND CONCLUSION

The issue in this appeal is whether M.M. was a domiciled student during the forty-five days she attended school in Elizabeth.

Public schools are required to provide a free education to individuals between the ages of five and twenty years in certain circumstances, including individuals who are domiciled within the school district. N.J.S.A. 18A:38-1(a). Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which whenever she is absent, she has the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is the domicile of the parent, custodian, or guardian. P.B.K. o/b/o minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super 419, 427 (App. Div. 2001). Thus, a child would routinely attend school in the district where his or her parents live.

N.J.S.A. 18A:38-1(b)(2) in pertinent part reads as follows:

> The parent or guardian may contest the Board's decision before the Commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the Commissioner and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this section.

N.J.A.C. 1:1-14.4(a) requires the withholding of any action for one day "if, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the clerk or judge." Thereafter, the matter may be returned to the transmitting agency for appropriate disposition.

The petitioner has failed to appear and to appropriately prosecute the matter brought by her. She has also failed to advise the reason for the nonappearance.

Therefore, I **CONCLUDE** that the findings by BOE that the child in question is not domiciled in the City of Elizabeth is in full force and effect.

N.J.S.A. 18A:38-1(b)(1) reads in pertinent part as follows:

> If in the judgment of the Commissioner the evidence does not support the claim of the resident, he shall assess the resident tuition for the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the Commissioner are enforced.

BOE's proofs as to ineligibility for attendance and as to the tuition rate are convincing and satisfy its burden of proof for the counterclaim. Therefore, I **CONCLUDE** that G.G. must pay BOE tuition calculated at the rates previously referenced for her child as to his attendance at BOE's public school during their ineligibility period.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that the petition of the petitioner, G.G, be and is hereby **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that G.G. reimburse respondent the total sum of $4,483.35 for tuition costs associated with the attendance of her child M.M. in Elizabeth between December 1, 2023 and February 12, 2024.

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.

February 14, 2024

DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency: February 14, 2024

Date Mailed to Parties: February 14, 2024

ljb

APPENDIX

WITNESSES

For Petitioner:

Did not appear.

For Respondent:

Timothy Kirk

EXHIBITS

Petitioner

None

Respondent

R-1 G.G.'s Powerschool Demographic Information

R-2 Investigator Timothy Kirk's Summary of Residency file dated January 18, 2024

R-3 Elizabeth Public School's Laptop Location Data (PING) for M.M.

R-4 Background address check for G.G.

R-5 Returned envelope.

R-6 Photographs of Irvington address

R-7 Blank Residency Verification Form

R-8 Final Notice of Ineligibility dated December 1, 2023

R-9 Proof of Delivery signed by G.G. at the Irvington address

R-10 G.G.'s Residency Appeal

R-11 Photographs of the Irvington address

R-12 Academic Calendar for Elizabeth Public Schools

142-24

New Jersey Commissioner of Education

Final Decision

Robert Zywicki,

Petitioner,

v.

Board of Education of the Township of Mount Olive, Morris County,

Respondent.

Synopsis

Petitioner, formerly Superintendent in the Mount Olive School District, challenged the March 2023 actions of the respondent Board, alleging that the Doctrine of Necessity was improperly invoked to certify tenure charges against him. The Board contended that the Commissioner lacks jurisdiction in this matter, which should have been filed with the School Ethics Commission (SEC). Petitioner initially sought emergent relief, which was denied by the Commissioner in May 2023; the case was returned to the OAL at that time with a directive to bring the case to closure since the ALJ had issued an order denying emergent relief and dismissing the matter for lack of jurisdiction instead of issuing an Initial Decision as required under *N.J.A.C.* 1:1-12.7.

On remand, the ALJ found, *inter alia,* that: ethics matters are to be initiated by a complaint filed with the SEC, not with the Commissioner, and the essence of petitioner's allegations is that certain members of the Board acted unethically by invoking the Doctrine of Necessity to manipulate which board members could vote on whether to certify tenure charges against him. The ALJ concluded that the Commissioner lacks jurisdiction here and petitioner should have brought this matter before the SEC; since the case has been decided on jurisdictional grounds, there is no need to address the standards for emergent relief. Accordingly, the ALJ dismissed the petition without considering additional submissions from the parties.

Upon review, the Commissioner found that the ALJ advised the parties that they could file written exceptions to the Initial Decision within thirteen days, and neither party has filed exceptions nor otherwise objected to the dismissal of the case. Accordingly, the Commissioner concluded that the petitioner has abandoned the prosecution of his appeal. The petition was dismissed.

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.

142-24
OAL Dkt. No. EDU 02655-23
Agency Dkt. No. 77-3/23

New Jersey Commissioner of Education

Final Decision

Robert Zywicki,

Petitioner,

v.

Board of Education of the Township of Mount Olive, Morris County,

Respondent.

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.

In this matter, petitioner alleged that respondent Board improperly invoked the Doctrine of Necessity to certify tenure charges against him and requested that the Board's vote be vacated. On April 14, 2023, following oral argument on petitioner's motion for emergent relief, the Administrative Law Judge (ALJ) issued an Order denying emergent relief and dismissing the petition for lack of jurisdiction.

On May 25, 2023, the Commissioner rejected the ALJ's Order dismissing the petition. The Commissioner explained that, pursuant to *N.J.A.C.* 1:1-12.7, an ALJ's disposition of a motion which completely concludes a case shall be by Initial Decision. Here, because the ALJ had not issued an Initial Decision, the parties were deprived of the opportunity to file exceptions pursuant to *N.J.A.C.* 1:1-18.4. Consequently, while the Commissioner found that petitioner

failed to demonstrate that irreparable harm would occur if the relief sought was not granted and denied his motion for emergent relief, the Commissioner directed that the underlying matter continue at the OAL with such proceedings as the parties and the ALJ deemed necessary to bring it to closure.

On February 20, 2024, without having considered any additional submissions from the parties, the ALJ issued an Initial Decision denying emergent relief, dismissing the petition for lack of jurisdiction, and concluding the matter. The Initial Decision restated the findings and conclusions expressed within the ALJ's April 14, 2023, order. It also advised the parties that they could file written exceptions to the Initial Decision within thirteen days. Because the parties have neither filed exceptions nor otherwise objected to the dismissal, the Commissioner finds that petitioner has abandoned prosecution of the underlying petition of appeal.

Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 26, 2024
Date of Mailing: March 27, 2024

[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
EMERGENT RELIEF
OAL DKT. NO. EDU 02655-23
AGENCY DKT. NO. 77-3/23

ROBERT ZYWICKI,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF MOUNT OLIVE, MORRIS COUNTY,
Respondent.

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

Joseph L. Roselle, Esq. for respondent (Schenck, Price, Smith & King, LPP, attorneys)

Record Closed: May 25, 2023 Decided: February 20, 2024

BEFORE: JOHN P. SCOLLO, ALJ:

STATEMENT OF THE CASE

Petitioner, Robert Zywicki filed a Verified Petition of Appeal and a Motion for Emergent Relief with the Commissioner of Education's Office challenging and seeking to overturn two actions (i.e., votes) of the Mt. Olive Board of Education (hereinafter

MOBOE), which took place during the MOBOE's March 13, 2023 meeting. In the first action, the MOBOE voted to invoke the Doctrine of Necessity, and subsequently, in the second action, the MOBOE voted to certify tenure charges against Robert Zywicki, the Superintendent of Schools.

PROCEDURAL HISTORY

On or about March 22, 2023, the Petitioner, Robert Zywicki (hereinafter "Zywicki" or the "Superintendent"), through his attorney, Stephen J. Edelstein, filed a Petition of Appeal with an accompanying Motion for Emergent Relief. On March 23, 2023, Attorney Edelstein filed his supporting Brief. On March 23, 2023, the Office of Controversies and Disputes in the Department of Education (hereinafter the "DOE" or the "Commissioner") transmitted the case to the Office of Administrative Law (OAL) where it was filed on March 24, 2023 as a contested case. The matter was then assigned to John P. Scollo, ALJ, who ordered the parties to submit Opposition papers, Reply papers, Briefs and supporting materials by March 30, 2023. Oral argument via Zoom was conducted on April 3, 2023 with concerned citizens and a member of the press[1] in attendance.

After the hearing, the judge ordered the attorneys to submit their written summation Briefs by April 5, 2023 with clarifications of their arguments and additional materials.

On May 25, 2023, Acting Commissioner of Education, Angelina Allen-McMillan, Ed.D. sent her Order on Emergent Relief to Judge Scollo stating that his May 14, 2023 Order was an improper way to resolve this matter. She directed Judge Scollo that when dismissing a petition for lack of jurisdiction he should issue an Initial Decision. Therefore, on this date, the undersigned is issuing this Initial Decision which concludes the matter.

[1] The Tribunal welcomes the participation of the press in this matter. While this Judge does not know the parties, their histories, their affiliations, their personal biases or prejudices, or their feelings towards each other, it is evident that these parties have engaged in multiple actions and lawsuits against each other over matters which directly or indirectly affect the schools. The taxpayers will likely bear the costs of these legal matters. The newspaper's thorough and objective investigation, probing into the origins and causes of these multiple actions, would render a great service to the people of Mt. Olive.

BACKGROUND INFORMATION ASCERTAINED FROM THE PARTIES' SUBMISSIONS

In support of Petitioner Zywicki's position, Attorney Edelstein first explained what the Doctrine of Necessity is. He noted at the outset that of the nine people who constituted the MOBOE on March 13, 2023, four of them were conflicted on the issue of voting on tenure charges against Zywicki due to their involvement in pending litigation with Zywicki (who initiated the litigation is not entirely clear to this Tribunal). The four BOE members claimed to be conflicted by Edelstein are: Mr. Antoine Gayles, Mr. Anthony Strillacci, Ms. Elizabeth Ouimet, and Dr. Anthony Giordano. Attorney Edelstein also noted that the Doctrine of Necessity could only be invoked if there were at least five BOE members who were genuinely conflicted. Edelstein claims that enemies of Zywicki (including the above four people and Christopher Zeier and the MOBOE's attorney, Marc Zitomer), improperly and in bad faith manipulated the issue of conflicts in order to bring the number of purportedly "conflicted" BOE members to at least five so that all MOBOE members, including the four previously listed above, would be able to vote on the tenure charges thus making it virtually certain that said charges would be certified. Edelstein argued that if the machinations of Zywicki's "enemies" in manipulating the number of "conflicted" people had not been successful, then there would have still been a quorum (five people) available to vote on the tenure charges and that the effort to certify the tenure charges against Zywicki would have failed. Attorney Roselle argued to the contrary.

ANALYSIS OF THE ARGUMENTS

The following is not a verbatim account of the arguments and documents presented, but rather it encompasses points that the Tribunal found to be most important.

Petitioner's and Respondent's Arguments Regarding Emergent Relief

Attorney Edelstein argued that the MOBOE's improper invocation of the Doctrine of Necessity and its improper certification of tenure charges against Zywicki, and its concomitant suspension of Zywicki's salary and benefits calls for emergent relief. He argued that Zywicki meets the standards (i.e., the four prongs) set forth in Crowe v.

DeGioia, 90 N.J. 126 (1982) and thus qualifies for emergent relief. Attorney Roselle argued to the contrary claiming that emergent relief would not be justified and that Zywicki meets none of the criteria for emergent relief as set forth in Crowe v. DeGioia, 90 N.J. 126 (1982). This will be addressed further below.

The Parties' Arguments Regarding Jurisdiction

Both sides agree that the threshold issue before me is the question of whether the OAL has jurisdiction over this matter.

The Parties' jurisdictional arguments with respect to the Commissioner's decision to refer the matter to the OAL

Zywicki's Petition of Appeal and Motion for Emergent Relief were filed with the Commissioner of Education, who immediately referred the matter to the Office of Administrative Law.

Attorney Edelstein notes that the Commissioner of Education could have dismissed the Petition of Appeal and the Motion if she believed that she lacked jurisdiction. Therefore, he argues that the very fact that the Commissioner referred the matter to the OAL demonstrates that the Commissioner believes she has jurisdiction.

Attorney Roselle, the Respondent's counsel, notes that jurisdiction properly lies with the School Ethics Commission and that the Commissioner of Education's acceptance of Zywicki's papers does not automatically mean that she acknowledged that jurisdiction was proper and was no longer an issue. Attorney Roselle argues that issues dealing with Board member conflicts of interest or the proper invocation of the Doctrine of Necessity belong before the School Ethics Commission. The Respondent relies on previous OAL rulings in Gilliam Gardner v. Board of Education of the City of Hackensack, Bergen County and James Montesano, Patricia Aquino-Lozano and Celso King, Intervenors, OAL Docket No.: EDU 09421-12 (2013) and Castriotta v. Board of Education of the Township of Roxbury, Morris County, OAL Docket No. : EDU 09217-10 (2011), *reversed* on other grounds, 427 N.J. Super. 592 (App. Div. 2012)

The Parties' jurisdictional arguments with respect to whether this matter arises under the School Laws or under the School Ethics Act (N.J.S.A.18A:12-21, et seq.)

Attorney Edelstein argues that this case contains a valid and important issue which arises under the school laws and therefore jurisdiction belongs to the Commissioner of Education and thus to the OAL. For support, he points to the wide scope of N.J.S.A. 18A:6-9, where is says:

> The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws....

That being so, Edelstein argues, the case clearly belongs under the jurisdiction of the Commissioner of Education.

The issue Edelstein refers to is whether or not the MOBOE failed to follow Board Policy 0163, a bylaw, when on March 13, 2023 it allegedly failed to post notice of its intent to invoke the Doctrine of Necessity. Attorney Edelstein maintains that this is a school law issue and therefore it brings this matter into the jurisdiction of the Commissioner of Education. He concludes that the Board's invocation of the Doctrine of Necessity fails because the Board did not announce (by posting, as required by the bylaw) its intention to invoke the Doctrine of Necessity.

Attorney Edelstein's other argument is that when the Board ignored one of its own bylaws, it was acting beyond the scope of its bylaws when it went ahead with the vote to invoke the Doctrine of Necessity and when it went ahead with the vote on the tenure charges. The bylaw (Board Policy number 0163) covers the invocation of the Doctrine of Necessity and says:

> "When the Board announces the Doctrine of Necessity is being invoked, the details, parameters and / or other pertinent facts of the matter to be voted should be revealed on an agenda for the public meeting in which the matter is to be voted upon."

Edelstein argues that the ignoring of a bylaw raises a school law issue because boards of education must follow procedures set forth in N.J.S.A. 18A:11-1(for making, amending, or repealing bylaws) if they intend to act outside the bounds of their present bylaws. Attorney Edelstein argues that the Board was only empowered to make, amend or repeal its bylaws by following N.J.S.A. 18A:11-1 and that any such changes must appear in the Board's minutes. Edelstein says, "That did not occur" on March 1, 2023.

The Respondent does not concede that the Board acted beyond the scope of its bylaws because it simply did not ignore or set aside the bylaw. Instead, the MOBOE acted within the scope of its bylaws. It concedes that advance posting of its intent to invoke the Doctrine of Necessity did not take place before the March 13, 2023 Board meeting. However, the Respondent argues that no advance posting could possibly be made of its decision to invoke the Doctrine of Necessity because the MOBOE only received advice regarding the invocation of the Doctrine of Necessity from its attorney during the actual Board meeting of March 13, 2023. Moreover, the Board did announce that it was invoking the Doctrine of Necessity during the Board Meeting. The Respondent argues that its action was fully in keeping with the wording of Board Policy 0163 for the following reasons

because it did announce its decision to invoke the Doctrine of Necessity at its earliest opportunity to do so at the Board meeting to those in attendance;

because the announcement itself constituted the required posting of an agenda;

because there is no requirement in the bylaw for any minimum amount of posting time that must pass before the Board may vote on a matter under the Doctrine of Necessity; and

because the very wording of the bylaw allows a posting to be simultaneous with the vote, as demonstrated by the words "for the public meeting in which the matter is to be voted upon.

APPLICABLE LAW

Jurisdiction of the Commissioner of Education

N.J.S.A. 18A:6-9 provides

> The commissioner shall have jurisdiction to hear and determine, without costs to the parties, all controversies and disputes arising under the school laws ....

The New Jersey School Ethics Act

The New Jersey School Ethics Act is found at N.J.S.A. 18A:12-21 through N.J.S.A. 18A:12-34. N.J.S.A. 18A:12-24 sets forth prohibited conduct pertaining to all school officials. The Code of Ethics for School Board Members is found therein at N.J.S.A. 18A:12-24.1. In addition to the requirements of the School Ethics Act, it imposes additional rules governing the conduct of School Board Members. The establishment of the School Ethics Commission is set forth in N.J.S.A. 18A:12-27. The School Ethics Commission's (or "S.E.C.'s") powers and duties are set forth in N.J.S.A. 18A:12-28 and -29. The jurisdiction of the School Ethics Commission is set forth in N.J.S.A. 18A:12-29 where the statute says that the S.E.C. accepts complaints alleging a violation of the School Ethics Act or of the Code of Ethics for School Board Members. The S.E.C. then determines whether or not probable cause exists to credit the allegations of the complaint. If the S.E.C. determines that probable cause does not exist, then it shall dismiss the complaint. If the S.E.C. determines that probable cause exists, then it shall refer the matter to the Office of Administrative Law (OAL). Once the OAL hears the matter, the S.E.C. determines by majority vote whether the conduct complained of constitutes a violation of the School Ethics Act (i.e., it decides whether to accept or reject the ALJ's Initial Decision). If the S.E.C. finds that a violation has occurred, it shall, by majority vote, recommend a sanction (reprimand, censure, suspension, or removal) to the Commissioner of Education, who then shall act on the S.E.C.'s recommendation regarding the sanction.

LEGAL ANALYSIS AND CONCLUSIONS

Decision on whether the Commissioner of Education's decision to refer the matter to the OAL manifests a decision on his part that jurisdiction lies with the Commissioner rather than with the School Ethics Commission

While that is true that the Commissioner could have dismissed the Petition of Appeal and the Motion for Emergent Relief if she believed she lacked jurisdiction, the Commissioner was not under any obligation to do so. Her decision to refer the matter to the OAL was proper and, in most cases, the usual course; but her referral does not necessarily decide the question of jurisdiction. To believe otherwise would mean that the issue of determining jurisdiction can never be decided by the OAL. Obviously, that is not true. The parties, in their arguments, have not taken such a position and they have vigorously argued the pros and cons of jurisdiction.

I **CONCLUDE** that the Commissioner of Education's referral of the matter to the OAL does not manifest a decision on her part that jurisdiction lies with the Commissioner of Education's Office.

Decision as to whether the bylaw's (Board Policy 0163's) requirement for a posting is or is not a school law issue

I have evaluated the arguments of both counsel. Attorney Edelstein's argument is that the Board's alleged ignoring of its own bylaw raises a school law issue because boards of education must follow procedures set forth in N.J.S.A. 18A:11-1 (for making, amending, or repealing bylaws) if they wish to act outside the bounds of their present bylaws. This, he argues, is a matter of school law. His purpose is to characterize this matter as a school law case. The Respondent's position is that the thrust of Attorney Edelstein's allegations, indeed his entire case, is that the Board "improperly and in bad faith" invoked the Doctrine of Necessity in order to certify tenure charges against Mr. Zywicki. The Respondent argues that Zywicki's allegations are all School Ethics issues, which belong under the jurisdiction of the School Ethics Commission.

The applicable law was stated by Margaret Monaco, ALJ in Clarissa Gilliam Gardner v. Board of Education of the City of Hackensack, Bergen County and James Montesano, Patricia Aquino-Lozano and Celso King, Agency Docket No. 146-5/12 (2013)

> "The Commissioner's jurisdiction is defined by statute and is limited to controversies and disputes arising under the school laws." N.J.S.A. 18A:6-9. Our courts have held that, "[w]here the controversy does not arise under the school laws, it is outside the Commissioner's jurisdiction even though it may pertain to school personnel." Bd. of Educ. Of E. Brunswick v.Twp. Council of E. Brunswick , 48 N.J. 94, 102 (1966). It is recognized that "the sweep of the Department's interest and the Commissioner's jurisdiction does not extend to all matters involving boards of education." Archway Programs, Inc. v. Pemberton Twsp. Bd. of Educ., 352 N.J. Super. 420, 424-425 (App. Div. 2002).

In my analysis, Attorney Edelstein's words tell it all. By his use of the words, "improperly and in bad faith", Attorney Edelstein makes it clear that he is arguing that the members of the MOBOE engaged in unethical conduct. The issue of whether the MOBOE ignored the bylaw is only part and parcel of the larger ethical claims. Therefore, I **CONCLUDE** that the allegation that the MOBOE ignored its bylaw does not transform the matter into a school law case.

Decision Regarding Jurisdiction

The Petitioner, Robert Zywicki, submitted his Petition of Appeal and Motion for Emergent Relief and later submitted his supporting Brief and Exhibits to the Office of Controversies and Disputes in the New Jersey Department of Education. Zywicki did not file his papers with the School Ethics Commission (the "S.E.C.").

While the Commissioner of Education has jurisdiction over "all controversies and disputes arising under the school laws", it is also clear that jurisdiction over School Ethics matters belongs with the School Ethics Commission (i.e., that ethics matters are to be initiated by a complaint filed with the S.E.C., not with the Commissioner, and then the S.E.C. decides the threshold issue of probable cause). Zywicki's allegations are that the

MOBOE "improperly and in bad faith" invoked the Doctrine of Necessity in order to "manipulate" the vote on the certification of the tenure charges against him. The essence of Zywicki's allegations (bad faith manipulation of who was or was not "conflicted" in order to invoke the Doctrine of Necessity, and bad faith manipulation of the vote certifying tenure charges) is that certain members of the MOBOE acted unethically and conspired to strip him of his position, his compensation and his family's health benefits. Therefore, by his own words, Zywicki states that the matter presents ethical issues rather than school law issues.

Since it is clear that Zywicki himself has characterized this matter as an ethics matter, it follows that pursuant to N.J.S.A. 18A:12-28 and 29, jurisdiction lies with the S.E.C. rather that the Commissioner of Education. See Castriotta v. Bd. of Educ. Of Roxbury, EDU-09217-10, Final Decision (May 18, 2011), http://www.nj.gov/education/legal/, rev'd on other grounds, 427 N.J. Super. 592 (App. Div. 2012), where the Commissioner of Education re-affirmed that the "review and adjudication of allegations of Code of Ethics For School Board Members violations is solely within the purview of the School Ethics Commission."

In his filed papers, Zywicki does not raise a valid school law issue; the issues he raises are ethical issues. If this were a matter arising under the school laws, then the Commissioner (and subsequently, at his discretion, the OAL) would have jurisdiction. However, the nature of the allegations, set forth in Zywicki's own words, demonstrates that they are ethical matters and not matters arising under the school laws. As stated above, N.J.S.A. 18A:12-28 and -29 provide that complaints regarding ethical matters fall within the jurisdiction of the S.E.C. rather than the jurisdiction of the Commissioner of Education. I **CONCLUDE** that jurisdiction belongs with the S.E.C. and Zywicki should have brought his grievance by way of a Complaint filed with the S.E.C. It follows, and I **CONCLUDE** that this OAL matter, having been transmitted to the OAL by the Commissioner of Education, who lacked jurisdiction, cannot be maintained, and must be **DISMISSED** for lack of jurisdiction.

Legal Analysis Of The Arguments Concerning The Crowe Factors

Since the matter has been decided on jurisdictional grounds, there is no need for this Tribunal to make an analysis of the Crowe factors.

ORDER

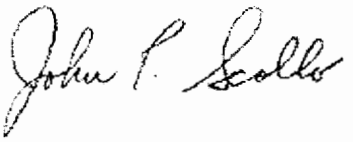
It is hereby **ORDERED** that Zywicki's Petition of Appeal is **DISMISSED** and his Motion for Emergent Relief seeking an Order immediately vacating the MOBOE's vote to invoke the Doctrine of Necessity and immediately vacating the MOBOE's certification of the tenure charges brought against Zywicki must be, and hereby is, **DENIED**; and it is further

ORDERED that a copy of this Initial Decision shall be transmitted by email from the OAL to both attorneys, Stephen J. Edelstein and Joseph L. Roselle.

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.



February 20, 2024

DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Exhibits

Court Exhibit

Acting Commissioner's May 25, 2023 Order on Emergent Relief

For Petitioner

P-1 Petitioner Zywicki's (per Attorney Edelstein) March 31, 2023 submission containing Brief (supplementing his March 23, 2023 Letter Brief to the Commissioner of Education, attached as "#1"); and also attaching as "#2", Board Policy 0131; and also attaching as "#3", the Minutes of the MOBOE meeting of 3/13/23.

P-2 Petitioner Zywicki's April 5, 2023 supplement / summation of the April 3, 2023 oral argument, with an attached Exhibit "A" (a copy of the OAL Transmittal Sheet)

P-3 Copies of Statutes, Regulations, Rules and Cases relied upon by the Petitioner

For Respondent's

R-1 Respondent MOBOE's March 30, 2023 submission containing Brief; Outline of Factual Background; Certification of Christopher Zeier, attaching Exhibits "A" through "L"; and an Index of Cases with cases.

R-2 Respondent's April 5, 2023 supplement / summation of the April 3, 2023 oral argument with an attached "Exhibit "A" (a copy of the 3/13/23 Resolution to Invoke the Doctrine of Necessity); Exhibit "B" (a copy of Zywicki's Answer to the Tenure Charges, Agency Docket Number 70-3/23, dated March 31, 2023); Exhibit "C" (a copy of a 3/31/23

letter from Jennifer Killough-Herrera of the Department of Education to Attorney LaPira and Attorney Edelstein; and, an Index of Cases with cases).

R-3 Copies of Statutes, Regulations, Rules and Cases relied upon by the Respondent.

143-24
OAL Dkt. No. EDU 03052-23
Agency Dkt. No. 92-4/23

New Jersey Commissioner of Education

Final Decision

D.D., on behalf of minor child, A.D.,

Petitioner,

v.

Board of Education of the Township of Toms River, Ocean County.

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement), and the Initial Decision issued by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 11 of the Agreement includes a confidentiality clause. The parties are reminded that the Board must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* in regard to information concerning this matter, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, which is hereby dismissed subject to compliance with the terms of the settlement consistent with applicable public records law.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 26, 2024
Date of Mailing: March 27, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. EDU 03052-23

AGENCY DKT. NO. 92-4/23

D.D. ON BEHALF OF A.D.

Petitioner,

v.

TOMS RIVER BOARD OF EDUCATION

OCEAN COUNTY,

Respondent.

D.D., petitioner pro se

R. Scott Eveland, Esq., for respondent (Inglesino, Webster, Wyciskala & Taylor, LLC, attorneys)

Record Closed: March 1, 2024 Decided: March 7, 2024

BEFORE **KIMBERLEY M. WILSON**, ALJ:

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 to 1482. The parties have voluntarily agreed to resolve all disputed matters and have entered into a settlement agreement as set forth in the attached document.

I have reviewed the terms of the settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures on the attached document.

2. The settlement fully disposes of all issues in controversy between them and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

March 7, 2024
DATE

KIMBERLEY M. WILSON, ALJ

Date Received at Agency: March 7, 2024

Date Mailed to Parties: March 7, 2024

KMW/am

APPENDIX

EXHIBITS

Jointly submitted

J-1 Settlement Agreement

COMEGNO LAW GROUP, P.C.
521 Pleasant Valley Avenue
Moorestown, New Jersey 08057
(856) 234-4114
(856) 234-4262 Fax

Attorneys for the Toms River Regional
Schools District Board of Education

BY: R. TAYLOR RUILOVA, ESQUIRE

TOMS RIVER REGIONAL SCHOOLS DISTRICT BOARD OF EDUCATION, Petitioner, v. L.D. and D.D. o/b/o A.D., Respondents.	STATE OF NEW JERSEY OFFICE OF ADMINISTRATIVE LAW OAL DKT No.: EDS 01948-2023 AGENCY REF No.: 2023-35315
D.D. o/b/o A.D., Petitioner, v. TOMS RIVER REGIONAL SCHOOLS DISTRICT BOARD OF EDUCATION, Respondent.	STATE OF NEW JERSEY OFFICE OF ADMINISTRATIVE LAW OAL DKT No.: EDU 03052-23 AGENCY REF No.: 92-4/23

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the "Agreement") is entered into between L.D. and D.D., individually and on behalf of their son A.D. ("Parents"), and the Toms River Regional School District Board of Education ("TRRS") (TRRS, Parents and A.D. collectively referred to as the "Parties").

WHEREAS, the Parties, following good faith settlement negotiations, are desirous of arriving at an amicable resolution regarding A.D.'s educational program; and

WHEREAS, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties enter into this Agreement to outline their agreement, release claims, and express the full and complete terms of same;

NOW, THEREFORE, THE PARTIES HEREBY AGREE THAT:

1. Parents hereby consent to TRRS conducting the following evaluations of A.D. at TRRS' sole expense:

- Functional Behavioral Assessment with a TRRS behaviorist; and
- Psychiatric Evaluation with an independent psychiatrist chosen by TRRS.

2. For the Psychiatric Evaluation, Parents will have an opportunity to meet with the independent psychiatrist to express any concerns and share any information which they may have regarding A.D.

3. Written reports from both evaluations will be generated and copies will be provided to Parents.

4. Once both written reports have been received, a meeting of the 504 Committee will be convened with Parents at a mutually convenient time to review the evaluation reports and recommendations and to review and revise A.D.'s 504 Plan and behavior plan accordingly.

5. Parents hereby agree to withdraw the December 2022 request for independent educational evaluations and the Petition of Appeal filed against TRRS, with prejudice.

6. TRRS hereby agrees to withdraw its Due Process Petition to Deny Request for Independent Educational Evaluations filed against Parents, with prejudice.

7. In consideration of the above, the Parties hereby forever and fully waive and release each other from any and all claims under any law, regulation, or legal theory, which have accrued as of the date that this Agreement is fully accepted by Parents on the record before the Honorable Kimberly M. Wilson, A.L.J. Nothing in the release set forth in this Paragraph shall be construed as a release or waiver of any claims between the Parties seeking to enforce any term or provision of this Agreement.

8. This Agreement is made without any admission of fault or liability by any Party.

9. No Party will be considered to be a "prevailing party" for any purpose, and each Party shall be responsible for its own attorney's fees, expert costs, and any other costs incurred in connection with this matter except as otherwise provided herein.

10. The Parties consent to this Agreement being memorialized into Orders and Decisions issued by the Office of Administrative Law approving this Agreement and closing both matters

11. The Parties agree that the terms of this Agreement shall remain **strictly confidential** to the fullest extent permitted by law, except that when asked regarding these matters, the Parties shall respond that the matters were resolved to their satisfaction.

12. Parents represent, verify, and affirm to the Board that they have the authority and ability to enter into this Agreement on behalf of A.D. and that it is binding on them and on A.D., and that they have voluntarily entered into this Agreement without duress or undue influence.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates written below.

FOR THE PARENTS:

By: _____ Dated: 21 FEB 2024
Lizbeth Colon Daye individually and o/b/o A.D.

By: _____ Dated: 02-21-2024
Donald Daye, individually and o/b/o A.D.

FOR THE TOMS RIVER REGIONAL SCHOOLS DISTRICT BOARD OF EDUCATION:

By: _____ Dated: 02-28-2024

144-24

New Jersey Commissioner of Education

Final Decision

H.P., on behalf of minor child, R.S.,

Petitioner,

v.

Board of Education of the Borough of Tenafly, Bergen County,

Respondent.

Synopsis

Petitioner appealed the decision of the respondent Board that her son, a freshman at Tenafly High School during the 2022-2023 school year, committed an act of harassment, intimidation, and bullying (HIB), pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 *et seq,* against a fellow classmate. The HIB complaint resulted from anti-semitic comments and threats of physical harm made by R.S. during an exchange on Instagram with a Jewish student in January 2023; this exchange followed text exchanges between R.S. and his classmate which included back-and-forth insults regarding the other's perceived soccer skills. R.S. alleged that the Instagram messages were in response to these sarcastic comments made about his soccer abilities. The Board filed a motion for summary decision, which was opposed by the petitioner, who contended that the Board's determination was procedurally deficient as it did not provide an HIB hearing within ten days as required by the Act; further, petitioner argued that R.S. was also a victim of bullying based on the comments made about her son's soccer skills.

The ALJ found, *inter alia,* that: there are no material facts at issue here, and the case is ripe for summary decision; an action by a board of education is entitled to a presumption of correctness and will not be undermined unless it can be shown that the decision was arbitrary, capricious or unreasonable; R.S. and the victim knew each other from physical education and other classes; an HIB investigation was initiated by the Board's anti-bullying specialist after the victim met with her guidance counselor to report R.S.'s anti-semitic comments and threats made through a private message on Instagram; and the resulting HIB report concluded that R.S.'s actions met all of the statutory requirements and did constitute an act of HIB. The ALJ concluded that the action of the Board in determining that R.S.'s conduct constituted HIB was not arbitrary, capricious or against the weight of the evidence; further, even though the Board failed to provide a hearing in this matter within 10 days as required under the Act, this failure does not undermine the Board's substantive HIB determination. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner, *inter alia,* concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination in this case. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

144-24
OAL Dkt. No. 07170-23
Agency Dkt. No. 198-7/23

New Jersey Commissioner of Education

Final Decision

H.P., on behalf of minor child, R.S.,

Petitioner,

v.

Board of Education of the Borough of Tenafly, Bergen County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the Tenafly Board of Education's (Board) determination that R.S. committed an act of harassment, intimidation, and bullying was not arbitrary, capricious, or unreasonable. The Commissioner further concurs with the ALJ that the Board failed to comply with *N.J.S.A.* 18A:37-15(b)(d) because the hearing requested by petitioner was not held within ten days. The Board is reminded to comply with this provision moving forward. However, the failure to comply is insufficient reason to require the Commissioner to reverse the Board's substantive HIB determination.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 26, 2024
Date of Mailing: March 27, 2024

[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 ON MOTION
FOR SUMMARY DECISION
OAL DKT. NO. EDU 07170-23
AGENCY DKT. NO. 198-7/23

H.P. ON BEHALF OF MINOR CHILD R.S.,
Petitioner,
v.
BOROUGH OF TENAFLY BOARD OF EDUCATION, BERGEN COUNTY
Respondent.

Joseph R. Donahue, Esq., on behalf of petitioner H.P. o/b/o R.S. (Joseph R. Donahue, attorneys)

Stephen Fogarty, Esq., for respondent Borough of Tenafly Board of Education (Fogarty and Hara, attorneys)

Record Closed: January 8, 2024 Decided: January 24, 2024

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On or about July 25, 2023, H.P. (petitioner) filed a Petition of Appeal to the decision of the Borough of Tenafly Board of Education (Board) in which she asserted that the District erred in finding that her son (R.S.) had been the perpetrator of an act(s) of

harassment, intimidation or bullying (HIB) in violation of the Anti-Bullying Bill of Rights Act (ABBRA), N.J.S.A. 18A:37-13 et seq., against S.S., a fellow high school student.

The matter was transmitted by the Department of Education to the Office of Administrative Law (OAL), where it was filed on August 8, 2023, for plenary hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was assigned to the undersigned thereafter. Accordingly, a telephonic case management conference was convened with the parties on September 7, 2023, to discuss the potential issues in the case, motion practice, and other case management concerns. Additional status conferences were held on October 18 and November 17, 2023. Initially, evidentiary hearing dates were set for December 2023 but those were adjourned when respondent sought leave to file a summary decision motion. Respondent filed a Motion for Summary Decision on the Appeal on or about November 14, 2023. Extensions of briefing deadlines were generously granted to each party. Those motion submissions having been received, the matter is now ripe for decision.

ISSUE PRESENTED ON THE MOTION

Respondent argues that the Board's determination that the conduct petitioner complained of did not constitute harassment, intimidation, or bullying under N.J.S.A. 18A:37-14 was not arbitrary, capricious or unreasonable and can be decided at this preliminary stage on the basis that there are no genuine issues of material fact and that the undisputed facts warrant upholding the Board decision. Petitioner opposes the motion to dismiss on the basis that the conclusions of the Board were arrived at in a cursory and faulty manner procedurally; and that substantively, her son should have also been viewed as a victim of bullying.

STANDARD OF REVIEW ON THE MOTION

An action by a board of education "is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable." Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Thus, in order to prevail, those challenging a HIB decision made

by a board of education "must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of the Bor. of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) (citation omitted) <http://njlaw.rutgers.edu/collections/oal/>, adopted, Comm'r (April 10, 2014). Also, a board's decision may be overturned if its determination violates the legislative policies expressed or implied in the governing act. J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)), adopted, Comm'r (April 25, 2013) <http://njlaw.rutgers.edu/collections/oal/>.

Under the Uniform Administrative Procedure, N.J.A.C. 1:1-1.1 to -21.6, which govern the conduct of contested cases before the OAL, a party may file a motion for summary decision on substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion "shall be served with briefs and with or without supporting affidavits." N.J.A.C. 1:1-12.5(b). The Administrative Law Judge presiding over the contested case may grant a party's motion "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." Ibid. Accord Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 530 (1995).

UNDISPUTED MATERIAL FACTS

1. R.S. and S.S. were both freshman in high school during the 2022-2023 school year. Both were attending Tenafly High School as freshmen that school year. R.S. is a boy from Korea and S.S. is a Jewish girl from Israel. [Brief of Joseph R. Donahue, Esq., at 2.] The two students knew each other from physical education classes, among other school classes and places.

2. On January 9, 2023, the victim came into the Guidance Office to speak with her counselor and reported that R.S. exchanged insulting and threatening comments via Instagram on January 7, 2023. [Certification of James O. Morrison (Morrison Cert.) ¶ 4.] These messages included threats of physical harm. [Morrison Cert. ¶ 4, Exhibit B.]

3. As a result, the District decided to inform a Crisis Team Member who determined R.S. needed a mental health clearance. On January 10, 2023, R.S. was cleared to return back to school as it was determined he was not a danger to himself or others. [Watson Cert. ¶¶ 5-6; Exhibit B.]

4. On or about January 11, 2023, Jessica Lopes, who is the District's Anti-Bullying Specialist, began an investigation to determine the facts and whether an act of HIB had occurred. James Morrison, Principal at the high school, assisted her with parts of the investigation. [Certification of Jessica Lopes (Lopes Cert.) ¶ 5.] Lopes met with the victim to learn more about the Instagram interaction that occurred on January 7, 2023. [Lopes Cert., Ex. B]. The victim reported that R.S. contacted her first through Instagram on January 7, 2023. R.S. messaged, in relevant part, the following to the victim:

> "U literally run lik the people from the holocaust getting chased by Germans"
>
> "ur forehead is big as ur life bout getting injected by germans"
>
> "no wonder y hitler ain't liking u only"
>
> "Monday ill kill u"
>
> "I'll fucking disform ur face"
>
> "and I have the rights to beat ur lil ass up"
>
> "u stupid...I'm going to get physical on u...hit ur face with my shoulder...even worse...my elbow...I can break ur calves since u have skinny ones...and u don't fucking work out"
>
> [Morrison Cert. ¶ 8; Ex. C.]

5. Lopes and Morrison also met with R.S. on or about January 11, 2023. R.S. stated that he had seen the victim like one of his Instagram pictures, so he sent a private message to her. R.S. alleged that his messages were in response to sarcastic comments made about him and his soccer skills. [Morrison Cert. ¶ 9; Exhibit B.]

6. On or about January 19, 2023, after investigating the report, Lopes issued her report finding that R.S.'s actions met all the statutory requirements and did constitute an act of HIB. She found that both the victim and R.S. made unfavorable comments to

each other about who was better at soccer; however, R.S. made comments threatening to hurt the victim as well as anti-semitic comments about her religion. Lopes also determined that since the victim said she was "...fearful of her physical/emotional well-being because she felt scared by the subjective comments made about her religion" and "...felt like she was being intimidated, judged and threatened, it created a substantial disruption/interference for her and meets the statutory definition of HIB." [Lopes Cert., Exhibit B.]

7. The Interim Superintendent Bruce Watson reviewed the Investigation Report, his own notes from the interviews, and agreed with Lopes that R.S. was fearful for her emotional and physical wellbeing because of the comments made by R.S., especially the comments made about her religion, and that thus he had violated the HIB policy. He informed R.S.'s parents in writing on January 17, 2023, that after reviewing the interviews and the pertinent evidence obtained by school personnel, R.S. was being charged with violating the HIB policy, and several other district policies. [Watson Cert., Exhibit A; Supplemental Watson Cert., ¶ 5.]

8. R.S. was required to receive counseling and served a very short suspension pending the above-referenced clearance process. [Lopes Cert., Exhibit B.]

9. On February 28, 2023, a second letter was sent to the parents to the same effect. [Certification of Joseph R. Donahue, Esq., (Donahue Cert.), Exhibit B.] Both letters advised petitioner of their procedural rights.

10. On March 3, 2023, petitioner wrote to Watson and requested a hearing on the allegations and charges. [Donahue Cert., Exhibit C.]

11. On March 22, 2023, the District Business Administrator/Board Secretary Victor J. Anaya wrote to petitioner informing them that the Board had affirmed the HIB finding and that petitioner could appeal the decision to the Commissioner of Education. [Donahue Cert., Exhibit D.]

12. On April 5, 2023, counsel for petitioner advised Board counsel in writing of Anaya's notice and also that the Board had failed to provide a hearing consistent with the March 3 request and their rights under ABBRA. [Donahue Cert., Exhibit E.]

13. Within several hours, Board counsel advised that a hearing would be held on April 24, 2023. [Donahue Cert., Exhibit F.]

14. On April 24, 2023, petitioner, her son, and counsel appeared for the hearing. The District did not present witnesses or evidence, but relied upon the investigation report. [Donahue Cert., ¶ 12.]

15. On April 26, 2023, the Board issued its formal notice that the HIB charges were upheld against R.S. [Donahue Cert., Exhibit G.]

16. On July 25, 2023, petitioner filed a Petition of Appeal before the Commissioner of Education. [Watson Cert. ¶ 13.]

17. On August 8, 2023, the Office of Controversies and Disputes transmitted the record to the Office of Administrative Law ("OAL").

Based on these facts presented on the pending motion, and even giving petitioners the benefit of any reasonable inferences that could be drawn from their papers or initial petition, I **FIND** that petitioner cannot prove that the Board's determination was arbitrary, capricious, or unreasonable.

LEGAL DISCUSSION

The issue for resolution is whether the Board's finding of HIB was arbitrary, capricious, or unreasonable, in light of the information that the Board possessed when it made its determination. The ABBRA sets forth:

> "Harassment, intimidation or bullying" means any gesture, any written, verbal or physical act, or any electronic

> communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

The Anti-Bullying Act mandates that school personnel report in writing to the school principal "all acts of harassment, intimidation or bullying" within two days of witnessing or receiving reliable information regarding any such incident. N.J.S.A. 18A:37-15(b)(5). The principal or the principal's designee must initiate a prompt investigation of the incident, which must be completed within ten school days of the report to the principal. N.J.S.A. 18A:37-15(b)(6)(a). The results of the investigation must be reported to the super-intendent and the board of education. N.J.S.A. 18A:37-15(b)(6)(b) and (c). Within five school days of reporting the results to the board of education, school officials must inform the parents or guardians of students involved about the results of the investigation. N.J.S.A. 18A:37-15(b)(6)(d). The statute does not expressly require disclosure of a written investigative report, notes, or any other designated school records. Rather, the statute provides that the school district must inform parents in writing of "the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed or services provided to address the incident of

harassment, intimidation, or bullying." Ibid. See K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 358 (App. Div. 2011).

At the next meeting following receipt of the HIB report, the board shall issue a decision to affirm, reject, or modify the superintendent's HIB decision. N.J.S.A. 18A:37-15(b)(6)(e). After receiving the results of an HIB investigation, a parent or guardian may request a hearing before the board of education. N.J.S.A. 18A:37-15(b)(6)(d). Parents of students who are aggrieved by the board of education's determination are then entitled to appeal the board's decision to the Commissioner of Education no later than ninety (90) days after the board issued the decision. Id.

I agree with petitioner that the courts have addressed situations where an act is not considered to be bullying motivated by a "distinguishing characteristic." In L.B.T. ex rel K.T. v. Board of Education of the Freehold Regional School District, EDU 7894-12 (January 24, 2013), adopted, Comm'r (March 7, 2013), <http://njlaw.rutgers.edu/collections/oal/>, there was a mutual dispute between two students about their respective roles on the swim team. The judge held that if a victim was targeted because of a dispute between the two people involved - such as a relationship falling apart between former friends, a fight over a piece of property, or some form of personal vendetta of one against another – that conduct would not be based on a "distinguishing characteristic" of the victim and would not be a violation of the statute.

Nevertheless, in this matter there is no question that R.S.'s statements were specifically targeted at the victim's religion. These messages threatened physical harm on the victim with comparisons to Adolph Hitler and the Holocaust. No reasonable person could conclude that these messages were not inherently based on the victim's religion even if earlier communications were sports "trash talk." I **CONCLUDE** that R.S. escalated the "trash talk" exchanges into hate speech through his chosen words. Students need to learn that words have power.

Moreover, S.S.'s earlier statements or retorts is not a defense to an act of HIB. In W.M. o/b/o J.M. v. Bedminster Twp. Bd. of Ed., OAL Dkt. No. EDU 07337-19 Initial Decision (Dec. 15, 2022), adopted, Comm'r (Mar. 7, 2023)

<http://njlaw.rutgers.edu/collections/oal/>, a student made negative comments about how much the victim weighed and unkind comments about the size of the victim's shoes, but defended that these comments were merely "trash talk" among a group of classmates. The Board's decision was upheld at both the OAL and the Department as not arbitrary or capricious. The Commissioner set forth that "[i]t is irrelevant to the determination in this matter whether [victim] participated in trash-talking or whether [student] was joking; the HIB definition does not consider the accused's intent." Id. at 6. Here, petitioner cannot negate his conduct by belatedly claiming that the victim's retorts subjected him to HIB. He is free to make an independent HIB complaint, but R.S. did not do so. See A.D. o/b/o A.D. v. River Edge Twp. Bd. of Ed., OAL Dkt. No. EDU 04748-23, Initial Decision (Sep. 18, 2023), adopted, Comm'r (Oct. 27, 2023), (stating that if petitioner believed that the student was the target of HIB, they should have filed a complaint) <http://njlaw.rutgers.edu/collections/oal/>.

New Jersey courts have held that "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewage Co. v. Dep't of Envtl. Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973), aff'd o.b., 131 N.J. Super. 37 (App. Div. 1974). Likewise, the Commissioner has held that, in order to prevail, petitioner "must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of Franklin Lakes, No. EDU 13204-13, Initial Decision (Feb. 24, 2014) (citation omitted), adopted, Comm'r (Apr. 10, 2014) <http://njlaw.rutgers.edu/collections/oal/>.

On the basis of the undisputed facts and applicable legal standards, I **CONCLUDE** that the action of the Board in determining that the conduct constituted harassment, intimidation, or bullying within the meaning of the Anti-Bullying Act was not arbitrary, capricious or against the weight of the evidence, even if I or some other district might have decided it differently.

However, I note that the undisputed facts also establish that the Board did fail to hold a timely hearing in accordance with N.J.S.A. 18A:37-15(b)(6)(d), under which "[a] parent or guardian may request a hearing before the board after receiving the information,

and the hearing shall be held within 10 days of the request." Petitioner asked for a hearing on March 3, 2023, but the Board did not hold a hearing until April 24, 2023, and only after being reminded that they had failed to respond to the earlier request. Therefore, I **CONCLUDE** that the Board failed to hold a hearing within ten days in accordance with ABBRA.

While the ABBRA does not explicitly provide for remedies upon a successful procedural error within a school board's HIB investigation or decision to the Commissioner, the Commissioner has simply ordered school districts who have violated the ABBRA to comply with the statutory requirements. See, e.g., T.R. & T.R. ex rel. E.R. v. Bd. of Educ. of the Bridgewater-Raritan Reg'l Sch. Dist., EDU 10208-13 Initial Decision (Sept. 25, 2014) adopted, Comm'r (Nov. 10, 2014) (ordering school district that improperly found that a male student who sexually harassed a female student did not commit acts of HIB to also "comply with all reporting and other statutory and regulatory requirements applicable to the substantiation of an incident of HIB"). <http://njlaw.rutgers.edu/collections/oal/>.

Thus, while the Board violated the time requirements for a hearing, the Board should be required to comply prospectively and/or to retrain its staff responsible for implementing the ABBRA. See M.D.G. ex rel. C.J. v. Bd. of Educ. of the City of Atlantic City, EDU 6450-04, Initial Decision (April 27, 2005), adopted, Comm'r (May 26, 2005) (board may be ordered to comply with the Act by "conducting staff in-service programs with respect to the requirements of the statute in order to assure that all pupils under the Board's supervision and control will be protected from harassment, intimidation or bullying in the future.") <http://njlaw.rutgers.edu/collections/oal/>. I **CONCLUDE** that it does not undermine the substantive HIB determination.

ORDER

It is **ORDERED** that the motion of respondent Borough of Tenafly Board of Education for a Summary Decision Order on the appeal filed by petitioner H.P. on behalf of R.S. is hereby **GRANTED**. It is further **ORDERED** that the respondent Board must hold timely hearings in accordance with the statute and to document to the Bergen County

Office of Education the timeliness of the next three of its ABBRA hearings. It is further **ORDERED** that the Appeal shall be and the same is hereby 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 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.

Gail M. Cookson

January 24, 2024
DATE

GAIL M. COOKSON, ALJ

Date Received at Agency: 1/24/24

Date Mailed to Parties: 1/24/24
id

145-24
OAL Dkt. No. EDU 12728-23
Agency Dkt. No. 291-10/23

New Jersey Commissioner of Education

Final Decision

H.S. and N.B., on behalf of minor child, S.B.,

Petitioners,

v.

Board of Education South Orange-Maplewood School District, Bergen County,

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 26, 2024
Date of Mailing: March 27, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 12728-23
AGENCY DKT NO. 291-10/23

H.S. & N.B. ON BEHALF OF MINOR CHILD S.B.,

Petitioner,

v.

BOARD OF EDUCATION OF THE SOUTH ORANGE-MAPLEWOOD SCHOOL DISTRICT, ESSEX COUNTY,

Respondents.

H.S., appearing pro se

Patrick Carrigg, Esq. on behalf of respondent (Lenox Law Firm)

Record Closed: March 1, 2024 Decided: March 8, 2024

BEFORE **NANCI G. STOKES**, ALJ:

This case was transmitted to the Office of Administrative Law (OAL) on November 15, 2023, for resolution as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F1 to -13. On November 21, 2023, I conducted a telephone prehearing. On November 27, 2023 oral argument on the emergency relief was held. On

November 28, 2023, I issued an Order Granting Emergent Relief. The Commissioner of Education issued a Final Decision affirming my decision and ordering that the matter continue at OAL "...with such proceedings as the parties and the ALJ deem necessary to bring it to closure." A telephone conference was conducted on December 28, 2023, wherein the parties agreed to resolve all issues in dispute. Another telephone conference was scheduled for February 20, 2024. Prior to that date, respondent advised that the settlement agreement will be on the Board's agenda at its meeting on February 29, 2024.

On March 1, 2024, respondent's counsel submitted the fully executed settlement agreement, which is attached hereto for reference.

Having reviewed the contents of the attached Settlement Agreement and General Release, I **FIND**:

1. The parties have voluntarily agreed to the settlement, as evidenced by their signatures or the signatures of their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this settlement meets the requirements of N.J.A.C. 1:1-19.1 and that the stipulation should be approved. I approve of the settlement and, therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

March 8, 2024

DATE

NANCI G. STOKES, ALJ

Date Received at Agency: March 8, 2024

Date Mailed to Parties: March 8, 2024

ljb

SETTLEMENT AGREEMENT AND GENERAL RELEASE

WHEREAS, S.B., is a kindergarten student assigned to Tuscan Elementary School for the 2023-24 school year; and

WHEREAS, H.S., is the parent of S.B. and sought to have the South Orange Maplewood Board or Education and School District provide transportation for S.B. to Tuscan Elementary School; and

WHEREAS, H.S. o\b\o of S.B. initiated an claim for emergent relief under Docket No. EDU 12728-23 and Agency Dkt. No. 291-10/23, seeking transportation; and

WHEREAS, an emergent hearing was held; and

WHEREAS, on November 28, 2023, Administrative Law Judge Nanci G. Stokes granted H.S.'s Petition for Emergent Relief and ordered the district to begin providing transportation to S.B. during the pendency of the underlying matter; and

WHEREAS, on December 8, 2023, the Commissioner of Education finalized the November 28, 2023, Order granting emergent relief; and

WHEREAS, the District provided transportation in conformity with the Emergent Relief Order beginning on or about December 7. 2023; and

WHEREAS, the parties now seek to resolve the pending claim; and

NOW THEREFORE, the Parties, each intending to be legally bound, agree as follows:

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (the "Agreement") is made and entered into by and between H.S. o\b\o S.B. for themselves and their heirs, executors, administrators, personal representatives and assigns (collectively referred to as " H.S. o\b\o S.B."); and SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION ("SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION, ET AL") or (the "District"). H.S. o\b\o S.B. and SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION, ET AL are collectively referred to as "the Parties."

1. H.S. o\b\o S.B's.General Release of All Claims. In consideration of the provisions of this Agreement, H.S. o\b\o S.B. and their heirs, executors, administrators, personal representatives, and assigns (collectively referred to as "Releasor") hereby knowingly and voluntarily dismisses with prejudice their Petition filed under Docket No. EDU 12728-23 and Agency Dkt. No. 291-10/23 and all Claims for attorneys' fees and costs.

2. Consideration. The Parties agree that they will seek signatures of the Settlement on this document within Seven (7) days and the Settlement will be presented to the Board for approval to occur at the regular meeting after receipt of the signed Release.

The Board agrees that while S.B. and any other resident children of H.S. resides at 56 Curtiss Place, Maplewood, NJ 07040 and attend Tuscan Elementary School, the District will provide transportation as stated in the November 28, 2023 Emergent Relief Order. Per the November 28, 2023 Emergent Relief Order, the District must provide busing to and from school absent days involving aftercare.

Should H.S.'s school-age children no longer reside at 56 Curtiss Place or be transferred out of Tuscan Elementary School, the District will reassess its transportation obligation from their new residence or to the new school under the law and Board Policy that exist at that future time.

This decision by the District is based upon H.S. o\b\o S.B.'s circumstances only and would not be precedential for any other resident family whose children attend the District's schools.

3. Acknowledgment of Consideration. H.S. o\b\o S.B. acknowledges that, in return for executing this Agreement, they are receiving the consideration described in Paragraph 2, which they may or may not have received through the pending claim before the Commissioner of Education. H.S. o\b\o S.B. agrees they are not entitled to any other consideration or payment of any kind from the Released Parties relating to the Petition filed under Docket No. EDU 12728-23 and Agency Dkt. No. 291-10/23.

4. No Admission of Liability. Neither the execution of this Agreement by the Released Parties, nor the terms hereof, constitute an admission by the Released Parties, or by any principal, director, officer agent, employee or representative of the Released Parties, of liability with respect to any possible claim that was or could have been made by H.S. o\b\o S.B. By entering into this Agreement, the Released Parties do not admit, and expressly deny, that they have violated any contract, rule, law, statute or regulation, including, but not limited to, any federal, state or local law, statute, or regulation relating to employment or employment discrimination or retaliation, or that their actions were unwarranted, unjustified, discriminatory, retaliatory, or otherwise unlawful in any way.

5. Non-Interference and Non-Disparagement. The Parties mutually agree not to defame the other related to the circumstances of this lawsuit.

6. Agreement to Refrain from Filing Any Further Claims. H.S. o\b\o S.B. represents that they have not filed any lawsuit or initiated on their behalf any proceeding against SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION, ET AL or any of the Releasees that is not being withdrawn as a part of this settlement.

7. Voluntary Execution. H.S. o\b\o S.B. certifies that they have read and/or had the opportunity to have the terms of this Agreement explained to him by his counsel, above mentioned, and further acknowledges that they have entered into and executed this Agreement freely and voluntarily after complete consideration and understanding of all facts and legal claims and the provisions of this Agreement.

8. Governing Law and Forum Selection. This Agreement shall be governed by and

construed under the laws of the State of New Jersey, without regard to conflict of law principles. Any disputes relating to this Agreement shall be resolved exclusively by a state court in the State of New Jersey.

9. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior agreements or understandings with respect to the subject matter hereof. The Parties acknowledge that in signing this Agreement they do not rely upon and have not relied upon any representation or statement made by any of the Parties or their agents with respect to the subject matter, basis or effect of this Agreement, other than those specifically stated in this written Agreement.

10. Legally Binding. The terms of this Agreement contained herein are contractual, and not a mere recital. This Agreement shall be binding upon the Parties hereto and upon their heirs, administrators, representatives, executors and assigns. H.S. o\b\o S.B. expressly warrants that they have not transferred to any person or entity any rights, causes of action or claims released in this Agreement.

11. Severability. If any term or provision of this Agreement shall be held to be invalid or unenforceable for any reason, the validity or enforceability of the remaining terms or provisions shall not be affected, and such term or provision shall be deemed modified to the extent necessary to make it enforceable.

12. Amendments. Neither this Agreement nor any term hereof may be orally changed, waived, discharged, or terminated, and may be amended only by a written agreement between the Parties.

13. Counterparts. This Agreement may be signed in counterparts, each of which when executed and delivered, including by telecopy or email, shall be deemed to be an original and all of which together shall constitute one instrument. Photographic (including Adobe Acrobat formatted or other PDF documents) and/or facsimile copies of such signed counterparts may be used in lieu of the originals for any purpose.

14. Court Approval. This Agreement shall be approved consistent with the Administrative Regulations requiring Court approval of such an agreement involving a minor.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed.

H.S. o\b\o S.B.

Heather Scheer

By: H.S. o\b\o S.B.

Dated: 02/19/24

SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION

By:
on behalf of SOUTH ORANGE-MAPLEWOOD BOARD OF EDUCATION,

Title: President

Dated: 2/22/2024

END OF DOCUMENT

Signature:

Email: heatherloren@gmail.com

SCHOOL DISTRICT OF SOUTH ORANGE AND MAPLEWOOD
PUBLIC BOARD MEETING
February 29, 2024

FOR ACTION

RESOLUTION NUMBER **4580**

SUBJECT: **TRANSPORTATION SETTLEMENT AGREEMENT**

BE IT RESOLVED THAT the South Orange-Maplewood Board of Education hereby approves the terms of the agreement reached on February 19, 2024, relating to the following student 4340027143.

MOTION made by Board President Telesford, seconded by Board Member Duvall Wilson to approve Resolution 4580.

ROLL CALL: Motion 4580 Passed. YES: Board Members Callahan, DuVall Wilson, Eckert, Gifford, Meyer, Sackett-Gable, Telesford, Vadlamani, Wittleder, NO: None

I, Eric Burnside, Secretary of the South Orange-Maplewood Board of Education, hereby certify that the attached resolution was adopted at a duly convened meeting of the Board of Education on February 29, 2024 by the roll call vote set forth above and remains in full force and effect.

Eric Burnside, Board Secretary

146-24
OAL Dkt. No. EDU 12956-23
Agency Dkt. No. 292-10/23

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificate of Eileen Dean, Board of Trustees of the TEAM Academy Charter School, Essex County.

The record of this matter, the proposed Settlement Agreement (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 26, 2024
Date of Mailing: March 27, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 12956-23
AGENCY DOCKET NO. 292-10/23

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATE OF EILEEN DEAN, TEAM ACADEMY CHARTER SCHOOL, INC., ESSEX COUNTY.

Thomas O. Johnston, Esq. for petitioner Team Academy Charter School, Inc., Essex County (The Johnston Law Firm, attorneys)

Gail Oxfeld Kanef, Esq., for respondent Eileen Dean (Oxfeld Cohen, attorneys)

Record Closed: February 28, 2024 Decided: February 28, 2024

BEFORE **R. TALI EPSTEIN**, ALJ:

This matter was transmitted to the Office of Administrative Law (OAL) where it was filed on November 16, 2023, for resolution as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F1 to -13.

At the status conference on February 14, 2024, counsel advised that the matter was resolved and, thereafter, forwarded a fully executed Settlement Agreement to the undersigned, a copy of which is attached and fully incorporated herein.

Having reviewed the contents of the attached Settlement Agreement, I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures and/or the signatures of their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this settlement meets the requirements of N.J.A.C. 1:1-19.1. I therefore approve the settlement and **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

February 28, 2024
DATE

R. TALI EPSTEIN, ALJ

Date Received at Agency: 3-5-24

Date Mailed to Parties: 3-5-24

lsr

JOHNSTON
LAW FIRM LLC

MONTCLAIR, NJ NEW YORK, NY

THOMAS O. JOHNSTON
tjohnston@johnstonlawfirmllc.com
Member NJ and NY Bars

February 28, 2024

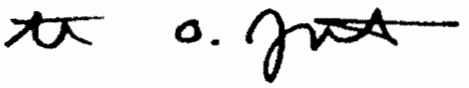
VIA EMAIL Linda.rivera@oal.nj.gov
R. Tali Epstein, ALJ
Office of Administrative Law
33 Washington Street
Newark, NJ 07102

Re: ***EDS TEAM Academy Charter School, Inc. Settlement Agreement***
EDU-12956-23

Dear Judge Epstein:

We are counsel to petition TEAM Academy Charter School, Inc. in the above matter. We enclose a settlement agreement between the parties. We respectfully request that the matter be dismissed, in accordance with the settlement agreement. Thank you for your kind attention in this regard.

Respectfully,



Thomas O. Johnston

Enc.
TOJ/ls
Cc: Gail Oxfeld (via email)
Client (via email)

LAW OFFICES

OXFELD COHEN, P.C.

A PROFESSIONAL CORPORATION

60 PARK PLACE, SUITE 600
NEWARK, NEW JERSEY 07102

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WILLIAM P. HANNAN**
SAMUEL B. WENOCUR **

ANALIESE W. SMITH

BARRY FRANK **
Of Counsel

BENJAMIN A. SPIVACK (1950-2012)

250 WEST 57TH STREET
NEW YORK, NEW YORK 10107
(212) 451-1115
PLEASE REPLY TO NEWARK

* MEMBER OF NJ BAR
** MEMBER OF NJ & NY BARS
*** MEMBER OF IN AND NJ BARS

February 26, 2024

VIA EMAIL Linda.rivera@oal.nj.gov AND REGULAR MAIL
R. Tali Epstein, ALJ
Office of Administrative Law
33 Washington Street
Newark, NJ 07102

Re: IMO Eileen Dean/Team Academy Charter School
Docket No. EDU-12956-23

Dear Judge Epstein:

I am pleased to enclose the fully executed settlement agreement in the above matter. Kindly process the settlement at your earliest convenience. Thank you.

Very truly yours,
OXFELD COHEN, P.C.

/s/ Gail Oxfeld Kanef

GOK/elj GAIL OXFELD KANEF
Cc: Thomas Johnston, Esq. (VIA EMAIL AND REGULAR MAIL)
Eileen Dean

SETTLEMENT AGREEMENT

This settlement agreement ("Agreement") made
by and between

TEAM ACADEMY CHARTER SCHOOL, INC.
(Hereinafter referred to as "TEAM")

AND

EILEEN DEAN
(Hereinafter referred to as "Ms. Dean")

WITNESSETH:

WHEREAS, Ms. Dean was employed by TEAM, pursuant to an Employment Agreement dated June 6, 2023 and signed June 8, 2023 for the 2023-2024 school year; and

WHEREAS, on or about October 20, 2023, TEAM filed an Order to Show Cause with the Office of Controversies and Disputes within the State of New Jersey, Department of Education docketed as 292-10/23 and titled as *In the Matter of the Suspension of the Teaching Certificate of Eileen Dean, Team Academy Charter Schools, Inc., Essex County*; and

WHEREAS, on or about November 15, 2023, the aforesaid case was transferred to the State of New Jersey, Office of Administrative Law, Docket No. EDU 12956-2023; and

WHEREAS, the parties desire to enter into a settlement for any and all claims arising from Ms. Dean's employment with TEAM;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties desire to enter into this Agreement as follows:

1. **EXECUTION DATE** As used in this Agreement, the "Execution Date" shall mean the date as of which the Agreement is fully executed.

2. **CONSIDERATION** In consideration of the release described in Sections 3 and 8 below, Ms. Dean agrees to not enter into employment with any public school or New Jersey

Department of Education approved private school for the disabled through one year from the Execution Date. Upon receipt of the fully executed Agreement, TEAM's counsel will file a request with the Office of Administrative Law that the the matter be dismissed, in accordance with this Settlement Agreement.

3. **RELEASE** In consideration for the agreement described in Section 2 above, the parties hereby mutually release each other and any of their predecessors, successors, parents, agents, affiliates or subsidiary entities, and its or their present or former officers, directors, agents, including KIPP New Jersey, Board of Trustees, representatives, employees, attorneys, committees, trustees, fiduciaries, trusts and their respective successors and assigns, heirs, executors and personal or legal representatives (hereinafter collectively referred to, together with TEAM, as the "Parties") from any and all claims or causes of action they may have or claim to have against another party arising out of or related to Ms. Dean's employment with TEAM. The claims released include, but are not limited to:

a. all statutory claims, including but not limited to claims arising under the New Jersey Law Against Discrimination (as amended), the New Jersey Civil Rights Act, the New Jersey Conscientious Employee Protection Act (as amended), the New Jersey Family Leave Act, Title VII of the Civil Rights Act of 1964 (as amended), Sections 1981 through 1988 of Title 42 of the United States Code (as amended), the Americans with Disabilities Act of 1990 (as amended), the Rehabilitation Act, the Employee Retirement Income Security Act of 1974 (as amended), the Fair Labor Standards Act (as amended), the Uniformed Services Employment and Reemployment Rights Act of 1994, the National Labor Relations Act (as amended), the Federal Warn Act (as amended), the New Jersey Millville Dallas Airmotive Plan Job Loss Notification Act (as amended), the Family and Medical Leave Act of 1993, the Occupational Safety and Health Act (as amended), the Equal Pay Act (as amended), the New Jersey Minimum Wage Law (as amended), the New Jersey Wage and Hour Law (as amended), Equal Pay Law for New Jersey (as amended), the New Jersey Worker Health and Safety Act (as amended), the Labor Management Relations Act (as amended) and State Education Laws, N.J.S.A. 18A et seq.;

b. all claims arising under the United States or New Jersey Constitutions;

c. all claims arising under any Executive Order or derived from or based upon any State or Federal regulations;

d. all common law claims, including but not limited to any and all rights to discovery, claims for wrongful discharge, constructive discharge, violation of public policy, breach of an express or implied contract, breach of an implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, defamation, conspiracy, tortious interference with contract or prospective economic advantage, promissory estoppel, equitable estoppel, fraud, misrepresentation, detrimental reliance, retaliation, and negligence;

e. all claims for any compensation including commissions, back wages, front pay, punitive damages, pay increases, bonuses or awards, fringe benefits, disability benefits, severance benefits, reinstatement, retroactive seniority, pension benefits, contributions to retirement plans, or any other form of economic loss;

f. all claims for personal injury, including physical injury, mental anguish, emotional distress, pain and suffering, embarrassment, humiliation, damage to name or reputation, interest, liquidated damages, and punitive damages; and

g. all claims for costs, interest, and attorneys' fees;

4. **NON-ADMISSION OF LIABILITY** This Agreement shall not be construed as an admission by either party of any of the acts or omissions alleged, or which could have been alleged against the other party. The Parties specifically deny any liability whatsoever for any damages, injuries or other claims made by either party against the other party.

5. **AGREEMENT NOT TO SUE** Each party mutually represents that they have not, and agrees will not, file any lawsuit or claim against the other based on any events, whether known or unknown, occurring prior to the date of the execution of this Agreement, including, but not limited to, any events related to, arising out of, or in connection with, Ms. Dean's employment with TEAM, or the termination of such employment, in any court or tribunal of the United States, New Jersey, or any other state, city, county, or locality. Parties expressly represent that they have not filed a lawsuit or claim or initiated any other administrative proceeding other than as noted

herein, and further promise not to initiate a lawsuit or to bring any other claim pursuant to N.J.S.A. 18A:26-10 arising out of or in any way related to Ms. Dean's employment by HAM. Ms. Dean also acknowledges and agrees that while this release does not preclude her from filing a charge with the Public Employment Relations Commission, the Equal Employment Opportunity Commission or a similar state or local agency, or from participating in any investigation or proceeding with such an agency, she will not personally recover monies, and expressly waives the right to recover such monies, for any complaint or charge filed against HAM with any federal, state or local board, agency or court.

6. **NON-DISPARAGEMENT** The Parties agree that they will not at any time from the time of signing this Agreement, through any medium, either orally or in writing, including but not limited to, electronic mail, television or radio, computer networks or internet bulletin boards, blogs, social media, such as META (formerly known as Facebook) LinkedIn, or X Corp (formerly known as Twitter), or any other form of communication, disparage, defame, impugn, damage or assail the reputation of the other party, but rather shall act in good faith to refrain from any conduct or communication which might reasonably be expected to cause the recipient of a communication to question the business condition, integrity, competence, good character or professionalism of the other party.

Notice Regarding Discrimination, Retaliation, or Harassment Claim(s)

Although the parties may have agreed to keep the settlement and underlying facts confidential, such a provision in an agreement is unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable. N.J. Stat. § 10:5-12.8(b).

7. **CONSIDERATION** Ms. Dean acknowledges that the only consideration she has received for signing this Agreement is that set forth herein. No other promise, inducement, threat, agreement or understanding of any kind or description has been made with her or to her to cause her to enter into this Agreement.

8. **REVIEW PERIOD** Ms. Dean understands that she has been given a period of twenty-one (21) calendar days to review and consider this Agreement before signing it. Ms. Dean also understands that she is free to use as much of the twenty-one (21) day period as she wishes or considers necessary before deciding to sign the Agreement. Ms. Dean may revoke her signature of the Agreement within seven (7) calendar days of signing it by delivering written notice of revocation to Thomas O. Johnston, Esq., Johnston Law Firm LLC, 151 Forest Street, Suite A, Montclair, New Jersey 07042. If Ms. Dean has not revoked her signature of this Agreement by written notice received within the seven (7) day period, it becomes effective immediately thereafter (the "Effective Date").

9. **SEVERABILITY** Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language set forth in Section 3, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. If the general release language in Section 3 is found to be illegal or unenforceable, Ms. Dean and [illegible] agree to execute a binding replacement release.

10. **CONSTRUCTION** The Parties and their representatives, if any, have participated fully in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

11. **AMENDMENT** This Agreement may only be amended by a writing signed by all of the Parties to this Agreement.

12. **AGREEMENT ENTERED VOLUNTARILY** Ms. Dean acknowledges that she:

a. has carefully read and fully understands all of the terms of this Agreement;

b. understands that by signing this Agreement, she is waiving her rights under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, 29 U.S.C. § 621, et seq., as well as all rights to all claims described in Section 2 of this Agreement, and that she is not waiving any rights after the date that this Agreement is signed.

c. knowingly and voluntarily agrees to all of the terms set forth in this Agreement;

d. knowingly and voluntarily intends to be legally bound by this Agreement;

e. is receiving consideration in addition to anything of value to which she is already entitled;

f. is hereby advised to consult with an attorney prior to the signing of this Agreement; and

g. has not been coerced, threatened, or intimidated in any way into signing this Agreement.

13. **ENTIRE AGREEMENT** This Agreement constitutes the entire agreement between the Parties and fully supersedes any and all prior contracts or agreements between the Parties pertaining to compensation or severance, and it likewise fully supersedes any and all other conflicting agreements or understandings between the Parties.

14. **EXECUTION IN COUNTERPARTS** This Agreement may be executed, including execution by electronic signature (e.g. pdf or tif file), in one or more counterparts, each of which shall be deemed an original, and which shall collectively be deemed to be one and the same instrument.

Ms. Eileen Dean
Date: 2/23/24

For I I AM Academy Charter School, Inc.
Name: Jasmin Ampaw
Title: Employee Relations Director
Date: 2/20/2024

147-24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the
Teaching Certificates of Sydney Fox,
Board of Education of the City of South Amboy,
Middlesex County.

Synopsis

This matter was opened before the Commissioner of Education on January 8, 2024, by way of an Order to Show Cause served by the petitioner, Board of Education of the City of South Amboy, upon respondent Sydney Fox, requiring her to show cause why an order should not be entered suspending her teaching certificate pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law. By notice dated January 22, 2024, the Office of Controversies and Disputes acknowledged proof that the Order to Show Cause had been served upon respondent and directed respondent to answer within 20 days. Respondent was advised that – pursuant to *N.J.A.C.* 6A:3-1.5(e) – failure to respond would cause each allegation raised by the Board to be deemed admitted and might result in summary decision by the Commissioner. The respondent failed to answer the order, despite ample opportunity to do so.

There being no response to the order to show cause, the Commissioner concluded that the allegations, which respondent has chosen not to deny, may be deemed admitted and justify suspension of respondent's certificate. Accordingly, summary decision was granted to the Board, and respondent's certificate was suspended for a period of one year from the date of the filing of this decision – a copy of which was forwarded to the State Board of Examiners for the purpose of effectuating this order.

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.

147-24
Agency Dkt. No. 4-1/24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificate of Sydney Fox, Board of Education of the City of South Amboy, Middlesex County.

This matter was opened before the Commissioner of Education on January 8, 2024, by way of an Order to Show Cause served by petitioner (Board of Education of the City of South Amboy) upon respondent (Sydney Fox), requiring respondent to show cause why an order should not be entered suspending her teaching certificate pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

By notice dated January 22, 2024, the Office of Controversies and Disputes (Office) acknowledged proof that the Order to Show Cause had been served upon respondent and directed respondent to answer within 20 days. No answer having yet been received, on February 12, 2024, the Office sent respondent a second and final notice – via certified and regular mail, and email – directing that she must file an answer within ten days. The notice advised that, pursuant to *N.J.A.C.* 6A:3-1.5(e), failure to answer would cause each allegation in petitioner's papers to be deemed admitted and might result in summary decision by the Commissioner. To date, the Office has not received a response from respondent.

The petition and supporting exhibits submitted by petitioner in this matter indicate that: petitioner hired respondent to work as an English teacher for the 2023-2024 school year; on October 12, 2023, respondent sent correspondence indicating that she was resigning to pursue

another opportunity and initially offered sixty days' notice but requested an early release if a replacement was found; subsequently, on November 13, 2023, respondent sent correspondence indicating that November 14, 2023, would be her last day of employment and abandoned her teaching position before the sixty-day notice period expired; and, on November 27, 2023, at a Board meeting, petitioner acknowledged respondent's resignation effective November 14, 2023, in violation of her employment contract. The respondent has not denied these allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(e) and further deems them sufficient to justify suspension of respondent's teaching certificate pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner. Respondent's teaching certificate, as well as any substitute teaching credential she may hold, is suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 26, 2024
Date of Mailing: March 27, 2024

[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.

148-24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Francesca Coté, Board of Education of the Township of South Brunswick, Middlesex County.

Synopsis

This matter was opened before the Commissioner of Education on January 18, 2024, by way of an Order to Show Cause served by the petitioner, Board of Education of the Township of South Brunswick, upon respondent Francesca Coté, requiring her to show cause why an order should not be entered suspending her teaching certificate pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law. In response to the Order to Show Cause, respondent emailed the Office of Controversies and Disputes to provide mitigating factors that she wished the Commissioner to consider in making his decision, namely that it was mandatory for her to resign in the time and manner she did due to the impact her employment was having on her mental health. However, respondent indicated that she did not wish to engage in the administrative dispute resolution process.

Upon review, the Commissioner concluded that the allegations, which respondent has chosen not to deny, may be deemed admitted and justify suspension of respondent's certificates. Accordingly, summary decision was granted to the Board, and respondent's certificates were suspended for a period of one year from the date of the filing of this decision – a copy of which was forwarded to the State Board of Examiners for the purpose of effectuating this order.

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.

148-24
Agency Dkt. No. 11-1/24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Francesca Coté, Board of Education of the Township of South Brunswick, Middlesex County

This matter was opened before the Commissioner of Education on January 18, 2024, by way of an Order to Show Cause served by petitioner (South Brunswick Township Board of Education) upon respondent (Francesca Coté), requiring respondent to show cause why an order should not be entered suspending her teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

In response to the Order to Show Cause, respondent emailed the Office of Controversies and Disputes to provide mitigating factors that she wished the Commissioner to consider in making his decision, namely that it was mandatory for her to resign in the time and manner she did due to the impact her employment was having on her mental health. However, respondent indicated that she did not wish to engage in the administrative dispute resolution process.

The petition and supporting exhibits submitted by petitioner in this matter indicate that: respondent entered into a contract to work as a teacher for the 2023-2024 school year; the contract provides that it can be terminated by the employee upon sixty days' written notice; and on October 16, 2023, respondent sent correspondence to petitioner indicating that she was resigning, effective October 20, 2023, thereby providing less than the required sixty days' notice. The respondent has not denied these allegations; therefore, the Commissioner deems such

allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(a) and further deems them sufficient to justify suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner. Respondent's teaching certificates, along with any substitute teaching credentials she may hold, are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 26, 2024
Date of Mailing: March 27, 2024

[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.

149-24
OAL Dkt. No. EDU 11069-14
Agency Dkt. No. 156-6/14

New Jersey Department of Education

Final Decision

Leonor Alcantara, individually and as Guardian ad Litem for E.A.; Leslie Johnson, individually and as Guardian ad Litem for D.J.; Juana Perez, individually and as Guardian ad Litem for Y.P.; Tatiana Escobar; Henry Moro and Ira Schulman, individually and as Guardian ad Litem for A.S.,

Petitioners,

v.

Angelica Allen-McMillan, Acting Commissioner of the New Jersey Department of Education; New Jersey State Board of Education; and New Jersey Department of Education,

Respondents.

Background and Procedural History

In a 2014 petition filed against the New Jersey Commissioner of Education, the New Jersey Department of Education (Department), and the New Jersey State Board of Education (collectively, "respondents"), petitioners alleged that the Lakewood Township Board of Education (Board or Lakewood) is unable to provide its public school students with a

thorough and efficient education (T&E) because it does not receive sufficient funding under the School Funding Reform Act, *N.J.S.A.* 18A:7F-43 to -70 (SFRA).[1]

Following a hearing, the Administrative Law Judge (ALJ) found that Lakewood's public-school students are not receiving T&E, but concluded that petitioners failed to meet their burden of demonstrating that the lack of T&E derives in significant part from the SFRA. The ALJ found that the population boom in Lakewood Township over the past twenty years resulted in a rise in attendance at private schools, totaling almost 30,000 non-public school students compared to approximately 6,000 students who attend Lakewood public schools. This causes a strain on the district financially, as the private school students are entitled to transportation at Lakewood's expense. Further, tens of millions of dollars are spent each year to send students to out-of-district placements.

Nevertheless, the ALJ found that the SFRA is not unconstitutional as applied to Lakewood and that Lakewood has failed to take steps to increase its ability to provide T&E. The ALJ found that although Lakewood had a budget surplus in 2010, it chose not to increase its levy to the cap for several years thereafter, despite being aware of population growth trends. Due to those choices, the district did not generate revenues that could have compounded over the years and was not taxing up to its local fair share. Relatedly, the ALJ found that Lakewood made little effort to exercise statutorily available tools to raise funds.

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[1] Petitioners are parents of children who attend Lakewood's public schools. Lakewood and Paul Tractenberg, Esq., joined this matter as participants. Mr. Tractenberg is a Professor of Law Emeritus and Board of Governors Distinguished Service Professor at Rutgers University. He established the Education Law Center, the Institute on Education Law and Policy, and the Center for Diversity and Equality of Education. While Lakewood initially declined to join this matter as a party and joined instead as a participant in 2016, Lakewood subsequently filed a motion to intervene as a party at the start of the hearing in 2018, which was denied.

Additionally, the ALJ explained that although Lakewood's transportation costs have continued to increase annually from $23 million in 2014-15 to $31 million in 2018-19, there is little evidence that Lakewood has done everything possible to reduce those costs. Further, there is no evidence that these rising costs are solely due to the increasing number of nonpublic school students in the district. The ALJ also noted that a large portion of Lakewood's budget is dedicated to special education due to the number of out-of-district placements (specifically, 343 students were placed in private schools for a cost of $33 million in 2018-19), but the record lacks evidence of any steps taken to set up a district-run special education program to save money by educating these students in-district, as the Department has urged. The ALJ also noted that the SFRA provides greatly increased aid for in-district special education, as opposed to out-of-district special education, but found no evidence in the record that Lakewood even tried to avail itself of that option.

The ALJ also reasoned that Lakewood does not offer a comprehensive preschool for three-year-old general education students. The ALJ found no evidence that Lakewood even attempted to receive State financing for a preschool facility to accommodate more at-risk, non-special education children.

Finally, the ALJ added that other legislation outside the SFRA has affected Lakewood financially, such as a tax levy cap on school districts and the annual Appropriations Act.

Following a review of the record, including the ALJ's Initial Decision and the exceptions and replies thereto, the Commissioner issued a decision concluding that petitioners failed to establish the lack of T&E in Lakewood. *Alcantara v. Hespe*, Commissioner Decision No. 149-21 (July 16, 2021). In doing so, the Commissioner relied upon improving standardized test scores,

success in meeting accountability targets, and the wide range of classes and programs offered to students. Nonetheless, the decision recognized that the quality of education in Lakewood could be improved, and therefore ordered the Department to conduct a comprehensive review of Lakewood's organization, structure, and policies to assess its compliance with quality performance indicators and to determine how it could improve its educational program. Id. at 7. As a result of the finding that Lakewood delivered T&E, the Commissioner did not reach the issue of the constitutionality of the SFRA. *Alcantara v. Hespe*, Commissioner Decision No. 149-21 (July 16, 2021).

Petitioners appealed, and the Appellate Division reversed and remanded the matter with instructions for the Commissioner to consider petitioners' substantive arguments pertaining to the SFRA. *Alcantara v. Allen-McMillan*, 475 *N.J. Super.* 58 (App. Div. Mar. 6, 2023).

On May 12, 2023, the Commissioner issued a letter directing the Department to expedite the comprehensive review of the Lakewood school district initially ordered in *Alcantara v. Hespe*, *supra*. The Commissioner indicated that the information that comprised the record before the OAL, the Commissioner, and the Appellate Division is now outdated and found that an updated record would assist the Department in identifying the root causes that led to the educational deprivations identified by the Appellate Division.

The Department retained Dr. Kimberly Markus, an education consultant who is also a former New Jersey Commissioner of Education, along with Public Consulting Group LLC, a management consulting firm that focuses on public sector clients, to complete the review. The report, entitled "Comprehensive Review of the Lakewood Public School District" (Comprehensive Report), was filed on March 1, 2024. The Comprehensive Report examined

five critical areas deemed relevant as influencing the provision of T&E in Lakewood: governance, curriculum and instruction, special education, finance, and transportation. The report closely evaluated each of these areas and presented a comprehensive analysis of each area's impact on T&E. The report's findings and conclusions are discussed in further detail below.

In response to the Comprehensive Report, petitioners[2] note that it confirms the conclusions of the ALJ and the Appellate Division that Lakewood students are not receiving T&E, and they urge the Department to remedy this denial as expeditiously as possible. According to petitioners, the Comprehensive Report does little to analyze the impact of the SFRA on the quality of education in Lakewood. Therefore, petitioners indicate that they do not feel the need to respond to the details of the report and instead choose to use their response to express their views regarding the final agency decision in this matter.

Petitioners take issue with the Comprehensive Report's framing of the obligation to provide T&E as an obligation of the district, rather than the State. Petitioners argue that the denial of T&E in Lakewood is primarily a function of the less-than-optimal performance of the SFRA and, accordingly, ultimate responsibility should be imposed on the State. Petitioners note that the SFRA has not been fully funded for 15 years, rendering any defense of its constitutionality at a disadvantage.[3] Petitioners further contend that if the SFRA were functioning at an optimal level, it would not have been necessary for the district to receive

[2] A joint response was filed by Mr. Tractenberg and counsel for petitioners. For ease of reference, this decision will use the term "petitioners" when referring to this response, together with the statements and arguments made therein.

[3] Petitioners acknowledge that the Governor's proposed budget for FY2024-25 would fully fund the SFRA if enacted.

$215 million in advance state aid loans since 2015. Petitioners also argue that the Comprehensive Report set an improperly high burden on petitioners by stating that declaring the SFRA unconstitutional would require that the SFRA "be established as the singular cause for the denial of a thorough and efficient education."[4] Finally, petitioners set forth a number of suggestions for remediation, including forgiving the existing advance state aid loan balance, amending the SFRA, or passing separate legislation to provide additional funding to Lakewood.

Lakewood's[5] response identifies alleged factual errors in numerous areas of the Comprehensive Report. Lakewood objects to what it characterizes as the selective use of comments made by stakeholders, as well as to portions of the report dealing with issues which the reviewers allegedly did not discuss with Lakewood's officials. According to Lakewood, the Comprehensive Report makes recommendations without discussion of the cost to the district and fails to analyze whether the recommendations will improve the provision of education to Lakewood students.[6]

Analysis

Upon review of the record, including the ALJ's Initial Decision, exceptions and filings made in response to the Initial Decision, the supplemental information contained in the Comprehensive Report, and the parties' written responses to the Comprehensive Report, the Assistant Commissioner concludes that the SFRA is not the significant cause of Lakewood's

[4] Comprehensive Report at 30.

[5] The filing indicates that it is the response of Superintendent Dr. Laura A. Winters and the Superintendent's Executive Leadership Team, and that it has been reviewed by both a committee of the Board and individual Board members.

[6] The majority of these areas concern portions of the report not relied upon herein and, accordingly, they are not reviewed in detail. To the extent that Lakewood's response does address items discussed herein, the response is detailed in the applicable section of the analysis below.

failure to provide T&E and that therefore, the SFRA is not unconstitutional as applied to Lakewood. "It is well recognized that legislative enactments enjoy a presumption of validity," and when a constitutional challenge is raised, "there is a strong presumption that the statute is constitutional." *Abbott ex rel. Abbott v. Burke* ("*Abbott XX*"), 199 *N.J.* 140, 235 (2009) (internal citations omitted). "Whether a statute passes a constitutional challenge 'as-applied' to any individual school district at any particular time must be determined only in the factual context presented and in light of the circumstances as they appear." *Ibid.* Here, the constitutionality of the SFRA as applied to Lakewood "turn[s] on proof that [petitioners] suffer educational inequities and these inequities derive, in significant part, from the funding provisions" of the SFRA.[7] *Abbott v. Burke* ("*Abbott I*"), 100 *N.J.* 269, 296 (1985).

The SFRA is a weighted school funding formula through which districts fund their budgets using a combination of local levies and State aid, which includes multiple categories of aid, discussed in more detail below.[8] *See N.J.S.A.* 18A:7F-43 to -66. According to the legislative findings, the SFRA "should provide State aid for every school district based on the characteristics of the student population and up-to-date measures of the individual district's ability to pay." *N.J.S.A.* 18A:7F-44(d).

Equalization aid is a wealth-equalized category of State aid to school districts. The amount of equalization aid that a district receives is based, in part, on measures of local fiscal capacity to raise revenue to support the school district. The first component in calculating a

[7] Based on this principle, the Acting Commissioner declines to apply the higher standard set forth in the Comprehensive Report – that the SFRA must be the "singular" cause for the educational inequities in Lakewood.

[8] Although each type of aid discussed herein is categorized, these categories are all part of the district's general fund revenue.

district's equalization aid is determining its adequacy budget, which is an estimate of a district's cost of providing educational opportunities to its students that are consistent with State standards and incorporates the characteristics of the student body. The calculation begins with a base per pupil amount, which reflects the cost of educating a student included in the district's resident enrollment in grades kindergarten through five who does not have any additional needs.[9] *N.J.S.A.*18A:7F-51(a). Next, this base per pupil amount is augmented using weights that account for students who are: enrolled in middle school or high school; "at-risk" (meaning that the student lives in a household in which income is no greater than 185 percent of the federal poverty threshold); English language learners; or enrolled in a county vocational school district.[10] *Ibid.*

The adequacy budget also accounts for the provision of special education services, employing a census-based model that funds special education based on the assumption that a fixed percentage of the district's resident enrollment requires special education services at a specific excess cost. *N.J.S.A.* 18A:7F-51(e).[11] Two-thirds of this cost is added to the district's

[9] The base per pupil amount is established by the Educational Adequacy Report (EAR), which is issued by the Governor to the Legislature every three years. *N.J.S.A.* 18A:7F-49; *N.J.S.A.* 18A:7F-46(b). The 2023 EAR is available at https://www.nj.gov/education/stateaid/2223/EAR2023.pdf (last visited March 13, 2024). For fiscal year (FY) 2023, the base per pupil amount was $12,451. 2023 EAR at 5.

[10] The EAR establishes these weights. *N.J.S.A.* 18A:7F-49. The SFRA also includes a county-level geographic cost adjustment. *N.J.S.A.* 18A:7F-51(a).

[11] The percentage of students requiring special education services is based on the statewide average classification rate established in the EAR. *N.J.S.A.* 18A:7F-51(e). For FY2023, the classification rate was 15.9 percent and the average excess cost was $19,524. 2023 EAR at 11-12.

adequacy budget.[12] *Ibid.* Finally, the adequacy budget includes an allotment for students who receive speech-only services.[13] *Ibid.*

The second component of calculating a district's equalization aid is determining its local fair share (LFS), which is an estimate of the amount that a district is able to raise through local taxation to support its education expenditures. This calculation considers two economic factors: the district's equalized property valuation and aggregate income, as determined based on New Jersey gross income tax returns.[14] *N.J.S.A.* 18A:7F-52(a). If a district's adequacy budget is greater than the LFS, the district's equalization aid equals the difference between the two; if the LFS exceeds the adequacy budget, the district does not receive equalization aid. *N.J.S.A.* 18A:7F-53.

Districts also receive security aid, which includes two components. First, districts receive a flat per pupil amount, multiplied by the district's resident enrollment.[15] *N.J.S.A.* 18A:7F-56. Second, districts receive a per pupil amount that increases as the percentage of low-income students in the district's resident enrollment increases.[16] *Ibid.* This per pupil amount is multiplied by the number of low-income students included in the district's resident enrollment. *Ibid.*

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[12] The remaining one third is funded through special education categorical aid, which is dispersed to districts without regard to any measure of a district's wealth. *N.J.S.A.* 18A:7F-55.

[13] For FY2023, the speech-only classification rate was 1.61 percent and the average excess cost was $1,270. *N.J.S.A.* 18A:7F-51(e); 2023 EAR at 11-12.

[14] Each of these factors is multiplied by a Statewide rate, with the products being summed and divided by two; the resulting amount is the LFS. *N.J.S.A.* 18A:7F-52(a).

[15] The FY2023 per pupil amount was $86. *N.J.S.A.* 18A:7F-56; 2023 EAR at 10.

[16] For FY2023, the per pupil amount for the second component increases to a maximum of $519 per pupil once the low-income concentration is equal to or greater than 40 percent. *N.J.S.A.* 18A:7F-56; 2023 EAR at 10.

Districts receive transportation aid for each student for whom the district is required to provide transportation, including nonpublic students. *N.J.S.A.* 18A:7F-57. Districts receive a base amount for each student who does not have any special transportation needs, plus an additional fee per mile between the student's home and school.[17] *Ibid.* For students who have special transportation needs – such as the need for a wheelchair on the school bus, a one-to-one aide or nurse assigned to the student, or transportation to an extended school year program – districts receive an increased base amount for each student, plus a mileage fee.[18] *Ibid.*

On top of the transportation aid allocated for each nonpublic student, the State bears additional costs for nonpublic student transportation. For nonpublic school students, districts are subject to a maximum per pupil expenditure.[19] *N.J.S.A.* 18A:39-1a. As the maximum increases beyond the amount of $710 set for the 2001-2002 school year, the additional cost is borne by the State. *Ibid.*

Districts that educate students with higher special education costs receive additional funding in the form of extraordinary special education costs aid. This type of aid reimburses school districts for a portion of the costs incurred in educating students with disabilities in various educational settings. Specifically: 1) for students educated in a public school setting with general education peers, districts are reimbursed for 90 percent of the cost of instruction

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[17] For FY2023, the base amount is $481.37 per pupil, plus $13.17 per mile. *N.J.S.A.* 18A:57(b); 2023 EAR at 10.

[18] For FY2023, the base amount is $3,355.31 per pupil, plus $6.40 per mile. *N.J.S.A.* 18A:57(b); 2023 EAR at 10.

[19] If a district is unable to secure transportation between home and school for an eligible nonpublic school student within this limit, the district can satisfy its statutory obligation to provide transportation by making an aid-in-lieu-of transportation payment to the parent or guardian. *N.J.S.A.* 18A:39-1.6. Accordingly, the district's cost to transport a nonpublic student should never exceed the statutory maximum.

and support services that exceed $40,000; 2) for students educated in a public school setting who are in self-contained classrooms, districts are reimbursed for 75% of the cost of instruction and support services that exceed $40,000; and 3) for students educated in a private, out-of-district placement, districts are reimbursed for 75 percent of the tuition costs that exceed $55,000. *N.J.S.A.* 18A:7F-55.

In addition to the above principles, it is important to note that students enrolled in an approved private school for students with disabilities (APSSD) are included in the district's enrollment count for State aid purposes. *See N.J.S.A.* 18A:7F-45 (including in the definition of "resident enrollment" a pupil who is a resident of the district and is enrolled in a "private school to which the district of residence pays tuition"). Accordingly, for purposes of calculating equalization aid, special education categorical aid, and security aid, a student enrolled in an APSSD is counted on the same basis as a student who attends Lakewood's public schools.[20]

Throughout the proceedings in this matter, petitioners have argued that the SFRA is unconstitutional as applied to Lakewood because it does not take Lakewood's unique demographics into account. Specifically, petitioners cite Lakewood's extraordinary costs in providing transportation and special education services to more than 30,000 nonpublic school students.[21] However, the record demonstrates that Lakewood's own choices and management issues have resulted in the unavailability of funds that could and should have been used to

[20] As noted above, the district may also receive extraordinary special education costs aid for students enrolled in APSSDs, based on the criteria set forth in *N.J.S.A.* 18A:7F-55.

[21] As of 2019, Lakewood had approximately 6,000 public school students and more than 30,000 private school students. Initial Decision at 65. Lakewood's response to the Comprehensive Report indicates that Lakewood currently has approximately 5,000 public school students and more than 40,000 nonpublic students. Lakewood Response at 1.

provide T&E to its students. The ALJ found that these issues existed at the time of the Initial Decision; the Comprehensive Report found that the issues persist today.

The SFRA anticipates that both the State and the local district will contribute to the district's budget in amounts determined by the district's relative wealth. Our Supreme Court has long upheld the sharing of financial responsibility for schools between the State and local districts. *Robinson v. Cahill*, 62 *N.J.* 473, 510 (1975). Accordingly, the Court has considered a municipality's ability to raise funds to support its portion of school funding to be critical when analyzing the formula's constitutionality. Indeed, when finding previous funding regimes unconstitutional as applied to certain districts, the Supreme Court specifically relied upon those districts' *inability* to raise revenue due to the lack of a tax base and municipal overburden. *Abbott by Abbott v. Burke*, 119 *N.J.* 287, 357 (1990) (finding that municipal overburden "effectively prevents districts" from raising money to support education in special needs districts); *see also Robinson v. Cahill*, 69 N.J. 449, 465 (1976) (identifying the possibility of an as-applied challenge based upon a "showing of inability at the local level" to contribute sufficient funding). The Court reasoned that, even at full State funding, such districts could not achieve a thorough and efficient education due to the lack of local resources. That is simply not the case for Lakewood, which has chosen not to require its tax base to further support its schools, and suffers from local mismanagement regarding its transportation and special education costs. Nothing in the record supports a finding that Lakewood suffers from municipal overburden to a degree that it cannot raise revenue to support its public schools and reduce the impact of transportation and special education costs.

As the ALJ found, Lakewood's decision to not maintain adequate local fair share contributed to the district's current fiscal problems. Initial Decision at 96-97. Lakewood had a $5 million surplus in 2010. Initial Decision at 65. Lakewood chose not to raise its tax levy to the cap from 2011-2014, despite the fact that the community's non-public school population was rapidly increasing. Initial Decision at 96-97. From 2014 to 2018, Lakewood was not taxing up to its LFS and lost not only the increased revenue from those years, but the compounding value as well. *Id.* at 60, 71, 97. Over fiscal years 2015 through 2018, Lakewood raised $31.5 million less than it would have had it taxed at its LFS level. *Id.* at 71. Furthermore, Lakewood chose not to avail itself of opportunities to present voters with a referendum to increase the school tax levy, as permitted by *N.J.S.A.* 18A:22-40 and *N.J.S.A.* 18A:7F-39, in any year except 2016.[22] *Id.* at 97-98. As a consequence of all of these decisions, Lakewood's school-tax rate was below the state average and below other districts. *Id.* at 52; Cf. Abbott, 119 N.J. at 355 (noting that special needs districts lacked resources but already had higher-than-average school tax rates and local tax levies). Lakewood only tried on one occasion in 2016 to raise additional money to help with transportation costs, which was unsuccessful. The Acting Commissioner concurs with the ALJ's supported finding that Lakewood failed to take advantage of opportunities under the funding scheme to ameliorate its financial difficulties. Id. at 97. The SFRA cannot be solely blamed for the substantial loss of revenue attributable to Lakewood's tax-related choices.

Additionally, the SFRA is not the only legislation that affects a district's finances. *N.J.S.A.* 18A:7F-38 – which is not a provision of the SFRA – places a cap on the district's tax levy, limiting

[22] The 2016 referendum, which was aimed at providing courtesy busing, a non-T&E item, was rejected by the voters. Initial Decision at 63.

the district's ability to raise revenue. With the tax levy comprising a sizable portion of a district's funding, any restriction on the amount of the levy has financial consequences, separate and apart from the amount of State aid the district receives under the SFRA. The annual Appropriations Act also affects the amount of money districts receive through the SFRA. From FY2010 through the enactment of P.L.2018, c.67, State aid was not allocated pursuant to the provisions of the SFRA. Instead, State aid was calculated based on provisions included in the State budget, with underlying funding policy changing every year. While petitioners assert that this fact contributes to their conclusion that the SFRA is unconstitutional, the Assistant Commissioner concludes that the opposite is true. Lakewood was not fully funded according to the provisions of the SFRA; therefore, even if Lakewood's funding levels had contributed to the denial of T&E during those years, the SFRA could not have been the cause.

The record also demonstrates severe deficiencies in Lakewood's fiscal management, including its failure to keep track of expenditures, records, and data and questionable spending practices. For example, testimony demonstrated that there were no purchase orders in place for students sent to out-of-district placements. Initial Decision at 36. The district did not keep an accurate position control roster reconciled with the names of staff. *Ibid.* An auditor from the Office of Legislative Services testified that an audit of Lakewood found financial transactions that were not consistent with government auditing standards, a lack of control environment leading to a lack of stability, lax reconciliation procedures, a lack of supporting documentation, Board approvals of contracts without review, and other questionable expenses. *Id.* at 54-44. The audit also noted that, in terms of special education costs, there was a lack of proper approval, tuition documentation, and attendance records for students placed in unapproved

nonpublic schools. *Id.* at 76. The New Jersey State Aid Audit Unit determined that poor record-keeping resulted in Lakewood incorrectly reporting hundreds of students on its Application for State School Aid (ASSA). *Id.* at 57.

Attention to administrative and financial detail remains an issue in Lakewood. There were significant data discrepancy and reporting issues related to special education State Performance Plan indicators and categorization of students by placement type. Comprehensive Report at 5. A financial audit noted that there are significant deficiencies in Lakewood's vendor management controls, payroll processing controls, financial close controls, and governance and IT cycle controls. *Id.* at 6. The Comprehensive Report found that the Board is not approving vendors before payment is issued, as required. *Id.* at 10. The transportation review noted that many nonpublic students do not have a student identification number in the District Report of Transported Resident Students (DRTRS), presenting a risk that students might be counted and funded in multiple counties. *Id.* at 20. A spot-check of transportation documents revealed several that listed the Township of Branchburg rather than the Lakewood Public School District as the contracting unit, which "could indicate a systemic lack of legal, procurement, and financial review and oversight of bid documents." *Id.* at 21.

The pervasive errors and questionable practices in Lakewood's record-keeping result in the inefficient use of funds.[23] If the Board is not properly vetting its vendors and only approving payments after services have been rendered, there is a risk that the district is overcharged. This practice is of even greater concern when paying for students' out-of-district

[23] Despite petitioner's suggestion to the contrary, the Assistant Commissioner does not find that the fault for these errors lies with the State monitor. It is not the monitor's responsibility to double-check the work of each member of Lakewood's staff.

placements or for special education services in nonpublic schools; the necessity of documenting tens of millions of dollars for those expenses, and thereby ensuring that all payments are proper, should be paramount. Furthermore, when students are incorrectly categorized or omitted from the rolls, Lakewood may be losing out on State aid for those students.

The record further reflects that transportation and special education costs accounted for more than half of the district's budget in 2017-2018. Initial Decision at 65. The financial impact of these areas was no surprise to the district. Through a Needs Assessment issued by the Department in 2009, when Lakewood was still running a surplus, the Department recommended that Lakewood take steps to reign in transportation and special education costs. Initial Decision at 74. This was followed by a 2014 Audit that made similar recommendations and observed the inevitable population trends. *Id.* at 75. Lakewood has not taken reasonable steps to control its special education and transportation costs despite receiving advice to do so for over a decade. Initial Decision at 77. In the 2009 Needs Assessment, the DOE noted that courtesy busing was contributing to the district's financial strain. *Id.* at 99. While the district no longer provides courtesy busing at its own expense, that practice was not stopped until 2016. *Id.* at 100. The cost of courtesy busing services – totaling $4 million for the 2008-2009 school year,[24] and presumably similar for the other years in which it was provided – drained resources from the district that could have been used to provide T&E. The 2014 Audit observed that Lakewood used gendered buses and that tiering bell times could save $6.7 million. Initial Decision at 75-76. At the OAL hearing, multiple experts, including one testifying on behalf of petitioners, stated that transportation costs could be reduced if route sharing were increased,

[24] Initial Decision at 100.

but it's unclear if any such initiatives have been explored. Id. at 10-12; 55-56. The ALJ found that Lakewood admitted it could stagger their school schedules to greatly reduce transportation costs, but noted that the record was unclear on whether such staggering had ever occurred. Id. at 100.

In terms of current transportation practices, the Comprehensive Report indicates that there is not sufficient separation between Lakewood as a contracting agency and the Lakewood Student Transportation Authority (LSTA) as a vendor. Comprehensive Report at 6. Additionally, the review notes that a single employee may have been employed full time by both Lakewood and the LSTA, creating "potential for procurement issues, diminished incentive to return saved funds to Lakewood, and potential for conflicts in contract oversight of the LSTA as a vendor," in addition to the duplication of salary. *Id.* at 20. Furthermore, there are potential opportunities to lower prices by bidding tiered routes as packages rather than individually. *Id.* at 6. The Report notes that some buses run four to eight routes a day at a cost of over $200,000 per bus, and finds extreme examples of the same bus being used for multiple routes. *Id.* at 145, 153. It also observes that for students transported by the district rather than the LSTA, buses run less full and costs per student are higher. *Id.* at 152.

Although the Commissioner acknowledges that Lakewood's demographics result in higher nonpublic transportation costs than in other districts, when the SFRA is fully funded, the majority of nonpublic transportation costs are supported by the State through a combination of the transportation aid for each nonpublic student and the State's assumption of the portion of the cost that exceeds $710. By way of example, testimony indicated that Lakewood paid $1,000 for each bused student in FY2018. Initial Decision at 21. Under the SFRA, that year

Lakewood would have received a minimum of $466 for each nonpublic student who was required to be transported.[25] With the State bearing the cost in excess of $710, that leaves $244 per nonpublic student that must be covered by the district's tax levy (the $710 local share per student reduced by the $466 State aid payment per student); for 30,000 nonpublic students, the total would be approximately $7.3 million. This cost is certainly substantial, but with an anticipated tax levy of $96.9 million for FY2018,[26] Lakewood would have $89.6 million remaining in its levy to use – in combination with other categories of State aid it received – to provide T&E to its students.

The 2009 Needs Assessment also recommended that Lakewood develop strategies to educate more of its special education students in-district, which would both save money and result in a greater allocation of extraordinary special education costs aid, which is structured to provide more aid for students who are educated in the district than for those in private placements. Initial Decision at 99-100. However, the ALJ concluded that petitioners had failed to demonstrate that Lakewood had taken steps to save money in this manner. *Ibid.* Furthermore, the ALJ concluded that even if none of the 343 students sent to out-of-district placements in the 2018-2019 school year (at a cost of $33 million) could have been educated in-

[25] The base and mileage amounts are established by the EAR every three years and adjusted by the Consumer Price Index (CPI) for the following two years. *N.J.S.A.* 18A:57(b). For FY2017, the base amount was $442.18 per pupil, plus $12.10 per mile. 2023 EAR at 10. Because districts are required by *N.J.S.A.* 18A:39-1 to provide transportation to elementary students who reside more than two miles from school, the minimum transportation aid that the district would receive under the SFRA for each student was $466.31 ($442.18 + $12.10 + $12.10). This amount would have been slightly higher in FY2018 due to the CPI adjustment. The amount would also increase for any student who lived more than two miles from school, or for students with special transportation needs. However, for purposes of clarity, the lowest possible figure – the base amount from FY2017 – is used in this example.

[26] *See* Lakewood's User Friendly Budget, https://www.nj.gov/education/finance/fp/ufb/2017/reports/29/2520/UFB18_2520.pdf (last visited March 13, 2024.)

district, Lakewood could have applied for additional aid based on an usually high rate of low-incidence disabilities.[27] *Id.* at 101. Petitioners did not present any evidence that Lakewood availed itself of this opportunity. *Ibid.* Nor had Lakewood applied for facilities funding to increase its ability to serve special education students in-district, despite the fact that Lakewood's Superintendent testified that a barrier to providing in-district special education services was a lack of space. *Id.* at 17, 99-100.

The Comprehensive Report undermines the Lakewood's Superintendent's claim that so many out-of-district placements are necessary because of insufficient space within the District.[28] Initial Decision at 17. The Report notes that Lakewood has made substantial investments in state-of-the-art related therapy equipment but is underutilizing those resources because of the number of students with disabilities who are not educated in the public-school buildings. Comprehensive Report at 5. As the Comprehensive Report observes, "For students with disabilities to improve their academic achievement and reduce the achievement gap with their nondisabled peers, they need to be included in the core curriculum and receive evidence-based interventions . . . throughout a continuum of special education services which are provided in the Least Restrictive Environment (LRE), where, to the maximum extent appropriate, a student with a disability is educated with peers who are not disabled." *Id.* at 15. Notably, Lakewood has not met targets related to LRE and has been found to be significantly

[27] *See N.J.S.A.* 18A:7F-55(g).

[28] The Superintendent also undermined that claim herself to the extent that she conceded that the Board could have sought voter approval for additional facilities but failed to do so. Initial Decision at 18.

disproportionate with regard to white students being placed in separate settings.[29] *Id.* at 14. The Comprehensive Report concludes that there is room in most of the buildings in the district to provide special education services. *Id.* at 26.

Lakewood's response to the Comprehensive Report indicates that because nonpublic students are not entitled to receive individualized services with respect to disabilities, students with significant disabilities typically leave nonpublic schools to enroll in Lakewood's public school system. Lakewood then becomes responsible for providing the intensive assistance that these students need, including the obligation of finding out-of-district placements at increased costs. Lakewood response at 1. Although Lakewood correctly notes that it is responsible for these students once they have enrolled in the district, as the Comprehensive Report concluded, creating special education programming in-district "could be a huge cost saver in the long run and best for students." *Id.* at 26. The Assistant Commissioner concurs with the ALJ's finding that the record contains "scant evidence of the district's efforts to educate more of these children in-district, which could save Lakewood substantial sums and result in more aid." *Initial Decision* at 101.

Conclusion

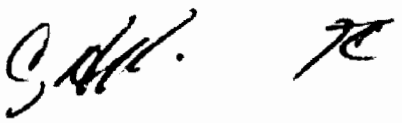
As stated by the Appellate Division, "the State has a continuing obligation to 'keep SFRA operating at its optimal level.'" *Alcantara v. Allen-McMillan*, *supra*, 475 *N.J. Super.* at 71 (quoting *Abbott XX*, *supra*, 199 *N.J.* at 146). However, this principle does not give districts a

[29] Lakewood's response to the Comprehensive Report takes issue with the disproportionality finding, arguing that the Department's data does not take into account the total population of Lakewood students. Lakewood response at 25. However, that argument has previously been rejected by the Appellate Division. *See Bd. of Educ. of the Twp. of Lakewood v. N.J. Dep't of Educ.*, No. A-0709-21, 2023 *N.J. Super.* Unpub. LEXIS 2155 (App Div. Nov. 27, 2023), *pending certification*.

blank check to spend money unwisely at the expense of the State's taxpayers. In light of Lakewood's tax-related choices that decreased revenue, the significant deficiencies in Lakewood's spending practices, and Lakewood's failure to control its transportation and special education costs, the Assistant Commissioner concludes that Lakewood's failure to provide T&E to its students does not derive, in significant part, from the provisions of the SFRA.

Accordingly, the petition of appeal's claim regarding the constitutionality of the SFRA as applied to Lakewood is hereby denied.

IT IS SO ORDERED.[30]



ASSISTANT COMMISSIONER OF EDUCATION[31]

Date of Decision: April 1, 2024
Date of Mailing: April 1, 2024

[30] 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.

[31] Pursuant to *N.J.S.A.* 18A:4-34, this matter has been delegated to Assistant Commissioner Cary Booker.

159-24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the
Teaching Certificates of Jacob Petrik,
Board of Education of the City of Gloucester,
Camden County.

Synopsis

This matter was opened before the Commissioner of Education on February 5, 2024, by way of an Order to Show Cause served by the petitioner, Board of Education of the City of Gloucester, upon respondent Jacob Petrick, requiring him to show cause why an order should not be entered suspending his teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law. In response to the Order to Show Cause, respondent emailed the Office of Controversies and Disputes on March 15, 2024, indicating that he did not wish to challenge the Order to Show Cause.

Upon review, the Commissioner concluded that the allegations, which respondent has chosen not to deny, may be deemed admitted and justify suspension of respondent's certificates. Accordingly, summary decision was granted to the Board, and respondent's certificates were suspended for a period of one year from the date of the filing of this decision – a copy of which was forwarded to the State Board of Examiners for the purpose of effectuating this order.

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.

159-24
Agency Dkt. No. 32-2/24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the
Teaching Certificates of Jacob Petrik,
Board of Education of the City of Gloucester,
Camden County.

This matter was opened before the Commissioner of Education on February 5, 2024, by way of an Order to Show Cause served by petitioner (Gloucester City Board of Education) upon respondent (Jacob Petrik), requiring respondent to show cause why an order should not be entered suspending his teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

On March 14, 2024, respondent emailed the Office of Controversies and Disputes and stated that he does not wish to challenge the Order to Show Cause.

The petition and supporting exhibits submitted by petitioner in this matter indicate that: respondent entered into a contract to work as a teacher for the 2023-2024 school year; the contract provides that it can be terminated by the employee upon sixty days' written notice; and on January 11, 2024, respondent sent correspondence to petitioner indicating that he was resigning, effective February 2, 2024, thereby providing less than the required sixty days' notice. The respondent has not denied these allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(a) and further deems them sufficient to justify suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner, and respondent's teaching certificates, as well as any substitute teaching credential he may hold, are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 11, 2024
Date of Mailing: April 15, 2024

[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.

160-24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Tenure Hearing of
Yesenia Camilo, School District of the Town of
West New York, Hudson County.

Synopsis

Petitioning Board filed tenure charges of unbecoming conduct against respondent, a tenured teacher, and sought to terminate her employment with the district. The charges outline ongoing attendance issues going back to the 2019-2020 school year; most recently, the respondent has been absent from her teaching position since the beginning of the 2023-2024 school year. To date, no reply to the tenure charges has been received from or on behalf of the respondent.

The Commissioner concluded that the allegations – which respondent has chosen not to deny – may be deemed admitted and are sufficient to warrant termination of the respondent from her tenured position. Accordingly, the Commissioner granted summary decision to the petitioner, dismissed the respondent from her tenured teaching position in petitioner's school district, and forwarded a copy of this decision to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

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.

160-24
Agency Dkt. No. 33-2/24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Tenure Hearing of Yesenia Camilo, School District of the Town of West New York, Hudson County.

For the Petitioner, Craig B. Novak, Esq.

No appearance by or on behalf of Respondent, Yesenia Camilo

This matter was opened before the Commissioner of Education on February 15, 2024, through tenure charges of unbecoming conduct certified by Clara Herrera, Superintendent of the West New York School District ("District"), together with supporting evidence against respondent, Yesenia Camilo, a tenured teaching staff member in the District's employ. The District provided respondent with written notice of such certification at the respondent's current known address, via email and certified mail.

On February 20, 2024, the Commissioner directed the respondent via email and regular mail to file an answer to the charges. This communication provided notice to respondent that, pursuant to *N.J.A.C.* 6A:3-5.3 and 6A:3-5.4, an individual against whom tenure charges are certified *"shall have 15 days from the day such charges are filed with the Commissioner to file a written response to the charges with the Commissioner,"* and that failure to answer within the prescribed period would – absent granting of an extension for good cause shown – result in the charges being deemed admitted. A second notice was sent to the respondent on

March 6, 2024. No reply to the tenure charges was received from or on behalf of the respondent.

The certified tenure charges and statement of supporting evidence filed by the District in this matter indicate that the respondent was employed by the District as a tenured teacher. The charges indicate that the respondent has not appeared for work for the 2023-2024 school year, failing to notify the District regarding her absences on all but two dates or to provide a physician's note once she had more than three consecutive absences, as required by District policy. The respondent had accrued 83 absences at the time the tenure charges were filed, 54 of which exceeded her contractual paid time off.

Deeming the allegations to be admitted and noting that the respondent has failed to respond to the charges certified against her, the Commissioner finds that the District's charge of unbecoming conduct has been proven and warrants the respondent's dismissal. Accordingly, summary decision is hereby granted to the District, and the respondent is dismissed from her tenured position with the West New York School District. This matter will be transmitted to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 11, 2024
Date of Mailing: April 15, 2024

[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.

161-24SEC

New Jersey Commissioner of Education

Final Decision

Lisa Strutin, Mary Renaud, Craig Green, Abigail Christmann, Harriett Gaddy, and Stephen Bienko,

Complainants,

v.

Lisa Moyer, Allamuchy Township Board of Education, Warren County,

Respondent.

Synopsis

Complainants alleged, *inter alia*, that respondent Lisa Moyer, a member of the Allamuchy Township Board of Education (Board), violated several sections of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, when she used her Board position to attempt to reverse a harassment, intimidation, and bullying determination made by the Board against her child. Following a full review of the matter, the School Ethics Commission (SEC) determined that the respondent's actions violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) of the Code of Ethics for School Board Members and recommended a penalty of reprimand.

The case was forwarded to the Commissioner for final determination of the appropriate penalty in this matter. Upon review, the Commissioner concurred with the penalty recommendation of the SEC. Accordingly, the respondent shall be reprimanded as a school official found to have violated the School Ethics Act.

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.

161-24SEC
OAL Dkt. No. EEC 11079-22
SEC Dkt. No. C24-22
Agency Dkt. No. 45-2/24

New Jersey Commissioner of Education

Final Decision

Lisa Strutin, Mary Renaud, Craig Green, Abigail Christmann, Harriett Gaddy, and Stephen Bienko,

Complainants,

v.

Lisa Moyer, Allamuchy Township Board of Education, Warren County,

Respondent.

The Commissioner has reviewed the record of this matter and the February 27, 2024 decision of the School Ethics Commission (Commission). The Commission found that respondent Lisa Moyer, a member of the Allamuchy Township Board of Education (Board), violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e) of the School Ethics Act. The Commission recommended a penalty of reprimand for the violation. The Commission's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). Respondent neither filed exceptions to the recommended penalty nor instituted an appeal, pursuant to *N.J.A.C.* 6A:4-1 *et seq.*, of the Commission's underlying finding of violation.

Upon review, the Commissioner concurs with the penalty recommended by the Commission for respondent's actions in using her Board position to attempt to reverse a harassment, intimidation, and bullying determination made by the Board against respondent's child.

Accordingly, respondent is hereby reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 11, 2024
Date of Mailing: April 12, 2024

[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.

Before the School Ethics Commission
OAL Docket No.: EEC-11079-22
SEC Docket No.: C24-22
Final Decision

Lisa Strutin, Mary Renaud, Craig Green, Abigail Christmann, Harriett Gaddy, and Stephen Bienko,
Complainants

v.

Lisa A. Moyer,
Allamuchy Township Board of Education, Warren County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on March 13, 2022,[1] by Lisa Strutin (Complainant Strutin), Mary Renaud, Craig Green, Abigail Christmann, Harriett Gaddy, and Stephen Bienko (collectively, Complainants) alleging that Lisa A. Moyer (Respondent), a member of the Allamuchy Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq*. More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24(b) (in Count 3), as well as *N.J.S.A.* 18A:12-24.1(a) of the Code of Ethics for School Board Members (Code) (in Counts 1-3, Count 5, and Counts 7-8), *N.J.S.A.* 18A:12-24.1(b) of the Code (in Count 1 and Count 7), *N.J.S.A.* 18A:12-24.1(c) of the Code (in Count 1, Count 3, and Counts 5-6), *N.J.S.A.* 18A:12-24.1(d) of the Code (in Count 1, Count 6, and Counts 9-10), *N.J.S.A.* 18A:12-24.1(e) of the Code (in Count 1, Counts 4-6, and Counts 9-10), *N.J.S.A.* 18A:12-24.1(f) of the Code (in Count 7, and Counts 9-10), *N.J.S.A.* 18A:12-24.1(g) of the Code (in Counts 1-2), and *N.J.S.A.* 18A:12-24.1(i) of the Code (in Counts 1-2, Count 4, Counts 8-9, and Count 11).

On May 23, 2022, the Commission voted to place this matter in abeyance, pursuant to *N.J.S.A.* 18A:12-32. Following resolution of the conflicting matter on or about September 6, 2022, the instant ethics case proceeded.

At its special meeting on October 17, 2022, and after reviewing Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, as well as Complainants' response thereto, the Commission voted to grant the Motion to Dismiss as to the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 1 and as to Counts 2-11 (in their entirety);

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[1] On March 13, 2022, Complainants filed a deficient Complaint; however, on March 24, 2022, Complainants cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

but deny the Motion to Dismiss as to Count 1 (excluding the alleged violation of *N.J.S.A.* 18A:12-24.1(a)). The Commission voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions. Based on its decision, the Commission also directed Respondent to file an Answer to Complaint (Answer) as to the remaining allegations (*N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i) in Count 1). In light of the fact that the only remaining allegations involved violations of the Code, the Commission voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) following receipt of the Answer, which the Commission received on December 1, 2022.

At the OAL, a hearing was held on June 22, 2023, and July 24, 2023. Thereafter, the Administrative Law Judge (ALJ) issued an Initial Decision on December 22, 2023, finding that Respondent violated the remaining allegations in Count 1 of the Complaint, and recommended that only the "minimum monetary penalty" be imposed."[2] The parties did not file exceptions to the Initial Decision.

At its meeting on January 23, 2024, the Commission considered the full record in this matter. Thereafter, at its special meeting on February 27, 2024, the Commission voted to modify the Initial Decision, finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(e) in Count 1, but did not violate *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(i) in Count 1. The Commission also voted to recommend a penalty of reprimand.

II. Initial Decision

This matter involves allegations that Respondent and her spouse were involved in "ongoing efforts to negotiate with the District Administration to reverse a determination that their child had committed a [Harassment Intimidation and Bullying (HIB)] violation, as well as a Code of Conduct violation, which became part of [their child's] school record." *Initial Decision* at 2.

Prior to the Board's reorganization meeting on January 4, 2022, Respondent's child had been "deemed liable for a Code of Conduct violation for an incident that occurred in District." *Id.* at 6. The Superintendent testified that she denied Respondent's request to have the Code of Conduct violation removed, and she also denied the request to have the matter brought before the full Board. *Id.* at 4. Nevertheless, Respondent communicated directly with the Superintendent several times "seeking her direct intervention and a reversal of the finding" against her child. *Id.* at 6. The Superintendent testified that Respondent "pressed on to the point of threatening her, saying . . . in the presence of others that 'she could not stand her' and that the Board 'needed to hold her accountable.'" *Id.* at 4. The Superintendent felt threatened by the tone of Respondent's accusations and retained counsel. *Id.* at 4, 6.

[2] Pursuant to *N.J.S.A.* 18A:12-29(c), the Commission may recommend penalties including the reprimand, censure, suspension or removal of a school official, but does not have the authority to issue monetary penalties.

In addition, Respondent also sent an email regarding the topic to each Board member, and did not indicate that she was doing so as a parent and not as a Board member. *Id.* at 6. Furthermore, Board counsel testified that he received emails from Respondent regarding her child, which "is not standard protocol since usually [B]oard member inquiries go through [a]dministration first." *Id.* at 4. The email stated, among other things, "No offense . . . but my legal counsel runs rings around you and your firm . . . Besides the obvious that I am a client there is also a moral obligation that a normal person would naturally feel after hearing what happened to a child. But because your client is devoid of any of those natural feelings we are now all in the mess that we are finding ourselves in." *Exhibit* P-8.

Respondent's husband raised the subject of their child's punishment at the same Board meeting, during public session, and sought clarification on the Board policy related to the subject. *Initial Decision* at 6. Respondent and her spouse continued their advocacy for their child directly with the administration and the Board until they secured private counsel some time after the January 4, meeting. *Ibid.* Respondent and her spouse filed suit against the Board, which was ultimately resolved. *Ibid.* Respondent testified that "everything she did was to advocate on behalf of her [child] who she feels was being unfairly treated." *Id.* at 5.

Based on the testimony of six witnesses, including Complainant Strutin and Respondent, the ALJ finds "there is clear evidence of personality conflicts and disputes over [B]oard policy between a majority of the members of the Board and Respondent which explains in part why the Complaint was filed by multiple [Complainants]." *Id.* at 7. The ALJ further finds Respondent acted inappropriately at the meeting on January 4, by communicating directly with the Superintendent, as well as sending an email about the situation to the entire Board, even if the email was sent as a parent and not as a Board member. *Ibid.* The ALJ also finds there were at least two other Board members who shared concerns during the public meeting related to Respondent's conduct at the meeting, and that despite warnings, Respondent's spouse still discussed the matter in public. *Ibid.* Finally, the ALJ finds sending a letter to the entire Board without indicating in which role it was being sent, parent or Board member, is a violation of the Act. *Ibid.*

The ALJ concludes Complainants have met their burden as to Count 1, namely that Respondent violated the alleged provisions of the Code. *Id.* at 11. The ALJ further concludes Respondent's actions were self-serving in nature and she would secure a personal benefit if the Code of Conduct violation were changed. *Ibid.* According to the ALJ, Respondent's conduct "constitutes bad judgment in violation of the School Ethics training she received and is obligated to follow by circulating an email to the entire Board, by communicating directly with the Superintendent about a private matter, by not stopping or cautioning her husband from bringing a private confidential matter into an open forum, and by not recusing herself or stepping aside when her husband went forward with his presentation to the entire [B]oard during the January 4, meeting." *Ibid.*

The ALJ asserts that although he finds that the remaining allegations in the Complaint have been sustained, "by way of mitigation, due to the emotional nature of the incident involving her [child] . . . Respondent felt that she was acting in [the child's] best interests and was simply unable to separate the two roles" of parent and Board member. *Id.* at 7. The ALJ notes that "this

is an unfortunate situation where Respondent and her spouse got carried away in what they thought was zealous advocacy for their [child], which was compounded by Respondent's refusal to adhere to instructions from [B]oard counsel and other members of the Board." *Id.* at 8. Therefore, and although Respondent violated the alleged violations of the Code, the ALJ recommends that only the "minimum monetary penalty" should be imposed against her. *Ibid.*

III. Analysis

Upon a careful, thorough, and independent review of the record, the Commission finds that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(e) in Count 1, but did not violate *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(i) in Count 1. Accordingly, the Commission recommends a penalty of reprimand for the violations.

Under *N.J.S.A.* 18A:12-24.1(b), board members must make decisions "in terms of the educational welfare of children" and "seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex or social standing." The Commission finds that Respondent's attempts to advocate for her child, including any contact made to the Superintendent, Board members, or Board counsel, while it may have been inappropriate or a violation of the Act, it does not establish that Respondent made a decision contrary to the educational welfare of children, or that she took deliberate action to obstruct the programs and policies designed to meet the individual needs of *all children*, regardless of their ability, race, color, creed, or social standing. Respondent's behaviors stemmed from an attempt to advocate for her child, not contrary to the needs of all children, which does not arise to a violation of *N.J.S.A.* 18A:12-24.1(b).

Pursuant to *N.J.S.A.* 18A:12-24.1(c), board members must confine board action to "policy making, planning, and appraisal" and "frame policies and plans only after the board has consulted those who will be affected by them." The Commission finds that Respondent used her position as a Board member to contact Board counsel to further her personal agenda regarding her child's disciplinary record. A non-Board member parent would not have the ability or opportunity to reach out directly to Board counsel, and as such, Respondent's actions in doing so for personal reasons stemmed from her Board membership and is action unrelated to her duties as a Board member, in violation of *N.J.S.A.* 18A:12-24.1(c).

Under *N.J.S.A.* 18A:12-24.1(d), board members must not "administer the schools," but instead "see that they are well run." The Commission finds that Respondent's direct communication, on multiple occasions, with the Superintendent to seek "direct intervention and a reversal of the finding" against her child, was a direct order to school personnel to alter her child's disciplinary record. By contacting individual members of the Board and Board counsel, in addition to the Superintendent, to lobby for a change to her child's disciplinary record, Respondent became involved in the functions that are the responsibility of school personnel. Although it was a highly emotional situation for Respondent, she attempted to administer the schools by insisting that the Superintendent remove her child's Code of Conduct violation and/or bring the matter to the full Board, and by pressing the issue with individual Board members and Board counsel, in violation of *N.J.S.A.* 18A:12-24.1(d).

Pursuant to *N.J.S.A.* 18A:12-24.1(e), a board member must "recognize that authority rests with the board" and a board member shall not make any "personal promises nor take any private action that may compromise the board." The Commission finds that Respondent's efforts to persuade individual Board members and Board counsel to advocate for her personal agenda, namely the reversal of her child's Code of Conduct and HIB violations, was action beyond the scope of her duties as a Board member. Although parents may contact the Superintendent regarding their children, Respondent was only able to contact individual Board members and Board counsel regarding her child's disciplinary record due to her Board member status. Such action has the potential to compromise the Board as she was attempting to influence Board members to overturn a decision regarding her child that the chief school administrator made. Additionally, when Board counsel receives emails, counsel may charge the Board for the time spent reading and/or responding to communications stemming from matters involving the Board, so Respondent's email to Board counsel for a personal matter may cost the Board money. As such, Respondent's actions went beyond the scope of her duties, and by its nature, that action had the potential to compromise the Board, in violation of *N.J.S.A.* 18A:12-24.1(e).

As set forth in *N.J.S.A.* 18A:12-24.1(g), board members must "hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools" and in all other matters, board members must "provide accurate information and . . . interpret to the staff the aspirations of the community for its school." The Commission finds that Respondent's discussion of her child's matter in public does not amount to disclosing confidential information. It does not appear that Respondent disclosed any information that she learned through her position on the Board, but rather she discussed information involving her own child that she learned as a parent. As such, Respondent's advocacy for her child does not violate *N.J.S.A.* 18A:12-24.1(g).

According to *N.J.S.A.* 18A:12-24.1(i), Board members must support and protect school personnel in the proper performance of their duties. Respondent's contact and tension with the Superintendent stemmed from the sensitive and emotionally charged topic of disciplinary action involving her child. As such, the Commission finds her communications were not deliberate action that resulted in undermining, opposing, compromising, or harming school personnel in the proper performance of their duties, and therefore, did not violate *N.J.S.A.* 18A:12-24.1(i).

With respect to a penalty, the Commission finds that a reprimand is appropriate. The Commission understands the need for a parent to advocate on behalf of her child and recognizes that Respondent was highly emotional given her concerns surrounding what she felt was an incorrect outcome that would have a lasting impact on her child's disciplinary record. However, the Commission notes that in doing so, a school official must adhere to the Act. Given Respondent's violations of the Code, balanced with the unique mitigating circumstances present in this matter, the Commission recommends a penalty of reprimand.

IV. Decision

For the aforementioned reasons, the Commission modifies the Initial Decision of the OAL and finds that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d) and

N.J.S.A. 18A:12-24.1(e) in Count 1, but did not violate *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(i) in Count 1. Additionally, the Commission recommends a penalty of reprimand for the violations.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* **within thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: February 27, 2024

Resolution Adopting Decision in Connection with C24-22

Whereas, at its special meeting on October 17, 2022, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Initial Decision dated December 22, 2023; and

Whereas, the ALJ found that Respondent violated the remaining allegations in Count 1 of the Complaint, and recommended that only the "minimum monetary penalty" be imposed; and

Whereas, the parties did not file exceptions to the Initial Decision; and

Whereas, at its meeting on January 23, 2024, the Commission reviewed the record in this matter, and discussed modifying the Initial Decision to find that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(e) in Count 1, but did not violate *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(i) in Count 1; and

Whereas, at its meeting on January 23, 2024, the Commission discussed recommending a penalty of reprimand for the violations; and

Whereas, at its special meeting on February 27, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on January 23, 2024; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its special meeting on February 27, 2024.

Brigid C. Martens, Director
School Ethics Commission

162-24E
OAL Dkt. No. EDU 03883-24
Agency Dkt. No. 75-3/24

New Jersey Commissioner of Education

Order on Emergent Relief

Biruthan Ganaganayagam,

Petitioner,

v.

New Jersey Department of Education, Office of Student Protection,

Respondent.

The record of this emergent matter, the sound recording of proceedings at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed.[1] Upon such review, the Commissioner concurs with the ALJ that petitioner has demonstrated entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6. Accordingly, the recommended Order of the OAL granting petitioner's application for emergent relief is adopted, with modification as explained herein.

The Commissioner wishes to clarify that while the ALJ appears to have assumed that a conditional discharge under New York law has the same effect as a conditional discharge under New Jersey law, a review of the relevant statutes suggests otherwise. The plain language of New York's conditional discharge statute, *N.Y.P.L.* § 65.05, indicates that a conviction occurs prior to

[1] The Order was received by the agency on March 27, 2024. On April 3, 2024, the ALJ issued a revised decision, which was captioned as an Initial Decision and informed the parties of the opportunity to file exceptions. The Commissioner has determined that the issue of emergent relief will be addressed herein, and a final agency decision addressing the merits of the underlying petition will be forthcoming in the usual course, following the review of the exceptions filed by respondent and any reply thereto that petitioner may file. No information or arguments contained in the exceptions filed by respondent were considered in reaching the decision herein regarding emergent relief.

imposition of a conditional discharge sentence. *Cf. N.J.S.A.* 2C:36A-1 (providing that a conditional discharge for certain eligible drug offenses need not result in the entry of a judgment of conviction). Moreover, nothing in the New York statute's plain language implies that the conviction is automatically nullified upon completion of the conditional discharge sentence. Furthermore, relevant New York case law suggests that the underlying conviction remains intact. *See generally People v. Seaberg*, 74 *N.Y.2d* 1, 6, 11-12 (N.Y. App. Div. 2d Dep't 1988), *aff'd*, 541 *N.E.2d* 1022 (N.Y. 1989) (holding that agreement wherein the defendant received a sentence of conditional discharge in exchange for his right to appeal the underlying judgment of conviction was valid). And while *N.Y.P.L.* § 160.60 provides, by operation of law, that an arrest and prosecution are nullified if a criminal action is terminated "against a person in favor of such person" pursuant to the parameters of *N.Y.P.L.* § 160.50(3), *N.Y.P.L.* § 160.50(3) does not include a conviction and sentence of conditional discharge among the enumerated circumstances which constitute termination of a criminal action "in favor of such person."

That said, even assuming petitioner's 2006 Class A misdemeanor conviction, pursuant to *N.Y.P.L.* § 165.40, of fifth-degree criminal possession of stolen property remains on his criminal record, he has nevertheless satisfied each of the *Crowe* factors and is entitled to emergent relief. The Commissioner concurs with the ALJ, for the reasons stated in the Order, that petitioner will suffer irreparable harm if the requested relief is not granted, and that petitioner will suffer greater harm on balance than respondent if the requested relief is not granted. Regarding whether the legal right underlying petitioner's claim is settled, and whether petitioner has a likelihood of success on the merits, the Commissioner's analysis differs from that of the ALJ, as explained next, because the ALJ presumed that the New York conviction was a nullity in the absence of adequate legal support for said conclusion.

The controlling statute regarding the permanent disqualification of individuals from public school employment is *N.J.S.A.* 18A:6-7.1, which provides that an individual shall be permanently disqualified if his criminal record check reveals a conviction for one of the New Jersey crimes identified in the statute or if he was convicted under a similar statute in another state "for a substantially equivalent crime or other offense." At respondent's request, petitioner requested police records related to the conviction but was informed in writing that the police department did not retain the records beyond the requisite seven-year retention period. The limited record provided to the Commissioner on emergent relief lacks sufficient evidence to support a determination that petitioner was convicted under a similar New York statute of a crime that is substantially equivalent to a New Jersey disqualifying crime enumerated in *N.J.S.A.* 18A:6-7.1. Absent such a determination, it was unlawful for respondent to permanently disqualify petitioner from public school employment. Consequently, based upon the limited record as presently comprised, the Commissioner holds that the legal right underlying petitioner's claim is settled, and that petitioner has a likelihood of success on the merits.

The recommended Order of the OAL granting petitioner's application for emergent relief is adopted, as modified. During the pendency of these proceedings, petitioner shall not be disqualified from public school employment.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 11, 2024
Date of Mailing: April 12, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
GRANTING EMERGENT RELIEF
OAL DKT. NO. EDU 03883-24
AGENCY DKT. NO. 75-3/24

BIRUTHAN GANAGANAYAGAM,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,
OFFICE OF STUDENT PROTECTION,

Respondent.

Biruthan Ganaganayagam, pro se

David Kalisky, Deputy Attorney General, for Respondent, (New Jersey Department of Education, Office of Student Protection, Matthew J. Platkin, Attorney General of New Jersey)

BEFORE **DANIELLE PASQUALE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, a newly-hired teacher of the Newark City Board of Education (The "Petitioner" or "Mr. Ganaganayagam") requests emergent and final relief from the New Jersey Department of Education's, Office of Student Protection's ("NJDOE" or "OSP") disqualification from his employment with the Newark City Board of Education at the North Star Academy Charter School and OSP's subsequent denial of the Petitioner's request

to rescind their termination of his employment due to an arrest found during his background check.

The case was transmitted to the Office of Administrative Law (OAL) for emergent relief on March 21, 2024 and assigned to me that day. I then conferenced the case on March 22, 2024 in an attempt to identify the issues and possibly resolve the matter. I heard the oral argument on March 26, 2024 via Zoom as the parties could not reach a resolution.

As the facts surrounding the timeline are largely undisputed, they will be discussed and found as **FACT**. Petitioner had a charge in New York that resulted in a Conditional Discharge. Accordingly, I took Judicial Notice that pursuant to N.J.S.A. 2C:36A-1 Conditional Discharge is available for certain first offenses. When that supervisory period after the sentence of conditional discharge is entered, (as there is no plea of guilt, factual basis, admission, or elocution required) "upon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes or disqualifications, or disabilities if any imposed by law upon conviction of a crime or disorderly personas offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. As such, and because there is no affidavit or proof to the contrary, I **FIND** as fact that the New York charge lodged against the petitioner when he was eighteen (18) (almost twenty years ago) resolved in a conditional discharge.

Petitioner submitted a detailed and thorough verified Petition of Appeal for Emergent Relief addressing each of the Crowe v. DeGioia, 90 NJ 126 (1986) factors as will be outlined below. Petitioner moved here from New York for his job at the Charter School in Newark and taught as a teacher in New York for seven (7) years prior where he passed a background check. Petitioner worked at the Charter school for ten (10) days before this note from the investigator of OSP inquired as the "amount" involved in his

charge in New York which might bring the New Jersey equivalent charge up to a third degree. I noted that there was no written argument submitted or affidavit offered by the Deputy Attorney General (DAG) disputing a resolution other than a conditional discharge which, as I note above, shall not be considered a conviction and I so **FIND** that there is no conviction here upon which can be considered here for the disqualification.

The Petitioner cooperated with the OSP investigator as per his verified appeal and is undisputed by the DAG. The DAG has not submitted opposition in this matter. The DAG presented the proofs that the Petitioner sent in good faith to the OSP investigator. In fact, these documents that shall not be considered, shall only be mentioned as the OSP wanted Petitioner to reveal the amount in question. The only thing he could show is that it was under a $1,000 and New Jersey's equivalent criminal code would require a showing of over $500. The Petitioner is the only verified documentation and attestation I have that he cannot put a number on the amount in question. In fact, when I found out that we were discussing a matter that resulted in a Conditional Discharge I instructed any discussion regarding the matter to cease in accordance with law as it is not a conviction, not an admission of guilt and improper for the Petitioner to comment on even though he was cooperative and certified that he did not know the amount in the paperwork prior to my being assigned the file, and thus I so **FIND.**

Without a brief, affidavit or any supporting caselaw to the contrary, Respondent argues that the "conviction" in New York from 2005 should equal a third-degree crime in New Jersey. However, as noted above, Respondent's argument is that this supposes that he can even refer to that incident. There is no dispute that there is no plea, no factual basis and no elocution was given regarding the circumstances surrounding that incident. Further, the DAG did not cite any law that requires that any of these assumptions or speculations apply specifically to Petitioner's termination or disqualification. Notably, the DAG was not aware that Petitioner was appealing a disqualification or termination, but rather that he was appealing the investigation itself, which is not the case. At oral argument the DAG was made aware when Petitioner sent him the e-mail disqualifying him from employment at the Charter School in Newark after the OSP notified them to do

so. The Respondent has not presented any affidavits or certified exhibits of the allegation that the arrest amounted in anything other than a conditional discharge which is as a matter of law, a legal nullity and not up for discussion, and thus I so **FIND**.

Petitioner's representation of the alleged irreparable harm to him and his family is clear. He moved to New Jersey for his job. He is counting on his health insurance as his wife is pregnant and going through many pre-natal appointments. In addition, if the facts or allegations of a conviction that does not exist and a resulting disqualification from employment at the Charter School get out, it would be harmful to his reputation in the education community and certainly amongst his co-workers. This could also have an effect on any future employment and thus I so **FIND**. In addition, if he does not win this emergent appeal, his boss who is attempting to hold the position open now will have to fill the position. This information is attached to the petitioner's verified petition, was in his sworn testimony at oral argument and it remains unopposed as the DAG could not dispute same and did not submit any paperwork to the contrary; as such I **FIND** it as **FACT.**

It should be noted that I have reviewed all corresponding certifications and documentation from both sides in this matter and discussed the matter at length in an attempt to resolve the matter. It should be noted that the DAG did not submit any written documentation other than to forward emails he received that were already forwarded to him and the OSP investigator by the petitioner regarding the 2005 charge (which was a conditional discharge and thus not a conviction). He did not submit an affidavit from the investigator or any potential witnesses discussing the charge from 2005 or any of the details. The DAG did not brief a legal argument as to why the laws surrounding conditional discharge as a legal nullity should not apply under the circumstances. The document regarding any details is hearsay and I **FIND** that the Petitioner's arguments against the OSP's disqualification hold up against the reason cited for his termination.

In accordance with N.J.A.C. 6A:3-1.6 and 1:1-12.6, emergency relief may be granted "where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case . . . ." My determination in this matter is further governed by the standard

for emergent relief set forth by our Supreme Court in Crowe v. DeGioia, 90 NJ 126 (1986), as follows:

> The judge may order emergency relief ... if the judge determines from the proofs that:
>
> 1. The petitioner will suffer irreparable harm if the requested relief is not granted.
> 2. The legal right underlying the petitioner's claim is settled.
> 3. The petitioner has a likelihood of success on the merits of the underlying claim; and
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the relief is not granted.

ANALYSIS AND CONCLUSIONS

The issue before me is whether, based on the largely undisputed facts and procedural history before me, the criteria for the granting of emergency relief has been met for me to reinstate the petitioner to the Newark City Public Schools after a disqualification where Petitioner has no conviction and thus the OSP cannot prove that the disqualification was appropriate. The applicable regulation incorporates the well-established standard for injunctive relief set forth in Crowe v. DeGioia, 90 N.J. 126 (1982):

> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
> 2. The legal right underlying petitioner's claim is settled;
> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.
>
> [N.J.A.C. 6A:3-1.6]

With respect to the first prong, I **FIND** that petitioner will suffer irreparable harm if the requested relief is not provided. It is undisputed that Petitioner moved to New Jersey after teaching in New York for seven (7) years. He never had a blemish on his employment record in New York and moved to New Jersey for the position at the Newark Charter School which is a coveted position. He cooperated with the investigation in a timely manner and checked off "arrest" on his background investigation which he did not have to do. Regardless, he cooperated and provided the documents regarding an arrest for a charge that he received conditional discharge for which as defined above is not a conviction and thus a legal nullity. To that end, this case is somewhat unique in that I am not required to do a comparability analysis of a New York crime to a New Jersey crime as when it resolves in a Conditional Discharge; I am required by law not to consider it a crime; and thus, it becomes almost impossible for the OSP to provide further proof for Petitioner's disqualification as I cannot consider it under these circumstances, and thus I so **FIND.** In short, I find that Petitioner will suffer irreparable harm if he is disqualified from his employment with the Newark Charter Schools for the reasons cited above. I also **FIND** that any substantive discussion of the alleged conviction in this case would also cause him irreparable harm to his reputation and cause speculation and possibly affect his chances of finding future employment. I also **FIND** that if this disqualification is not undone, that the Newark Charter school will find a replacement thereby costing him this position.

I have reviewed the second and third prongs of Crowe together because the merits and rights are intertwined here. Petitioner has the burden on this application with respect to proving that this forum is likely to reverse the determination of OSP in keeping with the opinion of NJDOE and their legal obligation under the NJ regulations to provide a safe education to residents. To that end, Petitioner's rights are well-settled. In fact, as Respondent notes, there is no statutory or regulatory authority that permits Petitioner to opt out of this requirement. As such, I acknowledge that the NJDOE and OSP are merely reporting what they find and doing their job. However, the DAG has not submitted any sworn documentation or any legal arguments upon which he argues any of the merits other than the existence of a "crime" without a proved amount and without a potential witness for trial. As a result of the DAG's lack of evidence or legal arguments, Petitioner

clearly meets the second and third prongs. The law is clearly settled, and there is a strong likelihood of his prevailing on the merits of his underlying claim and thus I so **FIND.**

On the last prong, I **FIND** that there is demonstrated irreparable harm to the Petitioner as he will not only suffer economic harm but also reputational harm and loss of medical coverage while his wife is pregnant. In addition, he left his last job and moved to New Jersey for his role at the Newark Charter School. That harm certainly outweighs OSP's as there is no right or requirement to disqualify a teacher in New Jersey based upon the lack of a conviction we are discussing here. To that end, I agree with Petitioner that his disqualification of employment was unlawful. In fact, as there was no brief or legal argument to the contrary, I am persuaded that there is no other way for the Petitioner to get relief and he was entirely cooperative, and thus I so **FIND.**

In balancing these interests, I **CONCLUDE** that petitioner has satisfied his burden of proof as to all of the Crowe factors with regard to his desire to overturn his disqualification from his employment at the Newark Charter School and that as a result, the interests clearly weigh in favor of granting the relief sought herein as all four prongs are needed to meet the Petitioner's burden, and have been met accordingly.

ORDER

Accordingly, it is hereby **ORDERED** that the emergent application for relief of the petitioner is hereby **GRANTED** and this resolves the case as no further issues remain.

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.

March 27, 2024
DATE

DANIELLE PASQUALE, ALJ

Date Received at Agency March 27, 2024

Date E-Mailed to Parties: March 27, 2024

lr

EXHIBITS

Petitioner:

Verified Pro Se Petition of Appeal for Emergent Relief

Respondent:

None except the hearsay document regarding the charge resulting in Conditional Discharge. No brief, no affidavits.

164-24
OAL Dkt. No. EDU 01476-23
Agency Dkt. No. 15-1/23

New Jersey Commissioner of Education

Final Decision

L.L. and L.L., on behalf of minor child, L.L.,

Petitioners,

v.

Board of Education of the Township of Cranford, Union County.

Respondent.

The record of this matter, the proposed Confidential Settlement Agreement with Mutual General Releases (Agreement), and the Initial Decision issued by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 13 of the Agreement includes a Confidentiality clause. The parties are reminded that the Board must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* in regard to information concerning this matter, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement

terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 17, 2024
Date of Mailing: April 17, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 01476-23
AGENCY DKT. NO. 15-1/23

L.L. AND L.L., ON BEHALF OF MINOR CHILD, L.L.,

Petitioners,

v.

BOARD OF EDUCATION OF THE TOWNSHIP OF CRANFORD, UNION COUNTY,

Respondent.

Richard J. Kaplow, Esq., for petitioners

Jennifer A. Osborne, Esq., for respondent (Cornell, Merlino, McKeever & Osborne, LLC, attorneys)

Record Closed: March 15, 2024 Decided: March 19, 2024

BEFORE **BARRY E. MOSCOWITZ,** ALJ:

On February 15, 2023, the Commissioner of the Department of Education transmitted this case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A.

52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

A copy of their settlement agreement is attached to this decision. Having reviewed the terms of the settlement agreement, I **FIND** that the parties have entered into their settlement voluntarily, as evidenced by their signatures, the signatures of their representatives, or both on the agreement.

Moreover, I **CONCLUDE** that the settlement agreement is consistent with the law, is fully dispositive of all issues in controversy between the parties, and is otherwise consistent with the requirements of N.J.A.C. 1:1-19.1.

Therefore, given my findings of fact and conclusions of law, I **ORDER** that the parties comply with the terms of their settlement, and that these proceedings are now closed.

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 case. 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 under N.J.S.A. 52:14B-10.

March 19, 2024
DATE

BARRY E. MOSCOIWTZ, ALJ

Date Received at Agency: March 19, 2024

Date Mailed to Parties: March 19, 2024

dr

RESOLUTION 3/11/24 - 53

CORNELL, MERLINO & OSBORNE, LLC
238 St. Paul Street
Westfield, New Jersey
(908) 481-5000
Attorneys for Cranford Public School District

L.L. and L.L. o/b/o L.L., Petitioners v. CRANFORD PUBLIC SCHOOL DISTRICT, Respondent.	Before the Commissioner of Education of State of New Jersey Dkt. No.: EDU 01476-22 Agency Ref. No.: 15-1/23

CONFIDENTIAL SETTLEMENT AGREEMENT WITH MUTUAL GENERAL RELEASES

WHEREAS, on or about July 11, 2022, a Complaint alleging actions of harassment, intimidation, and bullying ("HIB") was filed with the Cranford Public School District (hereinafter referred to as the "District"), the school district governed by the Cranford Township Board of Education (hereinafter referred to as the "Board")(hereinafter collectively referred to as the "District/Board" or "Respondent"); and

WHEREAS, an investigation, which named L.L. (hereinafter referred to as the "Pupil"), was conducted and the Board affirmed the recommendation of the Superintendent of Schools, thereby substantiating a finding of HIB; and

WHEREAS, there is a dispute between the Petitioners and Respondent (hereinafter Petitioners and Respondent shall be collectively referred to as the "Parties"); and

WHEREAS, on or about January 26, 2023, Petitioners filed a Complaint with the Commissioner of Education; and

WHEREAS, on or about February 12, 2023, Respondent filed an Answer with the Commissioner in response to the Complaint; and

WHEREAS, on or about February 26, 2024, the Parties participated in a settlement conference with the Honorable Barry E. Moscowitz, Acting Director & Chief A.L.J.; and

NOW THEREFORE, the Parties having a desire to settle the above matter in an amicable way, hereby agree as follows:

1. The Parties agree that all Cranford Public School District records associated with this matter, which are in the possession and control of the District/Board, shall be removed from the student records of Pupil.

2. The Parties further agree that all documents, including written or electronic/digital, relating to the HIB incident and the District's investigation shall be modified to permanently redact the Pupil's name, initials, Student ID, and State ID from such documents. The Parties acknowledge that once all documents related to the HIB incident, including but not limited to the HIB investigation report, are modified to permanently redact the Pupil's name, initials, Student ID, and State ID from all such documents, those documents will no longer be considered a student record for the pupil. Further, all documents, including written or digital/electronic, relating to the HIB incident and the District's investigation, which are currently included in the Pupil's student records, shall be removed in their entirety from the record and a written confirmation to that effect shall be sent to Petitioners within five (5) days following the ratification of this Agreement by the Board with written notice to counsel.

3. The Parties have reached this compromise to avoid the expense, inconvenience, and potential acrimony of an administrative law hearing under the school laws. The Parties specifically disclaim any liability to each other. The Parties' entry into this Agreement shall not constitute nor shall it be interpreted as an admission of wrongdoing or guilt, or liability in any manner on either of the Parties' part. Any such obligation or liability on either Party's part is expressly denied. The Parties have all entered into this Agreement solely to compromise disputed claims.

4. In consideration of the settlement of the captioned matter, Petitioners, on their own behalf and on behalf of the Pupil, a minor, and the District/Board forever waive their right to take any action against each other regarding this matter.

5. In consideration of the settlement of the captioned matter, Petitioners, on their own behalf and on behalf of the Pupil, a minor, and the District/Board shall mutually release and forever discharge each other, its/their officers, employees, administrators, agents and servants from any and all past, present, or future claims, whether known or unknown to Petitioners, on their own behalf and on behalf of the Pupil, a minor, arising out of the alleged HIB incident that was the subject of this litigation, including but not limited to any and all claims for attorney's fees, money damages, civil liability, or any other equitable or legal relief.

6. In the event that Petitioners, on their own behalf and on behalf of the Pupil, a minor, or the District/Board or any member, employee or authorized agent or representative of the Parties breaches or violates any provision of this Agreement, then in that event the Parties reserve the right to bring a claim before a tribunal of competent jurisdiction to enforce their rights under this Agreement.

7. Each party shall be responsible for its own attorney's fees and costs associated with this matter.

8. This Agreement contains the entire Agreement and understanding between all Parties and constitutes a full and final agreement and settlement on any and all issues.

9. Any dispute arising out of the breach of this Agreement shall be governed by the laws of the State of New Jersey.

10. If, during the term of this Agreement, a specific clause of the Agreement is determined to be illegal or in violation of any Federal or State law, the remainder of the Agreement shall not be affected by such a ruling and shall remain in full force and effect.

11. The Parties have entered into this Agreement freely and voluntarily with a full understanding of their rights and the contents of this Agreement. The Parties acknowledge that they had the opportunity to consult with legal counsel or a representative of their choice and that they reviewed the Agreement in detail with their counsel or representative and fully understand its requirements and limitations.

13. This Agreement shall remain confidential to the maximum extent permitted by law and the Parties shall not disclose its form or contents to any third parties.

14. This Agreement shall be construed as if it were drafted by both Parties contemporaneously.

15. This Agreement is subject to ratification by the Cranford Township Board of Education.

16. Upon the signing of this Agreement by all parties, Petitioners shall withdraw its Petition of Appeal (Docket No. EDU 01476-22) without prejudice. Upon ratification by the Board, Petitioners shall withdraw its Petition of Appeal with prejudice.

17. The Parties stipulate and agree the email and/or fax signatures on this Settlement Agreement shall have the same affect as an original signature.

18. This Agreement shall be incorporated into an Order by the Honorable Barry E. Moscowitz, Acting Director & Chief A.L.J.

L.L. o/b/o L.L., a minor, Petitioner
Date: 03/08/2024

L.L. o/b/o L.L., a minor, Petitioner
Date: 03/08/2024

ON BEHALF OF THE CRANFORD BOARD OF EDUCATION

Kurt Petschow, Board President
Date: 3/11/24

APPROVED - RESOLUTION 3/11/24 - 33

Robert Olsen, SSB/BS

165-24
OAL Dkt. No. EDU 13281-23
Agency Dkt. No. 312-11/23

New Jersey Commissioner of Education

Final Decision

B.C., on behalf of minor child, M.M.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

The record of this matter, the proposed Settlement Agreement and Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 17, 2024
Date of Mailing: April 17, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. EDU 13281-23

AGENCY DKT. NO. 312-11/23

B.C., ON BEHALF OF MINOR CHILD, M.M.,

Petitioner,

v.

CITY OF ELIZABETH BOARD OF EDUCATION,

UNION COUNTY,

Respondent.

B.C. on behalf of minor child, M.M., petitioner, pro se

Brian J. Kane, Esq., for respondent (LaCorte, Bundy, Varady & Kinsella, attorneys)

Record Closed: March 12, 2024 Decided: March 12, 2024

BEFORE **MATTHEW G. MILLER**, ALJ:

This matter was transmitted to the Office of Administrative Law on November 29, 2023 for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

A hearing was scheduled for February 23, 2024 and during that time, the parties agreed to settle the matter. The executed Settlement Agreement indicating the terms of agreement was forwarded to the OAL on March 12, 2024 and is attached hereto.

Having reviewed the record and the settlement terms, I **FIND:**

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or the signatures of their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of 1:1-19.1 and that settlement should be approved. Accordingly, I approve the settlement and **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded

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.

March 12, 2024
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency: March 14, 2024

Date Mailed to Parties: March 14, 2024

sej

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE, (hereinafter referred to as "Agreement"), is made this 11 day of March 2024, by and between the Bethzaida Chaparro (hereinafter, also referred to as "Petitioner"), who currently resides at 70 Westfield Avenue, Elizabeth, New Jersey 07208 and the Elizabeth Board of Education (hereinafter, also referred to as the "Board"), with its principal offices located at 500 North Broad Street, Elizabeth, New Jersey 07208.

WHEREAS, Petitioner enrolled her minor child M.M., as a student in the Elizabeth Public School District for the 2023-2024 school year; and

WHEREAS, the Board determined that the minor child M.M. was ineligible to attend the schools of the Elizabeth Public School District due to domicile outside of Elizabeth; and

WHEREAS, Petitioner commenced an action against the Board appealing its residency determination in a matter entitled B.C. on behalf of minor child, M.M. v. City of Elizabeth Board of Education, OAL Docket No. EDU 13281-2023N, Agency Ref. No.: 312-11/23, (hereinafter referred to as the "Petition"); and

WHEREAS, the Board filed a Counterclaim to the Petition against Petitioner for tuition reimbursement for M.M.'s ineligible attendance in the Elizabeth School District; and

WHEREAS, the Petitioner and the Board (hereinafter, also referred to as the "Parties") having reached a negotiated agreement to fully, and finally, settle all claims among them, including those asserted in the Petition and Counterclaim; and

NOW, THEREFORE, in consideration of the mutual promises and undertaking said forth herein, the parties agree as follows:

The foregoing recitals are incorporated herein as if set forth at length.

1. **Consideration.** In settlement of this matter, Petitioner will pay the Board the amount of three-thousand, one hundred, ninety-two dollars and no cents, $3,192.00, which represents the alleged tuition due and owing for her minor child M.M.'s alleged ineligible attendance in the Elizabeth School District for the 2023-2024 school year. Petitioner shall send three (3) payments of one-thousand, sixty-four dollars and no cents, $1,064.00, in the form of personal checks made payable to the Elizabeth Board of Education. These checks shall be sent to the Respondent's principal place of business, 500 North Broad Street, Elizabeth, New Jersey 07208. The first payment shall be due not later than thirty (30) days after the date of the approval of this agreement by the Commissioner of the Department of Education for the State of New Jersey. The second and third payments shall each be made no later than thirty (30) days thereafter and sixty (60) days thereafter.

In the event that Petitioner fails to make any of the payments described above, the Petitioner shall be in default of this agreement, and the parties agree that judgment shall be entered and docketed in the Superior Court of New Jersey in favor of the Respondent for the balance of three-thousand, one hundred, ninety-two dollars and no cents, $3,192.00, less any payments made prior to the date of default.

2. **Attendance of M.M. at Elizabeth Public School District.** Petitioner unenrolled the minor child M.M. from the Respondent's school district on February 23, 2024. M.M. shall not be permitted to attend school in the Elizabeth Public Schools. Petitioner shall not be permitted to attempt to re-enroll the minor child M.M. unless the Petitioner submits adequate proofs that the child is domiciled in Elizabeth, pursuant to N.J.S.A. 18A:38-1, et. seq., and so long as Petitioner follows the proper enrollment procedures.

3. **Housing of Ms. Francisca Camacho.** Pursuant to this agreement, the Respondent and its investigators agree to not deliberately proceed with any action that may negatively affect the housing and domicile of Petitioner's mother, Ms. Francisca Camacho, who resides at 70 Westfield Avenue, Elizabeth, New Jersey, 07208. The Respondent and its investigators shall not actively participate in any investigation or process regarding Ms. Camacho's domicile at 70 Westfield Avenue, Elizabeth, New Jersey, 07208 unless compelled to by Court Order.

4. **Waiver and Release of Claims.** In settlement of this matter and in consideration of the payments set forth in Paragraph 1 above, Petitioner hereby releases and forever discharges the Board, in its official and personal capacities, and its related or affiliated entities, and its past, present and future officers, directors, attorneys, employees, owners, insurers, and their respective successors and assigns (collectively "Releasees"), jointly and severally, from any and all actions, complaints, causes of action, lawsuits or claims of any kind (collectively "Claims"), known or unknown, asserted or unasserted, which Petitioner, her heirs, agents, executors, successors or assigns ever had, now have or hereafter may have against Releasees arising out of any matter, occurrence, omission, or event existing or occurring prior to Petitioner's execution of this Agreement, including, without limitation: any and all causes of action suits, debts, dues, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, obligations, promises, variances, trespasses, damages, judgments, executions, claims and demands, whether arising in contract or tort, vested or contingent, whether known or unknown, direct or indirect, existing or not existing, by reason of any matter, cause or thing whatsoever, in law or at equity from the beginning of time to the date of the execution of this Agreement.

In settlement of this matter and in consideration of the payments set forth in Paragraph 1 above, Respondent hereby releases and forever discharges the Petitioner from any and all actions,

complaints, causes of action, lawsuits or claims of any kind, known or unknown, asserted or unasserted, regarding tuition reimbursement for 2023-2024 school year. Respondent waives and releases the Petitioner from any and all other causes of action, suits, debts, dues, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, obligations, promises, variances, trespasses, damages, judgments, executions, claims and demands, whether arising in contract or tort, vested or contingent, whether known or unknown, direct or indirect, existing or not existing, by reason of any matter, cause or thing whatsoever, in law or at equity from the beginning of time to the date of the execution of this Agreement.

5. **Stipulation.** Simultaneous with the execution of this Agreement, Petitioner and counsel for the Board shall execute a Stipulation of Dismissal with Prejudice with regard to the Petition and the Board's Counterclaim in the form attached hereto as Exhibit A.

6. **Counterparts; Entire Agreement; No Oral Modification.** This Agreement may be executed in counterparts, which together shall comprise the entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements, written or oral, expressed or implied. No other promises, agreements or amendments, or any separate agreement relating to the subject matter of this Agreement shall be binding or shall modify this Agreement unless expressed in writing and signed by all parties hereto.

7. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

8. **No Admission of Liability.** Nothing in this Agreement shall be construed as an admission or concession of liability or wrongdoing by either party to this agreement. Rather, this Agreement is being offered for the sole purpose of settling cooperatively and amicably any and all possible disputes between the parties.

9. **Severability**. Nothing in this Agreement is intended to violate any law or shall be interpreted to violate any law. If any paragraph or part or subpart of any paragraph in this Agreement or the application thereof is construed to be overbroad and/or unenforceable, then the court making such determination shall have the authority to narrow the paragraph or part or subpart of the paragraph as necessary to make it enforceable and the paragraph or part or subpart of the paragraph shall then be enforceable in its/their narrowed form. Moreover, each paragraph or part or subpart of each paragraph in this Agreement is independent of and severable (separate) from each other. In the event that any paragraph or part or subpart of any paragraph in this Agreement is determined to be legally invalid or unenforceable by a court and is not modified by a court to be enforceable, the affected paragraph or part or subpart of such paragraph shall be stricken from the Agreement, and the remaining paragraphs or parts or subparts of such paragraphs of this Agreement shall remain in full, force and effect.

10. **Headings.** The headings contained in this Agreement are for convenience of reference only and are not intended, and shall not be construed, to modify, define, limit, or expand the intent of the parties as expressed in this Agreement, and they shall not affect the meaning or interpretation of this Agreement.

11. **Interpretation.** This Agreement shall be construed without aid of any canon or rule of law requiring construction or interpretation against the party drafting or causing this Agreement or any provision thereof to be drafted.

12. **Contingency.** It is agreed and understood by all Parties hereto that this Agreement is contingent upon each of the Parties fulfilling all of their respective duties, obligations, and/or promises as stated herein.

13. **Entire Agreement.** By executing this Agreement, Petitioner represents and acknowledges, that she does not rely, and has not relied, upon any representation, or statement, not set forth in this Agreement made by Respondent, or their Counsel, with regard to the subject matter, basis, or effect of this Agreement, or otherwise. This Agreement sets forth the entire agreement between the parties, and supersedes any, and all, prior agreements, or understandings between the parties.

14. **Assent to Terms.** On February 23, 2024, the parties negotiated the terms of this Agreement at the Office of Administrative Law. Petitioner's signature below indicates that she was given the opportunity to review this Agreement with an attorney, that the Petitioner has read and understood the provisions, and that she has executed it voluntarily with full knowledge of the significance of all provisions. Ms. Bethzaida Chaparro hereby acknowledges that she enters into this agreement with a full understanding of her rights and that she was fully informed of the implications of this Agreement, and does so without duress, of her own free will and volition.

STATEMENT BY PETITIONER

The Respondent has advised me, in writing through the Agreement, to consult with Counsel prior to executing the Agreement. I have carefully read, and fully understand, the provisions of the Agreement, the acceptance, and sufficiency, of which I acknowledge. I have had sufficient time, and opportunity, to consult with Counsel of choice prior to executing the document, and I intend to be legally bound by its terms. I further so execute the Agreement in a knowing, and voluntary, manner with the full knowledge that I am waiving any and all rights, or claims, I may have to later challenge the sufficiency, scope, or terms of the Agreement and have, again, done so after consultation with my Counsel. I understand that I may revoke my signature within seven (7) days following my signing, I understand that my rights under the Agreement are contingent on my signing the Agreement, and not revoking my signature on said document.

IN WITNESS WHEREOF, the signatures and/or seals of the parties or their duly authorized representatives have been set forth on the dates indicated below:

BETHZAIDA CHAPARRO

Dated: 2/12/24

STATE OF NEW JERSEY:

: ss

COUNTY OF :

I certify that on February 12, 2024 Bethzaida Chaparro, personally came before me and acknowledged under oath, to my satisfaction, that she is the person named in the Agreement, and that she personally signed the document, and signed, sealed, and delivered the document as her act and deed.

ISABEL CALATAYUD
NOTARY PUBLIC
STATE OF NEW JERSEY
ID # 2276414
MY COMMISSION EXPIRES MAY 18, 2026

HAROLD KENNEDY, JR.
Board Secretary/Business Administrator
For the Elizabeth Board of Education
Dated: 3/11/2024

Brian J. Kane, Esq.
N.J. Attorney I.D. # 333912021
LA CORTE, BUNDY, VARADY & KINSELLA
989 Bonnel Court
Union, NJ 07083
(908) 810-0500
Attorneys for Defendant Board of Education
of the City of Elizabeth, Union County

B.C. on behalf of minor child, M.M., Petitioner, v. Board of Education of the City of Elizabeth, Union County Respondent.	BEFORE THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW JERSEY AGENCY DOCKET NO.: 312-11/23 OAL DOCKET NO.: EDU-13281-2023N **STIPULATION OF DISMISSAL WITH PREJUDICE**

The matter in difference in the above-entitled action having been amicably adjusted by and between the Petitioner, B.C. on behalf of minor M.M., and Respondent Board of Education of the City of Elizabeth, Union County, it is hereby stipulated and agreed by the undersigned that the same be and is hereby dismissed with prejudice, without costs.

All parties to this action further agree that this stipulation may be executed in counterparts and that photocopies and/or facsimile copies of this stipulation shall be deemed original signatures for the purposes of this stipulation.

STIPULATED:

Bethzaida Chaparro
70 Westfield Ave,
Elizabeth, New Jersey 07208
Dated:

LA CORTE, BUNDY, VARADY & KINSELLA
Attorneys for Respondent, Elizabeth Board of Education

/s/ Brian Kane
Brian J. Kane, Esq.
989 Bonnel Court
Union, New Jersey 07083
Dated: 02/26/2024

167-24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the School Nurse Non-Instructional Emergency Certificate of Lydia Mokaya, North Hudson Academy, Hudson County.

Synopsis

Petitioner sought to suspend the School Nurse, Non-Instructional Emergency Certificate of the respondent for resigning on inadequate notice, pursuant to *N.J.S.A.* 18A:26-10. Respondent filed an answer to an Order to Show Cause in January 2019, and the matter was transmitted to the Office of Administrative Law (OAL) for a hearing. The hearing was held remotely via Zoom on January 29, 2021, and an Initial Decision was subsequently issued by the Administrative Law Judge (ALJ) on March 15, 2024.

The ALJ found, *inter alia*, that: North Hudson Academy (North Hudson) is a private school for the disabled; respondent was initially hired by the petitioner as a paraprofessional and thereafter attended nursing school; she was offered the position of school nurse for the 2018-2019 school year under an emergency certificate, and was allowed to work a 30 hour week instead of the usual full time schedule of 35 hours/week; petitioner became concerned that her part time nursing schedule was not adequate to cover the medical needs of the students at North Hudson and discussed this with the school director on September 11, 2018; at this meeting, the school director told respondent that if she found a full-time school nurse to replace her, he would hire them; respondent then sought and found a replacement for her position; respondent tendered a letter of resignation on September 28, 2018, stating that she would work through December 21, 2018; and her replacement assumed the position of school nurse in January 2019. As *N.J.A.C.* 6A:9B-4.8, the regulation governing suspension of certificates for failure to give notice of intention to resign, provides an exception for employees who resign with consent of the school administration, the ALJ concluded that North Hudson Academy failed to sustain its burden of proof that the respondent is guilty of unprofessional conduct under *N.J.S.A.* 18A:26-10 and *N.J.A.C.* 6A:9B-4.8; accordingly, the Order to Show Cause seeking a finding that respondent was guilty of unprofessional conduct was denied.

Upon review, the Commissioner concurred with the ALJ that petitioner, North Hudson Academy, has not demonstrated by a preponderance of the credible evidence that respondent committed unprofessional conduct warranting suspension of her certificate under *N.J.S.A.* 18A:26-10. Accordingly, the Initial Decision was adopted as the final decision in this matter, and the Order to Show Cause was denied.

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.

167-24
OAL Dkt. No. EDU 02633-19
Agency Dkt. No. 38-2/19

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the School Nurse Non-Instructional Emergency Certificate of Lydiah Mokaya, North Hudson Academy, Hudson County.

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

Upon review, and for the reasons thoroughly detailed in the Initial Decision, the Commissioner concurs with the Administrative Law Judge that petitioner, North Hudson Academy, has not demonstrated by a preponderance of the credible evidence that respondent committed unprofessional conduct warranting suspension of her certificate under *N.J.S.A.* 18A:26-10.[1]

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the Order to Show Cause is hereby denied.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 22, 2024
Date of Mailing: April 24, 2024

[1] According to the record, respondent's certificate expired in July 2019.

[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
OAL DKT. NO. EDU 02633-19
AGENCY DKT. NO. 38-2/19

IN THE MATTER OF THE TEACHING CERTIFICATE(S) OF LYDIA MOKAYA, NORTH HUDSON ACADEMY, HUDSON CO.

TJ Legg, Esq., for petitioner, North Hudson Academy, (The Legg Law Firm, LLC, attorneys)

Eldridge Hawkins, Sr., Esq., for respondent, Lydia Mokaya

Record Closed: February 20, 2024 Decided: March 15, 2024

BEFORE **JULIO C. MOREJON**, ALJ:

SUMMARY OF THE CASE

Petitioner, North Hudson Academy seeks to suspend the School Nurse, Non-Instructional Emergency Certificate of respondent, Lydia Mokaya for resigning on inadequate notice, pursuant to N.J.S.A. 18A:26-10.

PROCEDURAL HISTORY

On January 14, 2019, petitioner, the North Hudson Academy (North Hudson Academy), filed with the Commissioner of the State of New Jersey, Department of

Education (Commissioner of Education) , an Order to Show Cause and Affidavit of Dennis P. McCarthy, Director of North Hudson Academy, seeking to suspend the School Nurse, Non-Instructional Emergency Certificate (certificate) of respondent, Lydia Mokaya (Mokaya) for unprofessional conduct pursuant to N.J.S.A. 18A:26-10.

On January 23, 2019, the Commissioner of Education entered the Order to Show Cause and instructed North Hudson Academy to serve the same on Mokaya in order to initiate proceedings before the Commissioner of Education. Mokaya was served and on February 19, 2019, Mokaya filed her answer.

On February 25, 2019, the Commissioner of Education transmitted the underlying case to the Office of Administrative Law for an evidentiary hearing. On March 26, 2019, an initial status telephone conference was held, and a Prehearing Order was entered therein. On September 3, 2019, a Notice of Substitution of Attorney was submitted to the undersigned, wherein the Academy's legal counsel, Gregory Mgrditchian, Esq., of the law firm of DeGrado Halkovich, LLC, was substituted by TL Legg, Esq., of the law firm of Legg Law Firm, LLC.

An evidentiary hearing was held via zoom on January 29, 2021. The parties requested the record to remain open to obtain hearing transcripts and submit post-hearing written summations. Following the hearing, telephone status conferences were held on May 3, 2021, June 3, 2021, and September 27, 2021, regarding the status of the hearing transcripts, and submission of the post hearing briefs. Written summations were filed by petitioner on December 21, 2021, and respondent on July 25, 2022.

The record remained open to allow for a review of the hearing exhibits, transcript, and summations, and the same closed on February 20, 2024.

FACTUAL DISCUSSION

In the evidentiary hearing, North Hudson Academy called Mokaya to testify and also presented testimony from Robert Federer, Esq., and Dennis McCarthy, Director of the North Hudson Academy. Mokaya also testified on her own behalf. I **FIND** all of the

witnesses in this matter credible and their testimony to be truthful, and where appropriate, to be corroborated by the documentary evidence submitted herein.

Having considered the testimony of Lydia Mokaya, Robert Feder, Esq., and Dr. Dennis McCarthy, and the following documentary evidence entered into the record: as to North Hudson Academy, exhibit P-2; and as to Mokaya exhibits R 1 through R5, and R8 through R11, I make the following **FINDINGS** of **FACT**:

North Hudson Academy is a private non-profit corporation providing education to the disabled, in North Bergen, New Jersey.[1] Mokaya was originally hired by North Hudson Academy as a para profession. Thereafter, she attended nursing school. On June 5, 2018, Mokaya entered into an employment contact with North Hudson Academy for the school year 2018-2019, as a School Nurse, holding a School Nurse Non-Instructional Emergency Certificate (R-1). The "school year" is defined from when classes begin in September through the end of the school year in June. (Id.) Although her title was that of a "non-instructional" school nurse, North Hudson Academy listed her as a "teaching staff member" because she had been a para professional at the school prior to being hired as the school nurse. (Transcript: 245: 3-13).

The School Nurse position was a full-time position, of thirty-five hours per week. At the time she signed the employment contract, Mokaya intended to work for the full term of the agreement. However, Mokaya was unable to work the full-time schedule required because she worked at night and North Hudson Academy allowed her to work about thirty (30) hours per week. Mokaya acknowledged the terms of the employment contract requiring her to work a full school year and the consequences for her not doing the same. (R-1, Section 6.3, and Memorandum dated June 1, 2018).

Mokaya was concerned that because some of the students who attended North Hudson Academy required medical attention, and she could not work the full-time hours, the school would be best served by a full-time School Nurse. On September 11, 2018, Mokaya had a conversation with Dr. Dennis McCarthy (Dr. McCarthy), where she

[1] It was represented by Dr. Dennis McCarthy, Director of North Hudson Academy that the school is approved by the Commissioner of Education as a private non-profit school providing education to the disabled.

expressed her concern that North Hudson Academy needed a full-time School Nurse to attend to some of the student's medical needs. Dr. McCarthy told her to "find me a full-time nurse and I'll hire them." (Transcript 54:22-55:10). Mokaya believed that if she could find a full-time School Nurse she could leave her employment at North Hudson Academy. (Id.)

On September 28, 2018, Mokaya tendered a letter of resignation to Dr. McCarthy, effective December 21, 2018. (R-9). As per her discussion with Dr. McCarthy, Mokaya sought a replacement for the School Nurse position, for when she was to leave. Mokaya knew someone called "Sabrina" and told her about the upcoming opening at North Hudson Academy due to her pending resignation in December 2018. (R-10). Sabrina applied, was interviewed, and hired by North Hudson Academy as School Nurse, and commenced her employment as School Nurse in January 2019, after Mokaya left. After satisfying North Hudson Academy's sixty-day probationary period for new hires, Sabrina remained School Nurse at North Hudson Academy through the end of the school year in June 2019. Sabrina did not seek to renew her contract with North Hudson Academy after the school year.

On December 7, 2019, Dr. McCarthy prepared a Memorandum addressed to Mokaya, referencing her "Employment Resignation" (R-3). The Memorandum contained the following language:

> You have informed the school administration that you have decided that your last day of work attendance will be December 21, 2018.
>
> It is understood that you will professionally and satisfactorily perform all current duties as a School Nurse through 3:15PM Friday, 12/21/18, including the successful transition of information and support to staff who may be assuming your duties.
>
> Finally, you are responsible for the satisfactory completion (and review with the Indicated staff member) of the following prior to 3:15PM 12/21/18:
>
> [listed obligations are not included herein]

> Please be advised that your final pay check cannot be release if the obligations above ae not satisfactorily met by your last day of work.
>
> [R-3]

Mokaya completed all of the required obligations contained in the Memorandum and her last day of employment as School Nurse at North Hudson Academy was December 21, 2018, which was the last day of classes. She was paid her final pay check said date. (R-10A).

North Hudson Academy affirmed that the employment contract (R-1) prepared by its counsel, Robert Feder, Esq., (Feder), was revised by Dr. McCarthy as to the terms applicable to for the school year in question (2018-2019) (R-3). Feder also affirmed that the employment contract did not have a breach of contract provision or early termination provision. (Transcript: 125:19-22). Feder further confirmed that the decision to file the Order to Show Cause in this matter was made by Dr. McCarthy and did not include the Board of Trustee's vote. (Transcript: 153: 19-25 and 154: 1:5). Feder further confirmed that the purpose of proceeding with the underlying Order to Show Cause against Mokaya was "among other things is the [sic] discouraging people to breach their contracts and the detrimental affect it has on the school and its student population." (Transcript: 155:19-24).

Dr. McCarthy testified that North Hudson Academy undertook the within action against Mokaya because he believed she was guilty of "unprofessional conduct" because she left her employment before the end of her one-year term. (Transcript: 190:5-25). When asked on direct examination to explain the December 7, 2018 memorandum (R-3), Dr. McCarthy stated that the memorandum contained the items Mokaya needed to complete before she left her employment after December 2018. (Transcript: 202:23-24; 203: 1-25). Dr. McCarthy testified that Mokaya's decision to leave her employment prior the end of the term was a "breach" of the employment contract and that he never intended or communicated to Mokaya that she was being let out of her contract prior to its term. (Transcript: 209:2-12).

On cross-examination, Dr. McCarthy denied requesting a replacement nurse from Mokaya and denied agreeing to the same, despite one being provided and hired by the school. (Transcript: 221: 4-12). Dr. McCarthy confirmed that the primary reason the underlying action was filed was because Mokaya left prior to the end of her employment contract and the school needed "consistency" of a nurse for the school year. (Transcript: 227: 1-7). In cross-examination, Dr. McCarthy admitted that he knew a replacement for Mokaya had been hired, but he did not know at the time if she would be a "qualified" replacement. (Transcript: 276:9-13). Dr. McCarthy confirmed that Sabrina was a qualified replacement, as she remained through the end of the school year. (Transcript: 281: 18-23).

Dr. McCarthy testified that after June 2019, Sabrina left and North Hudson Academy contracted a nursing service company, which did not always provide the same nursing personnel during the school year. (Transcript: 240: 6-20). Dr. McCarthy confirmed that with the exception of one employee who left during their sixty-day probationary period, all prior staff who left North Hudson Academy before the end of their contract term were brought up on charges before the State Department of Education. (Transcript: 285:3-7). Dr. McCarthy further stated that the decision to commence the within action against Mokaya was done strictly for school policy reason and not with any malice toward Mokaya.(Transcript: 286:10-14). North Hudson Academy affirmed that it did not suffer any monetary damages due to Mokaya leaving her employment prior to the contract term. (Transcript: 297: 17-26).

CONCLUSIONS OF LAW

N.J.S.A. 18A:26-10 provides that ("[A]ny teaching staff member employed by a board of education . . . who shall, without the consent of the board . . . cease to perform his duties before the expiration of the term of his employment, shall be deemed guilty of unprofessional conduct . . ." In order to sustain the charge of unprofessional conduct pursuant to N.J.S.A. § 18A:26-10, the petitioner must demonstrate that respondent: 1) was a teaching staff member employed by a board of education who; 2) ceased to perform her duties before the expiration of the term of her employment; 3) without consent of the board. The underlying purpose of N.J.S.A. 18A:26-10 is "to protect pupils from the

disruption caused by '[s]taff members who leave before the expiration of their contracts.'" Ibid. (citation omitted.)

In the present matter, the record reflects that the only required criteria in dispute is whether North Hudson Academy gave "consent" for Mokaya's departure prior to the expiration of her employment agreement. Mokaya's employment contract with North Hudson Academy does not provide an early termination provision. However, the employment contract does provide at paragraph 6.3 that an employee who leaves prior to the end of the school year, will be responsible for any "damages" the school incurs and will also be "assumed guilty" of unprofessional conduct "as per N.J.A.C. 6A:9-17.9" (R-1). The cited regulation is now known as N.J.A.C. 6A:9B-4.8, suspension of certificates for failure to give notice of intention to resign, and provides:

> (a) A teaching staff member employed by a district board of education who ceases, without the district board of education's consent, to perform the teaching staff member's duties prior to the expiration of the term of employment shall be deemed guilty of unprofessional conduct.
>
> (b) Upon receiving notice of the fact, the Commissioner may suspend the certificate for a period not to exceed one year pursuant to N.J.S.A. 18A:26-10.
>
> (c) Appeal of the Commissioner's decisions pursuant to this section shall be in accordance with N.J.A.C. 6A:4.

The Commissioner of Education has held that the central purpose of N.J.S.A. 18A:26-10 is "to provide notice to the school so that a suitable replacement can be hired without adversely impacting students." Penns Grove-Carney's Point Board of Education v. Leinen, 94 N.J.A.R.2d (EDU) 405, 407.

The operative word in N.J.A.C. 6A:9B-4.8 for a teaching staff member not to be found guilty of unprofessional conduct is that the school gave "consent" to their departure prior to the term of their employment agreement. The testimony of both Mokaya and Dr. McCarthy show that North Hudson Academy was aware as early as September 18, 2018, that Mokaya would be leaving the school prior to end of her contract term. Said testimony

and that of Feder, further reveals that the school did not sustain any "damages" as Mokaya produced Sabrina as her replacement, who remained as school nurse through the school year. Moreover, the record reveals that Mokaya completed all of her assigned tasks prior to her departure in January 2019 (R-3). The only reason this action was commenced by North Hudson Academy was because Dr. McCarthy felt that the time of Mokaya's departure he did not have a "qualified" replacement in Sabrina.

Dr. McCarthy's testimony that Mokaya's early departure would be disruptive to the school is contradicted by the record which shows: 1)Mokaya provided four-months' notice of her departure; 2) nurse replacement was in place prior to Mokaya's departure and 3) the replacement nurse remained employed through the end of the school year.

For these reasons, I **CONCLUDE** that petitioner, North Hudson Academy has not sustained its burden of proof by a preponderance of the credible evidence that Mokaya is guilty of unprofessional conduct under N.J.S.A. 18A:26-10 and N.J.A.C. 6A:9B-4.8. Accordingly, I **CONCLUDE** that the Order to Show Cause seeking a finding that Mokaya is guilty of unprofessional conduct under N.J.S.A. 18A:26-10 is **DENIED**.

ORDER

The charge of unprofessional conduct against respondent Lydia Mokaya is hereby **DENIED.**

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.

March 15, 2024
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency: March 15, 2024

Date E-Mailed to Parties: March 15, 2024

lr

APPENDIX

WITNESSES

For Petitioner:

Lydia Mokaya

Robert S. Feder, Esq.

Dennis P. McCarthy

For Respondent:

Lydia Mokaya

EXHIBITS

For Petitioner:

P-2 Text messages

P-3 Certification of Lydia Mokaya

For Respondent:

R-1 Employment Agreement

R-2 June 1, 2018, Memorandum

R-3 December 7, 2018, Memorandum

R-4 Affidavit of Dennis P. McCarthy

R-5 Order to Show Cause

R-6 and R-7 Not admitted

R-8 Emergency Diabetic Plan

R-9 September 28, 2018 Letter of Resignation

R-10 Text exchanges between Mokaya and Sabrina

R-10A Pay Stubs

R-11 June records and memos regarding Mokaya

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SEC Dkt. No. C87-21
OAL Dkt. No. EEC 06640-22
Agency Dkt. No. 15-12/23A

New Jersey Commissioner of Education

Final Decision

In the Matter of Kerry Anne Mastrofilipo,
Lodi Board of Education, Bergen County

This matter involves an appeal of the School Ethics Commission's (SEC) November 28, 2023, determination that appellant – a former member of the Lodi Board of Education (Board) – violated *N.J.S.A.* 18A:12-24(b) and (c) of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 to -34, by attending an executive session convened remotely on September 14, 2021, during which the Board discussed two candidates for appointment to an open Board seat, one of whom was appellant's husband.[1] The SEC recommended that appellant be censured for the violation. Having carefully reviewed the SEC's decision and the record in its entirety, the Commissioner finds that the SEC's decision that appellant violated the Act is supported by sufficient, credible evidence, and that appellant failed to establish that the decision is arbitrary, capricious, or contrary to law. *N.J.A.C.* 6A:4-4.1(a). Additionally, the Commissioner concludes that the penalty is appropriate.

By way of background, when enacting the Act, the Legislature declared that "it is essential that the conduct of members of local boards of education . . . hold the respect and confidence of the people. These board members . . . must avoid conduct which is in violation of their public

[1] While the SEC adopted the factual findings made by the Administrative Law Judge (ALJ) who heard the matter at the Office of Administrative Law (OAL), it rejected the ALJ's legal conclusion that appellant did not violate the Act.

trust or which creates a justifiable impression among the public that such trust is being violated." *N.J.S.A.* 18A:12-22(a). "The determination of whether a particular interest is sufficient to disqualify a board member is necessarily factual in nature[,] . . . depends upon the circumstances in each case" and "is dictated by a practical feel for the situation." *Friends Retirement Concepts v. Bd. of Educ. of Borough of Somerville*, 356 *N.J. Super.* 203, 214 (Law Div. 2002).

The inquiry "will always be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty." *Ibid.* "An actual conflict of interest is not the decisive factor" in determining whether the Act has been violated, "nor is 'whether the public servant succumbs to the temptation,' but rather whether there is a potential for conflict." *Id.* at 214-15 (quoting *Griggs v. Borough of Princeton*, 33 *N.J.* 207, 219 (1960)). Moreover, "[a] conflicting interest arises when the public official has an interest not shared in common with the other members of the public." *Id.* at 215 (quoting *Wyzykowski v. Rizas*, 132 *N.J.* 509, 524 (1993)).

At issue here are *N.J.S.A.* 18A:12-24(b) and (c) of the Act. *N.J.S.A.* 18A:12-24(b) prohibits a board member from using or attempting to use "his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others," and *N.J.S.A* 18A:12-24(c) prohibits a board member from acting "in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family."

The relevant facts are uncontested. Appellant served as a Board member from January 2019 through January 2022. On September 14, 2021, once the Board became aware of appellant's intent to resign, it held a special meeting to interview candidates for the Board

vacancy. Before the meeting, Board counsel advised appellant that she should not vote on the candidates because her husband was a candidate. The Board interviewed the candidates during public session, held remotely, which appellant attended. After the interviews, the Board discussed the candidates in a remote executive session that same evening. The Superintendent emailed appellant the executive session meeting link, thereby enabling her to log on from her computer, and he admitted her into the executive session.

When the executive session began, the Board attorney asked appellant if she had received an email sent to her during the public portion of the meeting. She responded no. The Board attorney then asked appellant to look over the email. The email contained a link to the New Jersey Department of Education's web page with the statutory language of *N.J.S.A.* 18A:12-24. Using her cell phone, appellant clicked the link in the email and spent about fifteen minutes reading the statute. During this time, she removed her earpiece and was neither listening to the executive session nor looking at her computer screen. She did not speak during executive session and was alone in the room the entire time. She did not disclose any information discussed in the executive session to her husband.

Appellant denies that she was ever told she should not attend the executive session, or that she should not have remained logged in. After the Board adjourned the executive session, appellant emailed Board counsel and asked whether she should abstain from voting on both candidates during the second public session. Board counsel replied, "I would suggest you 'recuse' on both." During the second public session, appellant recused herself from voting on the candidates as per Board counsel's advice. Appellant's husband was not selected to fill the open seat.

In her appeal to the Commissioner, appellant argues that: (1) the SEC's determination that she was present for confidential discussions during executive session was erroneous and arbitrary, and usurped the ALJ's authority to make legal conclusions based upon the evidence; (2) the SEC should not be permitted to substitute its own judgment for that of the ALJ, who recommended that the SEC find no violations occurred, particularly where the SEC failed to meet its burden of production or burden of proof; (3) the SEC should not be permitted to impose broader ethical constraints on board members than those determined by the Legislature by interpreting the Act's plain language in an overbroad manner; (4) the SEC's determination regarding the applicability of the "advice of counsel" defense is devoid of the requisite legal analysis; and (5) if a violation is found, it should be deemed *de minimis* with no penalty attached.

In opposition, the SEC argues that its findings and conclusions regarding appellant's violation of *N.J.S.A.* 18A:12-24(b) and (c) are reasonable and sufficiently supported by the record. The SEC asserts that appellant was undeniably present, albeit remotely, for the executive session on September 14, 2021, and her claim that her remote login and lack of active participation in that session exonerates her from a violation of the Act is without merit. The SEC also contends that, contrary to appellant's position, is it irrelevant under the Act that she did not actually secure a benefit for her husband; her presence created a justifiable impression among the public that she was attempting to use her official position to benefit her husband, which violates the Act. The SEC denies that it overbroadly interpreted the Act and performed de facto rulemaking. It maintains that it considered and rejected appellant's advice of counsel defense, and that its penalty determination was appropriate.

In adjudicating appeals from decisions of the SEC, the Commissioner must "ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated that [the Commission] acted in a manner that was arbitrary, capricious, or contrary to law." *N.J.A.C.* 6A:4-4.1(a). Upon a comprehensive review of the record, the Commissioner finds that the SEC's decision is supported by sufficient credible evidence, and that appellant has not established that the SEC acted in a manner that was arbitrary, capricious, or contrary to law.

Here, appellant had an interest not shared with other members of the public, namely, the Board was considering her husband's candidacy for a Board seat while she was still a Board member herself. Her official position as a Board member allowed her to access the remote executive session link. This privilege or advantage was not extended to the other candidate's spouse. She acted in her official capacity when she logged on to executive session. In so doing, she was aware that the Board would be deliberating regarding the candidates—one of whom was a member of her immediate family. Furthermore, appellant's presence in executive session reasonably created a justifiable impression among the public that she was attempting to secure an unwarranted privilege or advantage for her husband by influencing the Board's deliberations. Even if she did not verbally attempt to influence the Board deliberations, her presence during executive session violated the public trust as it had the potential to influence the deliberations and create a benefit for her husband.

Appellant's insistence that she was neither physically present nor an active participant in executive session is unavailing, as is her claim that her husband did not actually benefit because he was not selected. The Act does not require that a board member successfully secure an

unwarranted benefit for a violation to have occurred. Moreover, even if appellant did not discuss the confidential Board deliberations with her husband, her presence during executive session created a potential for conflict in that regard wherein he could have benefited.

Additionally, appellant's claims that the Board's executive session deliberations were somehow not confidential because the candidate interviews took place in public session is meritless. *See Gannett Satellite Information Network, Inc. v. Bd. of Educ. of Borough of Manville,* 201 *N.J. Super.* 65, 69 (Law Div. 1984) (holding that board of education "could exclude the public from its deliberations on the qualifications of the various candidates" under consideration for appointment to a board vacancy created by a departing board member so long as the board did not exclude the public from the entire process). Despite appellant's assertion to the contrary, nothing in Board Policy 0143 allows the public to "witness any deliberations" if the candidates are interviewed in public session as was the case here. The language cited by appellant applies only when interviews are conducted in executive session because, as explained in *Gannett*, the public cannot be excluded from the entire process. *Ibid.*

As for appellant's contention that the SEC should not be permitted to substitute its own judgment for that of the ALJ, who found that no violations of the Act occurred, it lacks merit because the Initial Decision of an ALJ is a recommendation to the agency. *See N.J.S.A.* 52:14B-10(c) (explaining that the ALJ's decision is "[a] recommended report and decision which contains recommended findings of fact and conclusions of law"). The Act mandates that the SEC, not the ALJ, "[u]pon completion of the [OAL] hearing, . . . by majority vote, shall determine whether the conduct complained of constitutes a violation of th[e] act, or . . . whether the complaint should be dismissed." *N.J.S.A.* 18A:12-29(c). "If a violation is found, the commission shall, by majority

vote, recommend to the commissioner the reprimand, censure, suspension, or removal" of the school official or board member found to have violated the Act. *Ibid.*

In this case, the SEC adopted the ALJ's factual findings but disagreed with the ALJ's conclusion that no violation occurred. That is entirely permissible under the Act. Furthermore, contrary to appellant's claim, the SEC was not required to present witness testimony during the OAL hearing to sustain its burden of production or burden of proof. Neither the Administrative Procedure Act nor the OAL rules preclude reliance upon documentary evidence alone—which in this case included an affidavit from appellant admitting that she was present for the executive session meeting at issue.

Because appellant has not established that the SEC acted in a manner that was arbitrary, capricious, or contrary to law, the Commissioner affirms the SEC's conclusion that appellant violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) and rejects appellant's contention that the SEC interpreted the Act overbroadly and engaged in de facto rulemaking.

Regarding the recommended penalty, appellant seeks to rely on an "advice of counsel" defense to either avoid or mitigate the imposition of a penalty for her violation of the Act. The Appellate Division has previously addressed charges of ethical violations by public officials acting on advice of counsel. *In re Zisa*, 385 *N.J. Super.* 188, 198-99 (App. Div. 2006). The mayor in *Zisa* relied on the advice of counsel, which he affirmatively sought, when voting on a matter. Specifically, Zisa "contacted the City attorney . . . and inquired whether he had a conflict of interest that would preclude him from voting" and was advised that he "did not have . . . a conflict of interest." *Id.* at 193. When ethics charges were brought against him regarding his vote, Zisa sought to rely upon the advice of counsel defense.

In examining the facts before it, the Appellate Division considered four prerequisites for an advice of counsel defense:

> 1. That the approval or advice was received prior to the action being taken.
>
> 2. That the individual who offered the advice or approval relied upon possessed authority or responsibility with regard to ethical issues.
>
> 3. That the individual seeking advice or approval made a full disclosure of all pertinent facts and circumstances.
>
> 4. That the individual complies with the advice received, including any restrictions it might contain.

Id. at 198-199. *See also In re Roman,* 2023 *N.J. Super. Unpub.* LEXIS 2379, at *14 (App. Div. Dec. 21, 2023) ("The application of the advice of counsel defense requires a fact-sensitive analysis to determine if the four prerequisites to an advice of counsel defense were met.") (citing *Zisa*, 385 *N.J. Super.* at 199). The Appellate Division emphasized in its analysis that it was uncontested that Zisa "had in fact asked [counsel] for his advice on the issue" prior to voting. *Zisa*, 385 *N.J. Super.* at 197-98.

Here, the Commissioner finds that the evidence in the record fails to establish that appellant has satisfied any of the four *Zisa* prerequisites. The third prerequisite makes clear that the individual seeking to invoke the advice of counsel defense must have affirmatively sought "advice or approval." *Id.* at 199. This case is readily distinguishable from *Zisa* and *Roman* because appellant never sought advice about whether to attend executive session. Consequently, she did not receive advice on that issue prior to logging on, and therefore could not have relied on that advice. Appellant cannot successfully invoke the advice of counsel defense by claiming that no one advised her not to attend executive session when she never sought advice on that issue in the first place. Therefore, having considered the *Zisa* prerequisites in connection with the facts

established herein, the Commissioner concludes that appellant's reliance on the advice of Board counsel is not a valid defense in this matter.

Finally, the Commissioner rejects appellant's assertion that any violation of the Act should be deemed *de minimis*. The penalty of censure in this case is commensurate with those recommended by the SEC and affirmed by the Commissioner in similar matters and takes into account appellant's responsibility to avoid all conduct which violates the public's trust. *N.J.S.A.* 18A:12-22(a); *see, e.g., In re Brogan*, Commissioner Decision No. 79-22SEC (April 14, 2022) (board member censured for violation of *N.J.S.A.* 18A:12-24(c) in connection with attendance at executive session during discussions about a matter in which she had a personal involvement).

Accordingly, appellant is hereby censured as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 22, 2024
Date of Mailing: April 24, 2024

[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.

Before the School Ethics Commission
OAL Docket No.: EEC-06640-22
SEC Docket No.: C87-21
Final Decision

I/M/O Kerry Anne Mastrofilipo,
Lodi Board of Education, Bergen County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on November 29, 2021, by Nancy Cardone (Complainant), alleging that Kerry Anne Mastrofilipo (Respondent), a member of the Lodi Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code) in Count 2 when she attended executive session while her husband's candidacy for the Board was discussed.

At its meeting on April 26, 2022, and after reviewing Respondent's Motion to Dismiss in Lieu of an Answer (Motion to Dismiss) and allegation of frivolous filing, and Complainant's response thereto, the School Ethics Commission (Commission) adopted a decision granting the Motion to Dismiss as to the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 2; denying the Motion to Dismiss as to all other allegations; and finding the Complaint not frivolous and denying Respondent's request for sanctions. Based on its decision, the Commission also directed Respondent to file an Answer to Complaint (Answer) as to the remaining allegations, which she did on May 13, 2022.

Thereafter, at its meeting on July 26, 2022, the Commission voted to find probable cause to credit the alleged violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) in Count 1, but not to find probable cause to credit the purported violations of *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(g) in Count 2. Based on its finding of probable cause, the Commission voted to transmit the within matter to the Office of Administrative Law (OAL) for a hearing and, pursuant to *N.J.A.C.* 6A:28-10.7(b),[1] the attorney for the Commission (Petitioner) was charged with prosecuting the allegations in the Complaint.

Following a hearing at the OAL, the Administrative Law Judge (ALJ) issued an Initial Decision on August 16, 2023, concluding Respondent did not violate *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(c), and ordering the dismissal of the matter. Petitioner filed exceptions to the Initial Decision, in accordance with *N.J.A.C.* 1:1-18.4, and Respondent filed a reply thereto.

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[1] This citation refers to the regulation that was in effect at the time of the probable cause determination.

At its meeting on October 17, 2023, the Commission considered the full record in this matter. Thereafter, at its meeting on November 28, 2023, the Commission voted to adopt the ALJ's findings of fact but reject the ALJ's legal conclusions, and instead the Commission found that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c), and recommended that a penalty of censure be imposed.

II. Initial Decision

According to Respondent's testimony, she served as a Board member from January 2019 through January 2022, and decided to resign from the Board due to "family obligations." *Initial Decision* at 3. On September 14, 2021, the Board held a special meeting to interview candidates for Respondent's open seat, and according to Respondent, prior to the meeting Board counsel advised her "she should not vote on any of the candidates because her husband was one of the candidates." *Ibid.* Respondent maintains she was not advised that she could not attend the remote meeting. *Ibid.* Respondent further maintains she and her husband were in separate rooms of the house and using separate computers. *Id.* at 4. Per Respondent, her husband was having technical issues logging in to the public meeting, and despite a Board member suggesting Respondent and her spouse share a computer (and no one objected to that suggestion), Respondent and her husband decided to switch computers for the interview so they would not be in the same room. *Ibid.*

Respondent contends that during the interviews, Complainant was friendly and smiling during the first interview; however, she "rolled her eyes, yelled" and "repeatedly interrupted" Respondent's husband during his interview. *Ibid.* After the interviews were complete, the Board went into executive session, including Respondent. *Ibid.* Respondent further contends at the start of executive session, Board counsel asked Respondent if she received an email he sent, and Respondent said she did not. *Ibid.* Board counsel advised Respondent to review the email, and she found that at 6:40 p.m., which was during public session, Board counsel sent an email to the Superintendent, which was forwarded to Respondent at 6:48 p.m. *Id.* The email contained a link to the New Jersey Department of Education webpage, which contained the "entire language" of the Act. *Id.* at 5. Respondent maintains that she removed her ear bud, read the information on the website, "did not listen to what anyone else was saying" in executive session "because she was busy reading the information in the link," did not participate in any discussion during executive session, and did not discuss any of the executive session with her husband. *Ibid.* Subsequently, Respondent emailed Board counsel to ask whether she should abstain from voting on the candidates and Board counsel advised that she should "recuse on both." *Ibid.* The ALJ notes that Respondent testified "consistently and credibly." *Id.* at 6.

Based on the testimony and evidence, the ALJ finds Respondent was present for both the public meeting and executive session on September 14, 2021. *Ibid.* The ALJ further finds Respondent was not advised by Board counsel or any other individual not to attend the virtual meeting. *Ibid.*

The ALJ asserts that Petitioner did not offer any evidence nor testimony to support that Respondent used her Board status to obtain any unwarranted privileges, advantages, or

employment for herself, her husband or anyone else, and therefore, the ALJ concludes that Petitioner failed to show that Respondent violated *N.J.S.A.* 18A:12-24(b). The ALJ further concludes that Petitioner did not provide any evidence or testimony that Respondent's "objectivity and/or independence of judgment was impaired," and therefore, failed to demonstrate that Respondent violated *N.J.S.A.* 18A:12-24(c), and consequently, the ALJ dismissed the Complaint.

III. Exceptions

Petitioner's Exceptions

Petitioner takes exception to the Initial Decision, specifically that Respondent did not violate *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(c). Petitioner avers that the Initial Decision should be rejected because the ALJ "incorrectly applied a standard of success that is not required by the statutory language," and therefore, the ALJ "ignored both the law and the Commission's plain language instructions." *Petitioner's Exceptions* at 6. According to Petitioner, when the Commission issued its probable cause notice, it properly explained that even if Respondent did not "actively participate" in the issue related to the candidates, which included her husband, "mere presence in executive session could have (and may have), without more," violated the Act because it could have a "chilling effect (intentional or otherwise) on the discussion and selection process … ." *Id.* at 7. According to Petitioner, despite this standard, the ALJ concluded that although Respondent was present, Petitioner also needed to demonstrate that "she succeeded in securing a benefit for herself or her husband in order to establish a violation of *N.J.S.A.* 18A:12-24(b)," which per Petitioner "is based upon a flawed legal premise that *N.J.S.A.* 18A:12-24(b) requires a showing of success." *Id.* at 8.

Moreover, it has been previously established that "as long as it can be reasonably assumed that a board member's conduct was undertaken in an attempt to secure unwarranted privileges for themselves or others, the board member's intentions behind such conduct are immaterial to finding" a violation of *N.J.S.A.* 18A:12-24(b). *Id.* at 10. Furthermore, Petitioner maintains "in determining whether a board member's particular interest in a matter is sufficient to disqualify them from even being present during discussions of that matter, our courts have concluded that '[t]he question will always be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty.'" *Id.* at 10-11. Therefore, Petitioner asserts the Commission has found that if a board member has any level of involvement in a matter affecting the interests of a family member employed by the district, it "'will, among other things, always create a justifiable impression among the public' that the board member used or attempted to use their official position to secure an unwarranted privilege or advantage for their family member." *Id.* at 11-12. Petitioner asserts that because the ALJ correctly found that Respondent was present for the entirety of the September 14, 2021, executive session while the board discussed and deliberated over the candidates, one of whom was her husband, any reasonable member of the public could infer that she used her official position to gain access to a private platform in order to persuade the other Board members to support her husband's candidacy, in violation of *N.J.S.A.* 18A:12-24(b).

In addition, in reaching the conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(c), Petitioner also maintains that the ALJ "incorrectly applied a standard of actual impairment of objectivity that is not required by the statutory language" and the ALJ "once again ignored both the law and the Commission's plain language instructions." *Id.* at 14. Petitioner argues the Commission "properly explained" in its probable cause notice that because "there is certainly value, and an advantage, in one['s] spouse being present for the discussion and decision-making process of a matter when their own spouse is being considered," Respondent's "mere presence" during the executive session on September 14, 2021, is enough to establish a violation of *N.J.S.A.* 18A:12-24(c). *Ibid.* Petitioner further argues the ALJ's conclusion "stems from the incorrect premise that *N.J.S.A.* 18A:12-24(c) requires a showing that" Respondent's "objectivity and/or independence of judgment was impaired." *Ibid.*

Of importance, Petitioner notes the Commission has previously found that "where a board member's immediate family member is seeking employment with the district, the expectation of such a conflict is especially reasonable since any questions about the qualification of the board member's family member can be seen by that board member as a personal attack." *Id.* at 17. Petitioner asserts it has been established that Respondent was present during the September 14 meeting, when her husband's candidacy was discussed, and Respondent admitted that she "viewed [] Complainant's questioning of her husband's qualifications during his public interview to be a personal attack on him." *Id.* at 18. Petitioner notes the minutes from that meeting would demonstrate that Respondent did not recuse herself from the executive session and was present during the Board's private deliberation. In essence, Respondent "created circumstances that might reasonably be expected to impair her objectivity or independence of judgment, thus 'creating a justifiable impression among the public that their trust is being violated,'" and as such the ALJ erred in finding that Respondent did not violate *N.J.S.A.* 18A:12-24(c). *Id.* at 19.

Turning to a penalty, Petitioner argues Respondent cannot assert inexperience or lack of legal advice as mitigating factors. According to Petitioner, Respondent was a Board member for nearly three years at the time and Respondent did not request legal advice nor did Board counsel provide her with incorrect legal advice. Petitioner maintains that ultimately, it was Respondent's duty to ensure that she was aware of the Commission's previously issued advice related to her ethical and statutory obligations. Per Petitioner, Respondent chose to "shirk" her obligations and purposely chose to attend a meeting in which her husband's candidacy was going to be discussed. Therefore, based on Respondent's presence during the executive session and because it could be seen as using her official position to gain access to the Board's private deliberation so that she could try to pressure the non-conflicted Board members into selecting her husband for that vacant seat, and securing an unwarranted privilege for him, Petitioner recommends the Commission impose a penalty of censure.

Respondent's Reply to Petitioner's Exceptions

Respondent argues the Commission's probable cause notice indicates a violation may be supported if Respondent was present in executive session *"despite Board counsel's advice to the contrary." Respondent's Reply Exceptions* at 1. Respondent asserts it was undisputed that Board counsel only advised that she should not *vote* on a candidate, that neither Board counsel nor

anyone else advised Respondent not to log in to executive session, that the Superintendent sent Respondent the meeting link and then admitted Respondent into the meeting, and that once logged in, Board counsel discussed an email that he sent her and still did not advise her to log out of the meeting. Therefore, Respondent contends the ALJ accurately determined "the element of the issue as framed by the [Commission] was not satisfied." *Id.* at 2. Respondent further contends Petitioner's exceptions "fail to address the fact that the [Commission's] framing of the issue in this case required a demonstration that Respondent acted 'despite Board counsel's advice to the contrary.'" *Ibid.*

Respondent asserts that despite Petitioner's argument that the Commission has determined "physical attendance and participation in executive session meetings may constitute a violation of the Act," it should be noted that "there is no legal authority declaring that a Board member may have violated the Act under the unique circumstances presented in this case." *Ibid.* Respondent reiterates, in this matter, Respondent was admitted to the meeting remotely, by the Superintendent and spent the entirety of the meeting focused elsewhere (reading the email from Board counsel) and these circumstances "present an issue of first impression never before discussed in case law." *Id.* at 3. Therefore, Respondent maintains the ALJ "appropriately exercised his discretion to consider the fact that Respondent's remote 'presence' in the executive session did not impair anyone's objectivity nor did it benefit Respondent or her husband." *Ibid.* Moreover, Petitioner's argument ignores Board Policy 0143, which confirms the "non-confidential nature of the Board's discussion about the candidates ... and negates any argument that, by merely logging in ... Respondent may have made other Board members too uncomfortable to express their opinions." *Ibid.* Finally, Respondent maintains Petitioner did not present any witnesses or evidence at the hearing to support the assertion that Respondent violated the Act.

For these reasons, Respondent contends the Commission should adopt the ALJ's decision or, at the very most, the Commission should find that any violation was *de minimis* and should not issue a penalty.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission adopts the ALJ's findings of fact, rejects the ALJ's legal conclusions, finds that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c), and recommends that a penalty of censure be imposed.

N.J.S.A. 18A:12-24(b) prohibits a school official from using or attempting to use her official position to secure unwarranted privileges, advantages or employment for herself, members of her immediate family or others. By attending executive session while the Board discussed her husband's potential appointment to the Board, Respondent used her official position as a Board member to secure the unwarranted advantage of hearing the Board's private deliberations regarding her family member during executive session. The spouse or other immediate family members of the other candidate for the Board were not permitted to attend executive session and hear the private discussions, so Respondent was only present due to her Board member status. Additionally, Respondent's mere presence in executive session may have

resulted in a chilling effect on the discussion and selection process that ensued by the other non-conflicted members of the Board. *See I/M/O S.J., Englewood Cliffs Board of Education*, Docket No. C09-20 (August 22, 2023) (finding a violation of *N.J.S.A.* 18A:12-24(b) when the respondent remained in executive session while the Board discussed a personal matter involving her family member because she was present for confidential discussions to which members of the public and other individuals involved in the matter were not privy). Accordingly, the Commission finds Respondent's attendance in executive session while the Board discussed the potential appointment of her husband to the Board, provided her with an "unwarranted privilege" or "advantage" that other members of the public, including the other candidates' family members, were not afforded, and therefore, violated *N.J.S.A.* 18A:12-24(b).

N.J.S.A. 18A:12-24(c) prohibits a school official from acting in her official capacity in a matter where she, or a member of her immediate family, has a direct or indirect financial involvement that might reasonably be expected to impair her objectivity, or in a matter where she has a personal involvement that created some benefit to her, a member of her immediate family, or others. Respondent acted in her official capacity as a board member when she attended executive session on September 14, 2021, while her husband's candidacy for a position on the Board was being discussed. Respondent had a personal involvement in the matter as the discussions involved her husband's potential appointment to the Board, and her presence created a benefit to her and/or her spouse as she witnessed the deliberations and selection process and had the opportunity to influence or affect the discussion or possibly chill the comments and opinions of the other non-conflicted Board members. *See I/M/O Shiela Brogan, Ridgewood Board of Education*, Docket No. C71-20 (February 25, 2022) at 7 (finding a violation of *N.J.S.A.* 18A:12-24(c) when Brogan remained in executive session while litigation in which she had a personal interest was discussed, and noting "[b]y merely being physically present in executive session, Respondent directly impacted, whether deliberately or otherwise, the ability of the non-conflicted Board members and Board counsel to engage in a candid conversation about the litigation"); *see also I/M/O Michael Kilmurray, Lacey Township Board of Education,* Docket No. C12-94 (February 24, 1998), at 3. (stating, "[w]hen a school official has a conflict of interest of which the public is aware, and that school official goes behind closed doors when that item is discussed, the situation creates a justifiable impression among the public that their trust is being violated"). As such, the Commission finds Respondent's decision to attend executive session when her husband's potential appointment to the Board was going to be discussed violated *N.J.S.A.* 18A:12-24(c).

The Commission disagrees with Respondent's argument that she did not violate the Act because she relied upon the advice of the Board attorney, who she contends only advised her not to vote on the Board candidates and did not advise her not to attend executive session. Board members are not "insulated from blame" when they rely on the advice of counsel, and are "responsible for their own actions," with a duty to act "prudently and cautiously." *Cheng v. Rodas, West New York Board of Education*, Commissioner's Decision No. 22-17ASEC (January 20, 2017), at 6. It is relevant to note that it does not appear that Respondent specifically asked for the advice of counsel regarding attendance in executive session; instead, she appears to rely on the absence of advice telling her not to attend executive session as an implicit approval to do so. Additionally, Respondent had been a Board member for nearly three years, and was required to undergo Board member ethics training during that time. Thus, Respondent should have known

that it was a conflict to remain in executive session while a matter in which she has a personal interest was discussed.

With respect to a penalty, the Commission recommends a penalty of **censure** for the violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c). Respondent should have known that she was not permitted to attend executive session while a matter in which she had a direct conflict – one involving an immediate family member – was being discussed. The Commission has previously issued a penalty of censure for violations of *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(c) in similar matters involving a board member's attendance at executive session while a matter involving a personal interest was discussed. *See S.J.,* Docket No. C09-20 (recommending a penalty of censure for violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e) when a board member remained in executive session on at least three occasions while a matter involving a personal family member was discussed); *I/M/O Shiela Brogan,* Docket No. C71-20, *penalty adopted,* Commissioner's Decision No. 79-22SEC (April 14, 2022) (recommending a penalty of censure for a violation of *N.J.S.A.* 18A:12-24(c) in connection with Brogan's attendance in an executive session during discussions regarding a legal matter in which she had a personal involvement); *I/M/O James Morgan, Ridgewood Board of Education*, Docket No. C68-20 (February 25, 2022), *penalty adopted,* Commissioner's Decision No. 78-22SEC (April 14, 2022) (recommending a penalty of censure for violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24.1(g) in connection with public comments that Morgan made regarding litigation filed by a fellow Board member and his failure to recuse himself from executive session discussing the litigation in which he had an interest in the outcome). Accordingly, the Commission recommends that Respondent be censured for violating *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c).

V. Decision

For the aforementioned reasons, the Commission adopts the ALJ's findings of fact, but rejects the ALJ's legal conclusions, finds that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c), and recommends that a penalty of censure be imposed.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* **within thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: November 28, 2023

Resolution Adopting Decision in Connection with C87-21

Whereas, at its meeting on July 26, 2022, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Initial Decision dated August 16, 2023; and

Whereas, the ALJ found that Respondent did not violate *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(c), and ordered the dismissal of the above-referenced matter; and

Whereas, Petitioner filed exceptions to the Initial Decision and Respondent filed a reply; and

Whereas, at its meeting on October 17, 2023, the Commission reviewed the record in this matter, discussed accepting the ALJ's findings of fact, rejecting the ALJ's legal conclusions, finding that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c), and recommending a penalty of censure; and

Whereas, at its meeting on November 28, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on October 17, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on November 28, 2023.

Brigid C. Martens, Director
School Ethics Commission

169-24
OAL Dkt. No. EDU 09457-23
Agency Dkt. No. 253-9/23

New Jersey Commissioner of Education

Final Decision

T.D., on behalf of minor child, S.D.,

Petitioner,

v.

Board of Education of the Morris County Vocational School District, Morris County,

Respondent.

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, and for the reasons thoroughly detailed in the Initial Decision, the Commissioner concurs with the Administrative Law Judge that the Board's decision to return S.D. to his public school district following multiple significant and disruptive disciplinary infractions was not arbitrary, capricious, or unreasonable.

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

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 22, 2024
Date of Mailing: April 24, 2024

[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

RECORD SEALED

INITIAL DECISION
SUMMARY DECISION
OAL DKT. NO. EDU 09457-23
AGENCY DKT. 253-9/23

T.D. ON BEHALF OF MINOR CHILD S.D.,
Petitioner,
v.
BOARD OF EDUCATION OF MORRIS COUNTY VOCATIONAL SCHOOL DISTRICT, MORRIS COUNTY,
Respondent.

T.D., petitioner, appearing pro se.

Carolyn R. Chaudry, Esq. appearing on behalf of respondent (Chaudry Law, attorneys)

Record Closed: March 7, 2024 Decided: March 14, 2024

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

Following several conduct infractions, the Morris County Vocational School District (District or Board) placed S.D. on a behavioral contract. Despite this, S.D. continued to misbehave, violating the contract, leading to his transfer from his vocational school, Morris County School of Technology (MCST), to his local high school. Is S.D. entitled to return to MCST? No. A vocational district may return a student for misconduct and that decision stands unless it is arbitrary, capricious, or unreasonable.

PROCEDURAL HISTORY

On September 18, 2023, T.D, filed a petition seeking emergent relief returning S.D. to MCST and challenging the Board's decision to return S.D. to his local high school.

On September 20, 2023, the Department of Education, Office of Controversies and Disputes, transmitted this case to the Office of Administrative Law (OAL) as a contested case for hearing as a contested case and resolution of petitioner's motion for emergency relief under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On September 29, 2023, I denied petitioner's application for emergent relief, which the Commissioner upheld on October 27, 2023.

On December 4, 2023, I issued an Order to Seal at petitioner's request to better protect his son's privacy, which I granted with the Board's consent.

At a pre-hearing conference on December 14, 2023, the Board requested leave to file a summary judgment motion, maintaining that the material facts were not in dispute. I granted leave and set a motion schedule.

On February 2, 2024, the Board filed its motion, and on February 22, 2024, petitioner responded. On March 7, 2024, the Board replied, and I closed the record.

FINDINGS OF FACT

The material facts are undisputed as to the events leading to S.D.'s return to his local high school or the differences between the educational program at MCST and Jefferson. The District supplies the Certifications of Scott Moffit, Superintendent; Mark Menadier, Principal; and Athena Borzeka, Director of Student Services and Special Education, with multiple exhibits addressing S.D.'s return to Jefferson Township High School (Jefferson). T.D. also supplied materials regarding his emergent application and asks that I consider those documents.

MCST is a vocational public high school in Denville Township, Morris County, operating as part of the District. The District provides choice schools that are admissions-based, and no student has a right to attend a choice school. Students who apply and MCST accepts must maintain an adequate level of academic performance, adhere to the student code of conduct, and consistently attend its program to remain in any career-technical program in the District.

S.D., a fourteen-year-old when T.D. filed the petition, now attends Jefferson within his domicile. That school district provides college preparation classes, including Advanced Principles in Computer Sciences. Computer science principles are part of the tenth-grade curriculum at MCST. S.D. was accepted into Jefferson's honors program, STEM Academy, focusing on science, technology, engineering, and mathematics. STEM Academy provides different Computer Information Systems (CIS) courses than S.D. received at MCST. Still, S.D. attends Jefferson without cost and will not lose credit for any semester. If successful, he can complete his education at the public high school, receive a diploma from that school, and even earn college credits.

T.D. supplies U.S. News' high school rankings to show that MCST's program is rated higher than that of Jefferson based on its students' performance on state-required

tests, graduation, and college preparation. Further, S.D. is interested in a CIS career that T.D. maintains MCST can better serve.

By February 1, 2023, the District placed S.D. on a behavioral contract due to his accumulation of code of conduct violations, including substantiated harassment, intimidation, and bullying (HIB) charges for racist comments made by him and other students. (Exhibit 5.) Specifically, S.D. incurred four infractions since school began. S.D. served a two-day suspension for the HIB, and the District required that S.D. undergo counseling and complete restorative justice protocol.

The contract explains that S.D.'s behavior did not comply with the MCST Student Handbook standards. To improve his standing at MCST, the District expected S.D. to demonstrate respect for all MCST community members and refrain from disparaging behaviors. Further, the District required S.D. to contribute to a positive educational environment and adhere to the Internet usage agreement. The contract explains that violating the code of conduct again could result in additional disciplinary action, including the "review of continued participation as a student at MCST." (Exhibit 6.) S.D.'s parents signed and returned the contract after they met with S.D.'s principal to discuss S.D.'s actions. In other words, S.D. and his parents were on notice that S.D.'s behavior was a problem and that if it did not improve, further discipline could follow.

Yet, after the contract began, S.D. engaged in subsequent acts of academic dishonesty, demeaning, and disruptive classroom conduct, loitering in a hall rather than going to class. MCST's principal met with S.D. following these incidents and advised T.D., S.D.'s father, of the misconduct.

Further, on May 31, 2023, the District substantiated another HIB charge against S.D. and advised T.D. In other words, S.D. did not remedy his behavior while attending MCST as expected under the behavioral contract. (Exhibit 12.)

Commencing in April 2023, the District provided S.D. with a 504 Plan for ADHD and misophonia after learning of his diagnosis in March 2023. As part of the HIB

investigations, the Director of Special Services, who investigated the HIB charges against S.D., considered his disabilities, including the possible Opposition Defiant Disorder (ODD) diagnosis, even without a physician's diagnosis. The Director also serves as the District's 504 Plan and Anti-Bullying Coordinator. Specifically, she reviewed S.D.'s 504 plan and concluded that S.D.'s disabilities were not the primary cause of his making racist comments, inappropriate sexual gestures, and severe lack of academic integrity. Instead, the District determined that S.D. understood right from wrong and received counseling on the seriousness of inappropriate racial comments.[1]

On June 5, 2023, the District suspended S.D. for the last ten days of school for his behavior and advised T.D. it was returning S.D. to his local public school district. That day, the District notified T.D. of his rights concerning the 504 Plan.

In sum, S.D. committed seventeen infractions before the decision to return him to Jefferson. (Exhibit 1.) Indeed, the District substantiated two HIB claims against S.D., including making inappropriate sexual gestures behind his teacher's back, and counseled S.D. on significant instances of academic dishonesty along with demeaning, lewd, and disruptive classroom conduct.

S.D.'s parents appealed the administration's decision to the Superintendent. Under the "Return to District Policy," District Policy 5114.1, the school's principal and the Superintendent met with T.D. and S.D. on June 15, 2023, to discuss the circumstances leading up to the decision to return S.D. to his resident school district. (Exhibit 21.) During that meeting, the Superintendent noted that the school investigated each incident, and S.D. did not deny his actions. In response, T.D. maintained that other students engaged in similar conduct. Yet, the Superintendent highlighted his focus on S.D.'s repeated inappropriate actions.

On June 21, 2023, the Superintendent upheld the determination to return S.D. to Jefferson. The Superintendent identified numerous verified incidents of S.D.'s

[1] Given the end of the school year, the District conducted a manifestation meeting later, agreeing that his behavior was not a manifestation of his disabilities, including the newly asserted diagnosis of opposition defiant disorder.

misconduct and its disruption and compromise to the educational environment at MCST. This decision coincided with the end of the school year.

S.D.'s parents appealed to the Board, which upheld the determination to return S.D. to his home school following the Board hearing on August 8, 2023. T.D. suggests the Board's closed session with MCST's Principal and Superintendent was inappropriate.

Notably, when S.D. returned to his local high school, the District marked S.D. as a transfer and withdrawal from its rolls, not an expulsion.

S.D. and his parents do not dispute S.D.'s inappropriate behavior leading to his transfer to Jefferson and did not contest the HIB determinations. Instead, T.D. asserts that the District did not follow its procedures in addressing S.D.'s behavioral issues, which could have prevented future events and kept him at MCST. Specifically, T.D. suggests that District Policy 5131.2 (HIB Policy) requires remedial measures to correct and avoid problem behavior. (Exhibit 24.) Indeed, the HIB Policy explains that the District should design consequences and remediation stemming from a student's commission of a HIB to correct the behavior, prevent another occurrence, protect the victim, and address systematic problems. Multiple remedial measures are available to the District, including student counseling, treatment, parent conferences, behavioral or child study team assessments, and behavioral management plans. Yet, the HIB policy does not mandate the type of remediation. (Exhibit 24.)

Even if the District could have done more, like ordering a behavioral or child study team assessment, it had the discretion to address S.D.'s inappropriate behavior as it did under the HIB Policy. Further, the HIB Policy notes that responses to HIB incidents should align with the code of conduct, and consequences can run from admonishment to expulsion.

In this case, MCST employed various remedial measures, even if not to T.D.'s satisfaction. It counseled S.D., met with his parents more than once, placed him on a

behavioral contract, and involved S.D. in restorative justice counseling. (Exhibits 5 and 6.)

T.D. also notes that the District did not provide S.D. with the required educational instruction within five days of the suspension. Yet, this case does not delve into the school's conduct after MCST determined to return S.D. to Jefferson. Instead, the focus is MCST's determination to withdraw S.D. from its rolls as a choice school and return S.D. to his local high school.

Further, T.D. questions the completeness of the District's investigation of events involving S.D., citing S.D.'s recent diagnosis of ODD and incitement by others as the root cause of S.D.'s misconduct. Notably, MCST's February 2023 HIB determination found multiple students at fault, not just S.D. Further, S.D.'s parents only provided a psychiatrist evaluation diagnosing S.D. with ODD after the District's determination to return S.D. to his local public school. Undeniably, S.D. apologized for his behaviors.

T.D. also argues that the District did not investigate other HIB incidents directed toward S.D., which T.D. reported on June 15, 2023, after the administration's decision concerning S.D.'s return to his local high school. T.D. maintains that S.D. reacted poorly to others, which T.D. attributes too much of S.D.'s misconduct. While T.D. may have a right to challenge any District decision regarding a subsequent HIB complaint, that dispute is not before this tribunal.

T.D. highlights that S.D. is doing better this year and has taken steps to improve his behavior, including counseling and completing his Sunday school studies and the CAP program through the Denville Police Department. Thus, T.D. suggests his son's behavior last year should be considered a "one-off" that did not warrant his transfer to Jefferson.

The District similarly supplies documents concerning S.D.'s conduct at Jefferson during the 2023-2024 school year, after the events in question, to support its decision.

However, this decision does not involve S.D.'s conduct at Jefferson after his return or his efforts to address his misbehavior once leaving MCST. Thus, I do not consider that evidence here. While I appreciate T.D.'s desire to showcase his son's improvement and community commitment, this occurred after S.D. left MCST. However, this decision focuses on the propriety of the District's determination regarding S.D.'s withdrawal from MCST and transfer back to Jefferson.

DISCUSSION AND CONCLUSIONS OF LAW

Summary Decision Standard

A party may move for summary decision upon all or any substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion shall be served with briefs, with or without affidavits. When the filed papers and discovery and any affidavits show that no genuine issue of material fact exists and that the moving party is entitled to prevail as a matter of law, the judge may grant the motion. N.J.A.C. 1:1-12.5(b). When such a motion is made and supported, an adverse party, to prevail, must submit an affidavit setting forth specific facts showing that a genuine issue of material fact exists that can only be determined in an evidentiary proceeding. Ibid.

To determine whether a genuine issue of material fact exists that precludes summary judgment, the motion judge must consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to demonstrate that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins., 142 N.J. 520, 540 (1995). The "judge's function is not to . . . weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Id.

When a motion for summary decision is made and supported, the burden shifts to the adverse party to set forth, by affidavit, specific facts showing there is a genuine issue resolvable only by an evidentiary proceeding. N.J.A.C. 1:1-12.5(b). Given this burden shift, a party opposing a summary-judgment motion "who offers no substantial

or material facts in opposition to the motion cannot complain if the court takes as true the uncontradicted facts in the movant's papers." Burlington Cnty. Welfare Bd. v. Stanley, 214 N.J. Super. 615, 622 (App. Div. 1987). Failure of the opponent to make such a showing entitles the moving party to summary judgment. Brill, 142 N.J. at 529.

Even though a statute calls for a "hearing," where a motion for summary decision is made and the objector submits no evidence to demonstrate that a genuine issue of material fact exists, the motion procedure constitutes the hearing, and no trial-type hearing is necessary. Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 120–21 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

Further, when the non-movant comes forward with some evidence, the court still must grant summary judgment if the evidence is "so one-sided that [the movant] must prevail as a matter of law." Ibid. at 536 (citation omitted). If the non-moving party's evidence is "merely colorable or is not significantly probative," the judge should not deny summary judgment. Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998). Indeed, courts recognize that liberalizing the summary judgment standard allows disposition of more cases sooner because we live in "a time of great increase in litigation and one in which many meritless cases are filed." Brill, 142 N.J. at 539 (citation omitted).

In this case, no genuine issue as to the material facts exists, and the only question presented is whether the District acted arbitrarily, capriciously, or unreasonably in returning S.D. to Jefferson. More pointedly, no genuine issue exists that S.D. committed multiple acts of misconduct, including a substantiated HIB, leading to the District's employment of a behavioral contract to guide S.D.'s conduct. Yet, no party disputes that S.D. continued to misbehave despite that contract, counseling, and meetings to discuss his behavior. Ultimately, the District sustained a subsequent HIB against S.D. and found him to lack academic integrity, causing the District to return S.D. to Jefferson. Undeniably, the District allowed T.D. and S.D. to discuss and dispute its determination. Since these facts are clear and undisputed, I **CONCLUDE** that this case is ripe for summary decision.

Return to District

Local boards of education adopt rules for the management of the district's public schools and act to ensure the lawful and proper conduct of the district's public schools. The local school district of Jefferson Township is responsible for student tuition and transportation to a vocational school district like the District here. Under N.J.S.A. 18A:54-7, vocational school districts can receive pupils who applied for admission to and accepted for attendance at any county vocational school district school. The board of education of a county vocational school district then has control over admitted students, including the power to suspend and expel pupils from school. N.J.S.A. 18A:54-20(g).

The right to education is not without certain restrictions. Pupils must submit to the authority of their teachers; they must pursue their prescribed courses of study and comply with the rules established to govern the schools. N.J.S.A. 18A:37-1. Under N.J.S.A. 18A:37-2, a school district may expel or suspend a student for good cause. Good cause includes, in relevant part, continued and willful disobedience, open defiance of authority, taking the personal property of another, or harassment, intimidation, or bullying. School districts must develop a student code of conduct, establishing standards, policies, and procedures for positive student development and behavioral expectations. N.J.A.C. 6A:16-7.5.

Significantly, vocational school districts have an alternative process for unsuccessful students called the "Return to Resident School District" (District Policy 5114.1 here). This process is distinguishable from expulsion because students do not experience a discontinuance of educational services. Instead, the vocational school district transfers them back to their local school for re-enrollment, which again becomes responsible for providing the student with educational services like all other students in its local school district.

Under District Policy 5114.1, "a student may be returned to their sending district when a pattern or single significant incident of unacceptable conduct results in

discipline, excessive absenteeism, or poor academic performance." Ibid. The Superintendent must predicate his determination to return to the district "upon the safety of the student and staff population, the security and integrity of district equipment and software, and the reasonable likelihood of the student to profit academically from the school program."

Further, the District will return students with behavioral contracts whose behavior does not adequately improve to their resident school district. Specifically, a Superintendent faced with student misconduct may issue the actor "a behavioral contract which will guide [their] continued enrollment. Breach of this contract will result in the student's return to the resident school district." Id.

District Policy 5114.1 also considers the timing of a student's return to district, if possible. In many cases, "dismissal will be timed to coincide with the end of the marking period. However, the administration reserves the right to immediately return a student to [their] resident district." Id.

Students in public educational institutions facing severe disciplinary measures such as suspension or expulsion have the right to due process of law. R.R. v. Bd. of Ed., Shore Reg. H.S., 109 N.J. Super. 337, 346-47 (Ch. Div. 1970). The fundamental requirements of due process of law are notice and hearing. Id. at 349, (quoting from Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930, (1961)).

District Policy 5114.1 explains the due process provided to parents and students when facing a student's return to their resident school district, including a meeting about the student's inappropriate behavior where the student can explain the reasons for their behavior, notice of an administrative determination, and the ability to disagree and appeal to the Board. Undeniably, S.D. and his parents received notice and attended several meetings before requesting and appearing at a Board hearing to address their appeal. See N.J.A.C. 6A:16-7.3(c).

Although T.D. suggests the Board's closed session to vote on S.D.'s discipline should not have included school administrators. However, when the Board votes on a student's suspension, it must review the case in consultation with school administrators. NJ.A.C. 6A:16-7.3. Still, that a school district may expel or suspend a student for good cause is settled in the Board's favor.

S.D. has no right to return to a choice school, even though it may have higher academic rankings, without demonstrating that the District improperly returned S.D. to Jefferson. T.D. suggests the District did not follow its disciplinary or return to local school procedures, but I **CONCLUDE** that a preponderance of the evidence exists to demonstrate that it did. Indeed, I found that the District employed remediation measures permitted under its policies. Yet, after the behavioral contract was in place following the first HIB substantiation, the District substantiated another HIB charge against S.D., among numerous other code of conduct violations. Further, District Policy 5114.1 and the behavioral contract placed S.D. and his parents on notice that a return to his local school district could occur if S.D. did not improve his conduct. The principal informed S.D.'s parents of S.D.'s continuing misconduct as it occurred and held several meetings to discuss S.D.'s actions.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness that will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). To overcome that presumption, the petitioner must prove that the board "acted in either bad faith or in disregard to the circumstances." T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07 (February 6, 2008), aff'd, Comm'r (April 25, 2013) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966)). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration [,]" and the Commissioner will not substitute his judgment for that of the board. Bayshore Sewerage Co. v. Dep't. of Envtl. Prot., 122 N.J. Super. 184, 199 (Ch.

Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974). In other words, petitioner's burden is a heavy one.

Still, the Board's factual determinations require such deference only when supported by substantial credible evidence, e.g., having a rational basis. Quinlan v. Board of Ed. of North Bergen Tp., 73 N.J. Super. 40 (App. Div. 1962); Schinck v. Board of Ed. of Westwood Consol. School Dist., 60 N.J. Super. 448 (App. Div. 1960). Additionally, the reviewing tribunal may reject the findings of fact if the evidentiary record does not support them. In re Suspension of License of Silberman, 169 N.J. Super. 243, 255-56 (App. Div. 1979), aff'd, 84 N.J. 303 (1980).

While petitioner may be dissatisfied with the District's actions in addressing S.D.'s behaviors, he presents insufficient evidence to show that the District acted improperly, arbitrarily, or unreasonably. To the contrary, I **CONCLUDE** that the District reasonably attempted to remediate S.D.'s behavior, provided a rational basis to support its conclusion, and afforded T.D. and S.D. with notice and opportunity to discuss S.D.'s continuing misconduct and challenge the District's determination. The behavioral contract's terms were clear. Therefore, I **CONCLUDE** that the District is entitled to summary judgment as a matter of law.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the District be **GRANTED** summary decision, and that the petitioners' appeal be **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 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.

March 14, 2024

DATE

NANCI G. STOKES, ALJ

Date Received at Agency: March 14, 2024

Date Mailed to Parties: March 14, 2024

ljb

170-24
State Board of Examiners Dkt. No.
1920-191 Agency Dkt. No. 02-01/24A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of
Vincent Cinquina, State Board of Examiners,
New Jersey Department of Education.

Order of Revocation by the State Board of Examiners, dated December 8, 2023

Respondent-Appellant, appearing pro se

For the Petitioner-Respondent State Board of Examiners, David L. Kalisky, Deputy Attorney General (Matthew J. Platkin, Attorney General of New Jersey)

The Commissioner has reviewed the record and submissions filed in connection with Vincent Cinquina's appeal of the Order of the State Board of Examiners (Board), dated December 8, 2023, revoking his Teacher of General Business Certificate of Eligibility, Teacher of Elementary Grades K-8 Certificate of Eligibility, Teacher of Students with Disabilities Certificate of Eligibility, Teacher of General Business Standard Certificate, Teacher of Elementary Grades K-8 Standard Certificate, and Teacher of Students with Disabilities Standard Certificate.

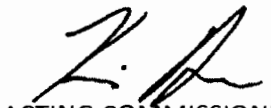
In revoking appellant's certificates, the Board determined that no material facts were in dispute. It reasoned that appellant's "acts of failing to remedy a situation where students were using an offensive and inappropriate group label, allowing students to engage in a game o[f] truth or dare during which students kissed and touched each other inappropriately, and disrupting a class by calling law enforcement because he was upset that the Principal was conducting an evaluation

constitute conduct unbecoming a teacher as they clearly indicate a repeated lack of the necessary self-restraint and controlled behavior expected in an educator."

Appeals of Board decisions revoking certificates must be submitted to the Commissioner per *N.J.S.A.* 18A:6-38.4, and in accordance with the rules at *N.J.A.C.* 6A:4. Those rules provide, in relevant part, that "[a]ppeals of final State Board of Examiners decisions shall be filed within 30 days of the filing date of the decision being appealed." *N.J.A.C.* 6A:4-2.2(a). The record reflects that the Board issued its Order of Revocation to appellant on December 8, 2023, via certified mail, regular mail, and email. The Office of Controversies and Disputes received appellant's appeal on January 23, 2024—two weeks after the 30-day filing deadline had passed.

Appellant has not established any unusual or compelling circumstances that would, in the interest of justice, warrant relaxation of the 30-day filing deadline for appeals of final State Board of Examiners decisions. Therefore, the Commissioner holds that the appeal must be dismissed as untimely. Furthermore, because the Board's decision is supported by sufficient, credible evidence in the record, and appellant has failed to establish that the decision was arbitrary, capricious, or contrary to law, the Commissioner has no grounds to disturb it. *N.J.A.C.* 6A:4-4.1(a).

Accordingly, appellant's appeal of the Board's December 8, 2023, Order of Revocation is dismissed as untimely.[1]



ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 22, 2024
Date of Mailing: April 24, 2024

[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.

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF	:	STATE BOARD OF EXAMINERS
VINCENT CINQUINA	:	ORDER OF REVOCATION
_____	:	DOCKET NO: 1920-191

At its meeting of June 26, 2020, the State Board of Examiners (Board) reviewed the Arbitration decision in *In the Matter of the Tenure Charges Against Vincent Cinquina.* The Perth Amboy Board of Education (Perth Amboy) certified tenure charges against Vincent Cinquina (Cinquina) for inefficiency, unbecoming conduct, incapacity, and other just cause for allegedly, among other things, permitting students to play a game of truth or dare in class. The dares consisted of kissing someone or hugging someone, licking the floor, and running through the hall screaming. On March 31, 2020, the Arbitrator found that Perth Amboy demonstrated the truthfulness of the charges and dismissed Cinquina from his tenured employment.

Cinquina currently holds a Teacher of General Business Certificate of Eligibility issued July 2004; a Teacher of Elementary Grades K-8 Certificate of Eligibility issued September 2005; a Teacher of Students with Disabilities Certificate of Eligibility issued September 2005; a standard Teacher of General Business certificate issued August 2007; a standard Teacher of Elementary Grades K-8 certificate, issued August 2007; and a standard Teacher of Students with Disabilities certificate, issued August 2009. Upon review of the above information, at its July 30, 2020 meeting, the Board voted to issue Cinquina an Order to Show Cause as to why his certificates should not be revoked.

The Board sent Cinquina the Order to Show Cause by regular and certified mail on August 12, 2020. Cinquina filed an Answer on or about May 8, 2022. Based upon the answer, there are no material facts in dispute. Accordingly, pursuant to *N.J.A.C.* 6A:9B-4.6(e), the Board sent Cinquina a hearing notice by regular and certified mail on September 7, 2023. The notice explained that there were no material facts in dispute and offered Cinquina an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause provided just cause to take action against his certificates as

well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificates. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine his conduct warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Cinquina was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Cinquina did not file a written submission with the Board. However, he appeared before the Board at its meeting on September 21, 2023. During his testimony before the Board, Cinquina challenged the fairness and accuracy of the tenure arbitration, but he did not specifically deny the conduct alleged in the Order to Show Cause. He also stated that he had no plans to return to the teaching profession.

The threshold issue before the Board in this matter is whether Cinquina's conduct constitutes conduct unbecoming a certificate holder or other just cause. At its meeting of October 27, 2023, the Board considered the allegations in the Order to Show Cause as well as Cinquina's testimony during his appearance before the Board. The Board determined that no material facts related to Cinquina's offense were in dispute since he never denied that he engaged in the alleged conduct. Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C.* 6A:9B-4.6(h).

The Board must now determine whether Cinquina's conduct, as set forth in the Order to Show Cause, provides just cause to act against his certificates pursuant to *N.J.A.C.* 6A:9B-4.4. The Board finds that it does.

The Board may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C.* 6A:9B-4.4. Educators must be held to a particularly "high standard of conduct because of the influence they exercise over the students." *State Bd. of Exam'rs v. Charlton*, 96 N.J.A.R. 2d (EDE) 18, 21; see also In re Tyler, 13 N.J.A.R. 297, 308. Teachers are "professional employees to whom the people have entrusted the care and custody of . . . school children. This heavy duty requires a degree of self-restraint

and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 S.L.D. 302, 321. "That school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as part of ordered society, cannot be doubted." *In re Grossman*, 127 *N.J. Super.* 13, 30 (App. Div. 1974) (citation omitted). Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944).

Cinquina's acts of failing to remedy a situation where students were using an offensive and inappropriate group label, allowing students to engage in a game or truth or dare during which students kissed and touched each other inappropriately, and disrupting a class by calling law enforcement because he was upset that the Principal was conducting an evaluation constitute conduct unbecoming a teacher as they clearly indicate a repeated lack of the necessary self-restraint and controlled behavior expected in an educator.

Accordingly, on October 27, 2023, the Board voted to revoke Vincent Cinquina's certificates. On this 8th day of December 2023, the Board voted to adopt its formal written decision and it is therefore ORDERED that Vincent Cinquina's certificates are hereby REVOKED, effective immediately. It is further ORDERED that Cinquina return his paper certificates, if applicable, to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Rani Singh, Secretary
State Board of Examiners

Date of Mailing:
Via certified , regular mail and Email

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.

172-24
State Board of Examiners Dkt. No. 1920-117
OAL Dkt. No. EDE 00599-20
Agency Dkt. No. 12-11/23A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of
Randi Drogin, State Board of Examiners,
New Jersey Department of Education.

Order of Suspension by the State Board of Examiners, dated September 21, 2023

For the Respondent-Appellant, Sanford Oxfeld, Esq. and Samuel Wenocur, Esq. (Oxfeld Cohen)

For the Petitioner-Respondent State Board of Examiners, Sydney Finkelstein and Sadia Ahsanuddin, Deputy Attorneys General (Matthew J. Platkin, Attorney General of New Jersey)

The Commissioner has reviewed the record, hearing transcripts, and papers filed in connection with Randi Drogin's appeal of the Order of the State Board of Examiners (Board), dated September 21, 2023, suspending her Teacher of Art Certificate of Eligibility, Teacher of Art Standard Certificate, and Supervisor Certificate for a period of six months.

On December 13, 2019, the Board issued an Order to Show Cause regarding the suspension of appellant's certificates, which she opposed. Following a contested hearing, the Administrative Law Judge (ALJ) found that while employed at Bayonne during the 2018-2019 school year, appellant involved herself in the personal lives of her students and gave them advice on personal matters; expressed suicidal thoughts to students, faculty, and staff; and had

conversations with students about her own mental health issues. Additionally, the ALJ found that appellant pried into the subjects of one student's mental health and sexuality, which ultimately resulted in a no-contact agreement implemented by school officials between appellant and that student. The ALJ also found that after one of appellant's students broke up with his girlfriend, who then threatened suicide, appellant offered personal advice to the student instead of reporting the incident to the district to ensure that the student received help.

When analyzing whether appellant's conduct warranted a suspension of her certificates, the ALJ considered that appellant suffered from mental and emotional stressors during the 2018-2019 school year that likely contributed to her conduct, and further found that her mental health issues were being improperly treated during that time. The ALJ reasoned that appellant did not intend to harm or negatively affect her students, but rather involved herself too deeply into their personal lives. In the end, the ALJ concluded that the Board failed to show, by a preponderance of credible evidence, that appellant's certificates should be suspended.

Upon considering appellant's exceptions and the Board's reply thereto, the Board adopted the ALJ's findings of fact, determined that those facts constituted unbecoming conduct, and imposed a six-month suspension of appellant's certificates. The Board considered, as did the ALJ, that appellant was suffering from mental health issues when the unbecoming conduct in Bayonne occurred. However, the Board disagreed with the ALJ that this negated or excused her unbecoming conduct. Instead, the Board considered appellant's mental health issues as a mitigating factor when determining that a six-month suspension was an appropriate penalty.

On appeal, appellant maintains that no action should be taken against her certificates. Initially, she asserts that the Board should have dismissed the exceptions filed by the Deputy

Attorney General (DAG) on procedural grounds under *N.J.A.C.* 1:1-18.4(b)(1). In addition, appellant contends that the Board's decision is arbitrary, capricious, and unreasonable because: (1) the Board did not afford proper deference to the ALJ's Initial Decision, as required under *N.J.S.A.* 52:14B-10; (2) the ALJ's factual findings do not support the Board's determination of unbecoming conduct; and (3) mitigating factors, including appellant's lack of intent to cause harm and misdiagnosis of her mental health condition during the 2018-19 school year, support dismissal of the Order to Show Cause rather than a suspension of appellant's certificates.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute his judgment for that of the Board so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. The Commissioner's role in reviewing appeals is constrained by *N.J.A.C.* 6A:4-4.1(a), which specifies that "the Commissioner shall ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated that the State Board of Examiners . . . acted in a manner that was arbitrary, capricious, or contrary to law."

Initially, the record reflects that appellant received due process throughout the proceedings, and she does not contend otherwise. Next, the Commissioner finds that the sufficient credible evidence in the record supports the Board's determination that a six-month suspension of appellant's certificates is warranted given the nature and extent of her proven unbecoming conduct. Notably, appellant does not dispute the ALJ's factual findings regarding the inappropriate interactions that occurred between her, her students, and staff members

during the 2018-2019 school year. Rather, she disputes the legal characterization of said conduct as unbecoming conduct sufficient to warrant suspension of her certificates.

"Conduct unbecoming" is an "elastic" concept that includes "conduct which adversely affects the morale or efficiency" of the public entity or "which has a tendency to destroy public respect for [public] employees and confidence in the operation of [public] services." *In re Emmons*, 63 *N.J. Super.* 136, 140 (App. Div. 1960). *Accord Bound Brook Bd. of Educ. v. Ciripompa*, 228 *N.J.* 4, 13 (2017). A finding of unbecoming conduct "may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." *Bound Brook Bd. of Educ.*, 228 *N.J.* at 14 (quoting *Karins v. City of Atlantic City*, 152 *N.J.* 532, 555 (1998)).

It is well-established that "[t]eachers . . . are professional employees to whom the people have entrusted the care and custody of . . . school children . . . . This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *In re Sammons*, 1972 *S.L.D.* 302, 321. Teachers "hold positions demanding public trust, and in such positions they teach, inform, and mold habits and attitudes, and influence the opinion of their pupils." *In re Tordo*, 1974 *S.L.D.* 97, 98-99. They are held to an especially "high standard of conduct because of the influence they exercise over the students." *State Bd. of Exam'rs v. Charlton*, 96 *N.J.A.R.* 2d (EDE) 18, 21.

Appellant repeatedly failed to exercise the self-restraint required of a teacher when she made inappropriate disclosures to students regarding her own personal life, and inappropriately pried into her students' personal lives. "The line between teacher and friend should be rigorously enforced." *In re Certificates of Zantow*, OAL Dkt. No. EDE 459-07, Agency Dkt. No. 0607-126,

Initial Decision at 22 (Feb. 29, 2008), State Bd. of Exam'rs Order of Suspension at 5 (July 28, 2008). Appellant crossed that line. Her sincere desire to help her students with personal issues does not excuse her conduct. By failing to exercise the self-restraint required of an educator on several occasions during the 2018-2019 school year and exercising poor judgment in her interaction with students, appellant committed unbecoming conduct.

Turning to appellant's contentions on appeal, her argument regarding the exceptions filed by the DAG lacks merit. The DAG's exceptions comported with *N.J.A.C.* 1:1-18.4(b)(1), as they sufficiently specified in the first paragraph that exception was taken to the ALJ's legal conclusion that appellant's proven conduct neither constituted unbecoming conduct nor warranted any penalty against her certificates.

Furthermore, contrary to appellant's contention, the Board did not violate *N.J.S.A.* 52:14B-10 when it adopted the ALJ's findings of fact and credibility determinations but disagreed with the ALJ's legal conclusions. Per *N.J.S.A.* 52:14B-10(c), the ALJ's decision is "[a] recommended report and decision which contains recommended findings of fact and conclusions of law," and the ALJ's legal conclusions may be rejected by the agency so long as the agency "state[s] clearly the reasons for doing so." Here, the Board's decision adequately explained why it disagreed with the ALJ's legal conclusions and instead decided that the facts as found by the ALJ supported a finding of unbecoming conduct and suspension of appellant's certificates. The Legislature granted the Board, not the ALJ, with the authority to revoke or suspend an educator's certificates. *Morison v. Willingboro Bd. of Educ.*, ____ *N.J. Super.* ____ (App. Div. Mar. 28, 2024) (slip op. at 5-7) (citing *N.J.S.A.* 18A:6-38 and *N.J.A.C.* 6A:9B-4.4(a)).

Moreover, appellant's claim that her lack of intent to harm her students should eliminate the need for the suspension of her certificates is unsupported by law. Nothing in the controlling statutes, regulations, or relevant case law supports the conclusion that an intent to harm students must be proven before the Board may suspend or revoke certificates. *See Morison*, slip op. at 6 ("[T]he Board of Examiners 'may revoke or suspend the certificate(s) of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher, or other just cause.'" (quoting *N.J.A.C.* 6A:9B-4.4(a))).

In addition, the Board appropriately considered the fact that appellant's mental health issues contributed to her unbecoming conduct when imposing a six-month suspension of her certificates instead of a more severe sanction. In other cases involving teachers who made inappropriate comments to students, the Board has imposed a one-year suspension. *See, e.g.*, *In re Certificates of Zantow*, Agency Dkt. No. 0607-126, State Bd. of Exam'rs Order of Suspension at 5 (July 28, 2008) (imposing one-year suspension of certificates when teacher made inappropriate comments to students); *In re Certificates of Skerbetz*, Agency Dkt. No. 0405-315, State Bd. of Exam'rs Order of Suspension at 5-6 (Mar. 2, 2007) (imposing one-year suspension of certificates when teacher engaged in inappropriate conversations with students).

As for the cases cited by appellant in her briefs, they are readily distinguishable from the present matter. None of them support the conclusion that any aspect of the Board's decision was arbitrary, capricious, or contrary to law. The fact that other individuals achieved dismissal of the Board's Order to Show Cause under entirely different circumstances is neither persuasive nor dispositive. For instance, *In the Matter of the Certificates of Ralph Schiavo*, Agency Dkt. No. 0304-289, State Board of Examiners Order of Dismissal (May 10, 2006), involved an isolated

incident wherein a teacher accidentally bumped heads with a student and made a single inappropriate comment for which he promptly apologized. *In the Matter of the Certificate of Sandra Kearney*, Agency Dkt. No. 0304-106, State Board of Examiners Order of Dismissal (Sept. 25, 2003), involved an isolated incident wherein a teacher accidentally hit a student in the face after she experienced an injury and reacted to the pain by swinging her arm. *In the Matter of the Certificates of V.R.*, Agency Dkt. No. 0304-193, State Board of Examiners Order of Dismissal (Dec. 2, 2009), involved an isolated incident wherein a teacher, who was taking pain medication for an acute injury, accidentally injured a student's hand in the classroom door.

The facts in *Schiavo, Kearney, and V.R.* bear no resemblance to what occurred here. Appellant's proven conduct in this case was not accidental. Because the Board's decision is supported by sufficient, credible evidence, and appellant has failed to establish that it was arbitrary, capricious, or contrary to law, the Commissioner has no grounds to disturb the decision. *N.J.A.C.* 6A:4-4.1(a).

Accordingly, the decision of the State Board of Examiners suspending appellant's certificates for six months is affirmed.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 29, 2024
Date of Mailing: May 1, 2024

[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.

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF	:	STATE BOARD OF EXAMINERS
RANDI DROGIN	:	DOCKET NO. 1920-117
		SUSPENSION PROCEEDING
		ORDER TO SHOW CAUSE

1. Randi Drogin is the holder of Teacher of Art Certificate of Eligibility, Teacher of Art, and Supervisor certificates.
2. The Bayonne Public School District (Bayonne) provided information to the State Board of Examiners (Board) regarding Drogin.
3. Drogin was a Bayonne teacher who resigned from her position after she allegedly engaged in inappropriate conduct including sharing personal information with students and seeking personal information from students.
4. Bayonne prepared Tenure Charges against Drogin prior to her resignation. The charges were not filed but are incorporated herein by reference.
5. On or about December 8, 2017, Drogin became so emotionally upset, anxious, and overwhelmed that she had to be removed from her classes for the day. Drogin was allegedly upset because she had to make 80 banners as a result of her responsibilities as graphic arts teacher. She refused to go with EMTs and was driven home by Bayonne staff.
5. As a result of the incident indicated in paragraph 4, during the 2018-2019 school year Drogin was assigned to teach Art I and Art II. Drogin was unhappy and disappointed in the new assignment and shared those feelings with other staff members.
6. Drogin complained about having a specific student in her class and had a meeting with administration about complaints relating to her teaching assignment(s). Drogin was

counseled by administration on classroom management and handling behavior issues, inappropriate use of social media, and discussing other staff members with students.

7. Drogin allegedly made comments to students and staff regarding suicide. She stated that she wanted to drive her car into a pole and/or otherwise kill herself. She broke down in tears with a coworker and as a result of concerning comments she was sent for a psychiatric evaluation. Students also alleged she discussed these suicidal ideations with them.

8. Drogin also allegedly made comments regarding her political beliefs in front of students. She asked students personal questions regarding their sexuality, she would act erratically during homeroom, scream at students for no reason, throw pens on her desk, disparage other teachers in front of students or to students, and spoke to students about her rape. Drogin was also investigated by Bayonne for Harassment Intimidation and Bullying (HIB). Although HIB was not found, her conduct was found to be unprofessional, unbecoming and inappropriate.

9. The Board finds that the level and nature of Drogin's conduct provides just cause for consideration of the suspension of her certificates.

10. Pursuant to the Board's vote, it is therefore on this 13th day of December 2019 ORDERED that Randi Drogin show cause why all certificates and credentials she holds as of the final adjudication of this matter should not be suspended.

Rani Singh, Secretary
New Jersey State Board of Examiners

Date of Mailing: 12/19/19

173-24

New Jersey Commissioner of Education

Final Decision

C.S., on behalf of minor child, C.S.,

Petitioner,

v.

Board of Education of the Bridgewater-Raritan Regional School District, Somerset County,

Respondent.

Synopsis

Petitioner challenged the decision of the respondent Board to conduct a code of conduct investigation rather than a harassment, intimidation, and bullying (HIB) investigation into allegations that students teased her minor son, C.S., by referring to him as a "school shooter" – a taunt that had been repeatedly directed at C.S. after he was suspended for violating the school's code of conduct when he brought a nerf gun to school. The Board contended that its decision to conduct code of conduct investigations into C.S.'s complaints was not arbitrary, capricious, or unreasonable. Petitioner argued that the Board ignored its statutory obligation under *N.J.S.A.* 18A:37-13 *et seq.* by not acknowledging C.S.'s distinguishing characteristic and investigating his HIB claims. The parties filed cross motions for summary decision.

The Administrative Law Judge (ALJ) found, *inter alia*, that: there are no material facts at issue here, and the case is ripe for summary decision; an action by a board of education is entitled to a presumption of correctness and will not be undermined unless it can be shown that the decision was arbitrary, capricious or unreasonable; in the present matter, the name-calling at issue was not based upon any distinguishing characteristic of C.S. as defined in *N.J.S.A.* 18A:37-13 *et seq.* or in case law; the facts in the record do not substantiate that C.S.'s decision to bring a nerf gun to school was related to any mental disability or that the students taunting him as a result of his poor choice were making such a connection; as the Board did not find that the taunting C.S. experienced was based upon any distinguishing characteristic, its decision to investigate the incidents under the school's Code of Student Conduct was appropriate. The ALJ concluded that petitioner has failed to prove that the Board's determination was arbitrary, capricious, or unreasonable.

Upon review, the Commissioner concurred with the ALJ that the comments made to petitioner's child were not based on a distinguishing characteristic; further, the school district's decision to address the matter under its Code of Conduct rather than as acts of harassment, intimidation, and bullying was not arbitrary, capricious, or unreasonable. Accordingly, the Initial Decision was adopted as the final decision in this matter. The Board's motion for summary decision was granted, and the petition was dismissed.

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.

173-24
OAL Dkt. No. EDU 04735-23
Agency Dkt. No. 104-4/23

New Jersey Commissioner of Education

Final Decision

C.S., on behalf of minor child, C.S.,

Petitioner,

v.

Board of Education of the Bridgewater-Raritan Regional School District, Somerset County,

Respondent.

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 the comments made to petitioner's child were not based on a distinguishing characteristic. The Commissioner further concurs with the ALJ that the school district's decision to address the matter under its Code of Conduct rather than as acts of harassment, intimidation, and bullying was not arbitrary, capricious, or unreasonable.

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

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 29, 2024
Date of Mailing: May 1, 2024

[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

SUMMARY DECISION

OAL DKT. NO. EDU 04735-23

AGENCY NO. 104-4/23

C.S., ON BEHALF OF MINOR CHILD, C.S.,

Petitioner,

v.

BOARD OF EDUCATION OF THE BRIDGEWATER-RARITAN REGIONAL SCHOOL DISTRICT,

Respondent.

Michelle M. Schott, Esq., appearing for petitioner (Flanagan Barone O'Brien, attorneys)

Douglas M. Silvestro., Esq, and **Marc Mucciolo,** Esq., appearing for respondent (The Busch Law Group, LLC, attorneys)

Record Closed: February 5, 2024 Decided: March 25, 2024

BEFORE **KIM C. BELIN,** ALJ:

STATEMENT OF THE CASE

Petitioner, C.S., parent of minor child, C.S., challenges respondent, Board of Education of Bridgewater-Raritan Regional School District's decision to conduct a code of conduct investigation rather than a harassment, intimidation, and bullying (HIB) investigation into allegations that students teased C.S. by referring to him as a "school shooter."

PROCEDURAL HISTORY

On April 19, 2023, petitioner filed a Petition of Appeal challenging respondent's decision not to conduct a formal HIB investigation during the 2022-2023 school year. Respondent filed an Answer on May 30, 2023. The Department of Education (DOE) transmitted this matter as a contested case to the Office of Administrative Law ("OAL") where it was filed on May 31, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A pre-hearing conference call was held on August 14, 2023, where an evidentiary hearing was scheduled for November 6, 2023. On October 4, 2023, respondent filed a motion for summary decision. On October 24, 2023, petitioners filed a cross-motion for summary decision. The November 6, 2023, hearing was converted to a conference call at the parties' request. Marc Mucciolo, Esq., replaced Mr. Silvestro as the respondent's counsel. The parties discussed the possibility of settlement and requested additional time to generate and circulate an agreement. Accordingly, a status conference call was held on November 15, 2023, where the parties reached a tentative settlement agreement. A conference call scheduled for November 30, 2023, was adjourned at the parties' request, and on February 5, 2024, the parties indicated that they both wished to proceed with their respective motions.

FACTUAL DISCUSSION AND FINDINGS

The following FACTS are undisputed and I, therefore **FIND**:

1. For the 2022-2023 school year, C.S. attended middle school in the respondent's district and was a seventh-grade student. He was not a classified student under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.

2. During the 2021-2022 school year, C.S. brought a nerf gun to school and received a forty-five day suspension from school in accordance with the respondent's Code of Student Conduct. (Respondent's Motion for Summary Decision (RMSD), ¶¶4 and 5.)

3. During the 2022-2023 school year, at least one other student referred to C.S. as a "school shooter" based upon the incident from the previous year where he brought in the nerf gun to school. (RMSD, ¶6.)

4. On January 31, 2023, the petitioner filed seven separate HIB complaint forms with the principal of the Middle School. Six of those complaints referred to instances in which C.S. was called a "school shooter," while the seventh referenced an incident in which C.S. was allegedly targeted due to being Jewish. (RMSD, ¶7.)

5. Three incidents were reported on September 6, 2022. (Petition ¶9.)

6. In the first incident, the petitioner reported that a student stated to C.S. in LAL[1] class: "I'm going to beat you up, you better watch out school shooter. You're such a loser. Everyone hates you." (Petition, ¶9a.)

[1] Language arts literacy.

7. In the second incident, the petitioner reported that a student stated to C.S.: "You're a b*tch, I'm going to beat the sh** out of [you]. Loser, go kill yourself." This student frequently called C.S. a school shooter when they left science class. (Petition ¶9b.)

8. In the third incident, the petitioner reported that three other students randomly throughout the day called C.S. a school shooter and said: "you're a b*tch, I'm going to f*** you up. Eww looked [sic] its C.S., the school shooter, he has a gun, he's going to shoot everyone, you don't belong here loser, everyone hates you go kill yourself." (Petition, ¶9c.)

9. In the fourth complaint, dated September 20, 2022, the petitioner reported that C.S. was referenced by students as the "kid who brought a gun to school, asked why he was in school, told to kill himself, and that that [sic] they've heard he has the list of people he's going to shoot, that others should watch out he's got a gun and that he is going to get his a** kicked." (Petition ¶9d.)

10. In the fifth incident that was reported in a complaint also dated September 20, 2022, three additional students "harass him about being a school shooter, called [sic] him a piece of garbage. They told everyone I smoke weed and vape. Had [his] locker searched." (Petition, ¶9e.) On the bus, C.S. was poked in the back with a "broomstick or other device." Ibid.

11. In the final incident, reported on January 5, 2020, after lunch, three additional students yelled: "watch out! That kid's got a gun" referring to C.S. (Petition, ¶9f.)

12. Respondent investigated the incidents and determined that six of them in which C.S. was referred to as "school shooter" or words of similar effect were not instances of HIB but were violations of the respondent's Code of Student Conduct. (RMSD, ¶15.)

13. The respondent disciplined the students involved. (RMSD, ¶16.)

14. The respondent determined that none of the six incidents reported by the petitioner identified a real or perceived distinguishing characteristic that was the basis for targeting C.S. (RMSD, ¶17.)

15. The respondent notified the petitioner via email on or about February 3, 2023, of the respondent's determination that the school would not conduct HIB investigations regarding the allegations because the complaints did not "meet the criteria for HIB as there is no distinguishing characteristic." (RMSD, ¶¶18 and 20.)

16. The petitioner filed a petition on or about April 19, 2023, appealing the respondent's decision not to investigate the six incidents as HIB. (RMSD, ¶19.)

Respondent's Motion

Respondent filed a motion for summary decision contending that C.S. made a poor and immature decision to bring a nerf gun to school, however, this decision was not a distinguishing characteristic of C.S. as a person that would trigger an HIB investigation. The decision not to conduct HIB investigations was not arbitrary, capricious, or unreasonable and therefore, need not be reversed.

Petitioner's Cross Motion

Petitioner argues that the respondent acted arbitrarily, capriciously, and unreasonably by ignoring its statutory obligation under HIB to acknowledge C.S.'s distinguishing characteristic and investigate his HIB claims.

LEGAL ANALYSIS AND CONCLUSIONS

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must "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." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). Even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536.

The Anti-Bullying Bill of Rights Act (Act), N.J.S.A. 18A:37-13 et seq., is designed "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises." N.J.S.A. 18A:37-13.1(f). Under the Act, "harassment, intimidation or bullying" (HIB) is defined as:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or

> interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
>
> [N.J.S.A. 18A:37-14.]

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A. 18A:37-15. Once an alleged HIB incident is reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A. 18A:37-15(b)(6). The investigation shall be conducted by a school anti-bullying specialist and shall take no longer than ten school days to be completed. The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. The results shall also be reported to the board of education "no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent." Ibid.

Pursuant to the Act, the parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation and the result of the investigation. The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Any hearing shall be held in executive session to protect the identity of any students involved. The board may hear from the anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents. The board must issue a decision at the

first meeting after its receipt of the investigation report. The board may affirm, reject, or modify the superintendent's decision. The board's decision may be appealed to the Commissioner of Education. N.J.S.A. 18A:37-15(6)(e).

An action by a board of education "is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable." Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). The Commissioner will not substitute their judgment for that of a board of education, whose exercise of discretion may not be disturbed unless shown to be "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). Our courts have held that "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewerage Co. v. Dep't of Envtl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974). Thus, in order to prevail, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it. T.B.M. v. Moorestown Bd. of Educ., 2008 N.J. AGEN LEXIS 67 (February 6, 2008) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966)).

In the present case, the issue for resolution is whether the respondent's decision not to conduct HIB investigations was arbitrary, capricious, or unreasonable in light of the information the respondent possessed when it made its determination. The petitioner argues that the respondent's decision turned a "blind eye" to the students' perception that C.S. was a school shooter which meets the requirement of a perceived distinguishing characteristic under the Act. (Petitioner's Brief in Support of Motion for Summary Decision, at p.8.) There are reported cases in which HIB determinations by boards of education have been both affirmed and overturned. In R.G.B. v. Vill. of Ridgewood Bd. of Educ., 2013 N.J. AGEN LEXIS 130 (May 15, 2013), adopted, Comm'r, 2013 N.J. AGEN LEXIS 592 (June 24, 2013), the Administrative Law Judge (ALJ) found that the Board did not act in an arbitrary, capricious, or unreasonable manner in determining that a student engaged in HIB when he repeatedly called a female student "fat," "fat ass," and "horse."

According to the ALJ, such verbal statements satisfied all of the necessary elements under N.J.S.A. 18A:37-14. In G.H. and E.H. ex rel. K.H. v. Bd. of Educ. of the Borough of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) http://njlaw.rutgers.edu/ collections/oal/, the ALJ also upheld a Board's finding that a white student who repeatedly called a black student "Kool-Aid" engaged in HIB. The ALJ found that the "use of the word 'kool-aid' was directed at [the other student] because of his race; insulted and demeaned [the other student]; and . . . interfered with [the other student's] education" because "[u]pset and embarrassed children are not fully available for learning." These cases involved perceived distinguishing characteristics such as weight, race, gender, and/or physical features.

However, in J.A.H. o/b/o C.H. v. The Twp. of Pittsgrove BOE, 2013 N.J. AGEN LEXIS 58 (March 11, 2013), adopted, Comm'r (April 13, 2013) http://njlaw.rutgers.edu/collections/oal/. the Board's finding that an incident in which one student stuffed a crumpled piece of paper down the shirt of another student constituted an act of bullying was overturned as arbitrary, capricious, and unreasonable because the incident was merely a prank that was part of an ongoing, mutual conflict between the two boys and did not "contain the more serious and aggravating elements either 'expressed or implied' under [N.J.S.A. 18A:37-14.]" The ALJ in J.A.H. found that the incident was not improperly motivated by a distinguishing characteristic and that the facts "only support[ed] a finding of ordinary student conflicts rather than the more serious behavior of bullying." Ibid.

In addition, In L.B.T. o/b/o. K.T. v. Bd. of Educ. of the Freehold Reg'l Sch. Dist., EDU 07894-12, Initial Decision, (January 24, 2013), adopted, Comm'r (March 7, 2013), http://njlaw.rutgers.edu/collections/oal/, the ALJ determined that an act was not considered to be bullying motivated by a "distinguishing characteristic" where there was a mutual dispute between two students about their respective roles on the swim team. The judge held that if a victim was targeted because of a dispute between the two people involved—such as a relationship falling apart between former friends, a fight over a piece of property, or some form of personal vendetta of one against another—that conduct would not be based on a "distinguishing characteristic" of the victim and would not be a violation of the statute.

Here, it is undisputed that during the 2021-2022 school year, C.S. brought an imitation gun to school and served a forty-five day suspension. The following year, students began calling him a "school shooter" and encouraging him to harm himself. The respondent acknowledged that this behavior was inappropriate and violated the Code of Student Conduct, and following an investigation resulted in discipline imposed on the offending students. The statute defines HIB as "any gesture, any written, verbal or physical act, . . . that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, . . . or by any other distinguishing characteristic." N.J.S.A. 18A:37-14 (emphasis added). As respondent points out, the students called C.S. "school shooter" because of his poor choice of bringing in the nerf gun to school. It is indisputable that the students' conduct was wholly inappropriate and hurtful, and discipline was warranted because "cruel words will not be tolerated in a school environment." C.C. o/b/o S.C. v. Bd. of Ed. of Jefferson, 2015 N.J. AGEN LEXIS 251 (April 6, 2015), aff'd Comm'r (May 12, 2015).

However, the name-calling in the present matter was not based upon C.S.'s distinguishing characteristics as defined in the statute or case law. The facts and inferences in the record do not substantiate a negative inference from C.S.'s decision to bring in a nerf gun with his mental facilities or that his fellow students were making such a connection.

The respondent did not find that the comments were based upon C.S.'s race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or mental, physical, or sensory disability, or another distinguishing characteristic. While the petitioner may disagree with the respondent's determination, the petitioner presents no evidence that this determination was made in bad faith or in utter disregard of the extant information. I therefore **FIND** that the respondent properly investigated the incidents under the Code of Student Conduct.

Accordingly, based on the facts presented on the pending motions, and even giving petitioner the benefit of any reasonable inferences that could be drawn from her

papers or initial petition, I **CONCLUDE** that petitioner has not proven that the respondent's determination was arbitrary, capricious, or unreasonable.

ORDER

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.

March 25, 2024
DATE

Kim C. Belin
KIM C. BELIN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KCB/vj

APPENDIX

WITNESSES

For petitioners:

None

For respondent:

None

EXHIBITS

For petitioner:

- Petition dated April 14, 2023
- Brief in Support of Cross-Motion for Summary Decision dated October 24, 2023

For respondent:

- Answer dated May 30, 2023
- Notice of Motion for Summary Decision dated October 4, 2023

174-24

New Jersey Commissioner of Education

Final Decision

A.M., on behalf of minor child, N.M.,

Petitioner,

v.

State-Operated School District of the City of Camden, Camden County,

Respondent.

Synopsis

Pro se petitioner sought documentation showing that his daughter was authorized to attend school outside of the school district in which she resides. Petitioner further sought to have N.M. attend school in Winslow Township where she resides. The respondent Board filed a motion to dismiss, arguing that it provided the entire student record to A.M. in November 2023. The Board further moved to dismiss the remainder of the petition, asserting that the Office of Administrative Law does not have jurisdiction over the issue of N.M.'s school enrollment.

The ALJ found, *inter alia*, that: petitioner and C.W., N.M.'s mother, have joint custody of their daughter; petitioner asserted that N.M. attends Yorkship Family in respondent's school district because her mother works at the school; petitioner seeks to have N.M. attend school in Winslow Township where she resides; the Board contends that A.M.'s request for his daughter's student record is moot, as it has previously been released to the petitioner in its entirety; N.M.'s school placement is governed under the joint custody order; petitioner acknowledges that he received some records from the respondent Board but contends that the record was incomplete and inaccurate; however, objections to the content of a school record must be raised in accord with *N.J.A.C.* 6A:32-7.7, which has not been occurred in this case; further, the custody agreement between N.M.'s parents expressly identified circumstances that, if changed, could require a review of the appropriate school for N.M., and such review would be before the Superior Court Judge who issued the custody agreement. The ALJ concluded that neither petitioner's claim regarding his daughter's school records nor the issue of what school N.M. should attend are properly before the Office of Administrative Law. Accordingly, the ALJ granted the Board's motion to dismiss the petition.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter and dismissed the petition.

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.

174-24
OAL Dkt. No. 08522-23
Agency Dkt. No. 205-7/23

New Jersey Commissioner of Education

Final Decision

A.M., on behalf of minor child, N.M.,

Petitioner,

v.

State-Operated School District of the City of Camden, Camden County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner has already been provided with a copy of N.M.'s student records, and that any challenge to the accuracy of those records must be made in accordance with the procedures outlined in *N.J.A.C.* 6A:32-7.7, which, to date, petitioner has not complied with. The Commissioner further agrees with the ALJ that the issue of N.M.'s school enrollment is governed by a custody order and any changes must be made by the Family Division of the Superior Court.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 29, 2024
Date of Mailing: May 1, 2024

[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
GRANTING MOTION TO DISMISS
OAL DKT. NO. EDU 08522-23
AGENCY DKT. NO. 205-7/23

A.M. ON BEHALF OF MINOR CHILD, N.M.,
Petitioner,
v.
CITY OF CAMDEN, STATE-OPERATED SCHOOL DISTRICT, CAMDEN COUNTY,
Respondent.

A.M., petitioner, pro se

Caitlin Pletcher, Esq., for respondent (Florio, Perrucci, Steinhardt, Cappelli, Tipton & Taylor, LLC, attorneys)

Record Closed: March 12, 2024 Decided: March 27, 2024

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner A.M. seeks his daughter's school records and documentation showing that his daughter was authorized to attend school outside of the school district in which she resides. He also contends that his daughter is enrolled in a school that is not located

in her home school district and seeks to have her attend school in the school district in which she resides.

Respondent, State-Operated School District of the City of Camden, Camden County (respondent or "Camden District"), filed a motion to dismiss in which it argues that petitioner's request for documents is moot because it provided the entire student record. It also moved to dismiss the remainder of the petition because it asserts that the Office of Administrative Law does not have jurisdiction over the issue of the child's school enrollment.

PROCEDURAL HISTORY

On July 14, 2023, petitioner filed a petition with the Commissioner of the Department of Education (Commissioner). The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on August 30, 2023. The matter was assigned to me on October 11, 2023. During November 15, 2023, and December 11, 2023, status conferences, the parties discussed the voluntary production of school records to petitioner by respondent. On December 11, 2023, respondent was granted leave to file a motion to dismiss. Its motion was filed December 20, 2023. Petitioner's brief in opposition to the motion was filed on January 24, 2024, and respondent's reply brief was filed on February 8, 2024. Additional information was requested from respondent on March 4, 2024. That information was received on March 12, 2024.

FACTUAL DISCUSSION

The following is undisputed for the purpose of this motion.[1] I therefore **FIND** the following as **FACT**:

[1] "Because the matter arises on defendants' motion to dismiss, [the court must] accept as true the facts alleged in the complaint. . . . Plaintiffs are entitled to every reasonable inference in their favor." Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 625–26 (1995) (citations omitted); see also Maeker v. Ross, 219 N.J. 565, 569 (2014).

1. Petitioner's daughter is N.M. Petitioner and N.M.'s mother, C.W., have joint custody of N.M.[2]

2. N.M. attended Yorkship Family School (Yorkship) in the Camden District at the time petitioner filed his petition. R-B ("Pet.") at 1.

3. On October 4, 2023, Hon. Frank C. Testa, J.S.C., Superior Court of New Jersey, Chancery Division, Family Part, Camden County, issued an Order that addressed issues related to A.M. and C.W.'s custody of N.M. The Order directed, in part, that N.M. "shall remain in her current school if not in conflict with school administration requirements." R-C.

4. N.M. attended Yorkship when Judge Testa issued this Order. R-A.[3]

5. On December 3, 2023, Samantha L. Price, Esq., general counsel and acting chief of staff for the Camden District, sent an email to petitioner in which she wrote that the District previously gave N.M.'s thirty-nine-page student file to A.M. Price wrote that the file included the following documents:

    - Parent/Guardian Emergency Contact forms
    - Parent/Guardian Media Consent Form
    - Student Acceptable Use Policy[4]

    [R-D.]

---

[2] Petitioner attached emails to his petition in which he advised the principal of Yorkship Elementary School that he and N.M.'s mother share joint custody and that N.M. resides in the Winslow Township School District. He attached a document labeled "[N.M.] Joint Legal Custody doc.pdf"; however, the document was not included with the petition. The principal confirmed, via email, that N.M. was enrolled as a student at Yorkship School. See Emails of September 8, 2022, 8:00 a.m., and September 15, 2022, 11:11 a.m.

[3] Respondent's Exhibit A includes N.M.'s report cards that document that she attended school there during the 2022–2023 and 2023–2024 school years.

[4] The referenced documents were not included in the exhibit.

6. Price also attached the following documents to the email:

> Non-resident tuition applications submitted for [N.M] to attend school in the District for the 2022–23 and 2023–24 school years. These records are maintained by our business officer, and that is why they were not part of the intital packet of information sent to you by the school couselor, Ms. Sheared.
>
> [Ibid.]

7. Ms. Price asked petitioner to advise if he believed any documents from N.M.'s file were missing. Ibid.

8. On March 11, 2024, Ms. Price certified that she is responsible for overseeing the production of students' records to parents. She also certified that the Camden District provided N.M.'s "full student record" and has not withheld any of N.M.'s records. R-E.

Parties' Arguments

Petitioner asserts in his petition that his daughter attends Yorkship even though she does not reside within its district because his daughter's mother is employed by Yorkship and his daughter's aunt was previously its principal. He further asserts that these relationships are the reason he has not received all his daughter's school records. He seeks to have his daughter attend school in her home district, Winslow Township.

Respondent argues that petitioner's request for production of N.M.'s student file is moot because it has already provided her entire record. In support of this, it cites Ms. Price's December 3, 2023, email. It supplemented the record with Ms. Price's certification, in which she explained that the District produced all records related to N.M.

Respondent also argues that the OAL does not have jurisdiction over petitioner's request that N.M. be permitted to attend school in Winslow Township, as any such relief may be granted by only the Superior Court, Family Division. Respondent asserts that

petitioner previously sought this relief from the Superior Court, Family Division. It cites the October 4, 2023, Order issued by Judge Testa as authority for its position.

In response to the motion to dismiss, petitioner contends that Judge Testa's Order is contingent upon satisfaction of school administration requirements and that the school district and State Department of Education are required to "ensure that policies are being adhered to" when a "[n]on-resident student [is] attending a school outside of the district" where she resides. Pet'r's Br. at 1. He seems to argue that N.M.'s mother improperly enrolled N.M. at Yorkship and that school personnel failed to prepare or require the appropriate documentation to permit N.M. to attend school there. He claims that the Camden District has "overlooked" violations of "school administration procedures and policies" because N.M.'s mother's sister, T.T., was the principal of Yorkship.[5] Ibid. He seeks an investigation by the Department of Education "to determine if all school administration policies and procedures have been adhered to in order for . . . [N.M.] to remain in attendance at Yorkship Elementary School as a non-resident student." Id. at 7.

With respect to the production of N.M.'s school records, petitioner acknowledges that on November 21, 2023, the District sent records to him by email. Id. at 2; P-B.[6] He asserts, however, that there were duplicate documents and that the following mandatory records were not included:

- Immunization records.
- Parent guardian emergency contact forms for the 2018–2019, 2020–2021, 2021–2022, and 2023–2024 school years.
- Media consent forms for the same school years.
- Forms or documents that were completed using the Genesis system and stored under the "Forms" and "Documents" tabs of the program.

[5] Petitioner also suggests that there is a conflict of interest due to the familial relationship and "unethical behavior" because a school principal "did not know the specifics of the tuition application" and was not "truthful" about it. Id. at 4–5.

[6] The school counselor sent the documents to petitioner and described them as "cumulative folder records for [N.M.]." Ibid.

- Tuition applications for non-resident students for the 2020–2021 and 2021–2022 school years.
- The August 29, 2022, and November 17, 2023, applications are incomplete because they are not signed and approved by the school business administrator.
- Documentation of the approval of waivers.
- Proof of N.M.'s mother's residence.[7]

LEGAL ANALYSIS AND CONCLUSION

Pursuant to R. 4:6-2,[8] 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[.]" 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 standard for granting summary judgment (decision) was discussed by the New Jersey Supreme Court:

> 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. The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the

[7] Petitioner asserts that "[t]here is a conflict with the addresses provided by [N.M.'s] mother" and seems to contend that she used a false address to show residence within the Camden District. He further seems to allege that the District accepted improper proof of her residence. Id. at 5.

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

> matter but to determine whether there is a genuine issue for trial."
>
> [Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995) (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)).]

R. 4:46-2(c) provides further guidance:

> An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

Student Records

N.J.S.A. 18A:36-19 provides for the promulgation of regulations governing the release of students' records:

> The State Board of Education shall provide by regulation for the creation, maintenance and retention of pupil records and for the security thereof and access thereto, to provide general protection for the right of the pupil to be supplied with necessary information about herself or himself, the right of the parent or guardian and the adult pupil to be supplied with full information about the pupil, except as may be inconsistent with reasonable protection of the persons involved, the right of both pupil and parent or guardian to reasonable privacy as against other persons and the opportunity for the public schools to have the data necessary to provide a thorough and efficient educational system for all pupils.

The corresponding regulation, N.J.A.C. 6A:32-7.5, provides, in pertinent part:

> (a) Only authorized organizations, agencies, or persons, as defined in this section, shall have access to student records, including student health records.
>
> . . . .
>
> (c) Each district board of education shall control access to, disclosure of, and communication regarding information

> contained in student health records to assure access only to people permitted by Federal and State statute and regulations or as stated at (e) below.
>
> (d) Access to, and disclosure of, a student health record shall meet the requirements of the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g and 34 CFR Part 99.
>
> (e) Organizations, agencies, and persons authorized to access student records shall include only the following:
>
> 1. The student who has the written permission of a parent and the parent of a student under the age of 18, regardless of whether the child resides with the parent, except pursuant to N.J.S.A. 9:2-4;[9]
>
> . . . .
>
> (g) In complying with this section, district boards of education and charter school and renaissance school project boards of trustees shall adhere to the requirements pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

Pursuant to N.J.A.C. 6A:32-7.7, parents (and adult students) have the right to examine student records and to challenge those records "on grounds of inaccuracy, irrelevancy, impermissible disclosure, inclusion of improper information, or denial of access to organizations, agencies, and persons." N.J.A.C. 6A:32-7.7(a). Such challenges may include requests for the "[i]nsertion of additional data, as well as reasonable comments regarding the meaning and/or accuracy of the student record[.]" N.J.A.C. 6A:32-7.7(a)(2). The regulation sets the procedures for such a challenge, starting with initial communication with the chief school administration, followed by an appeal to the district board of education and then to the Commissioner of the Department of Education. Jurisdiction and ultimate decision-making authority rest with the Commissioner of Education. N.J.A.C. 6A:32-7.7(b).

[9] Concerning determinations of child custody.

Here, petitioner does not dispute the provision of records; however, he contests the accuracy of the student file and asserts wrongdoing with respect to an alleged failure to prepare certain documents. Objections to the content of the school record must be raised in accord with N.J.A.C. 6A:32-7.7. For this reason, I **CONCLUDE** that petitioner's claims about the content of the school record is not properly before the OAL.

School Attendance

N.J.S.A. 2A:34-8 provides that the Superior Court "shall have jurisdiction of all causes of divorce . . . when either party is a bona fide resident of this State. . . . The Superior Court may afford incidental relief as in other cases of an equitable nature and by rule of court may determine the venue of matrimonial and civil union actions." This statute "gives the Superior Court jurisdiction in all causes dealing with divorce, nullity, alimony and maintenance." Tellian v. Healy, 60 N.J. Super. 539, 543 (1960).

Attempts to modify a custody arrangement, whether agreed upon by the parties or ordered by the Superior Court, require "a showing of changed circumstances, with the court determining custody in accordance with the best interests standard of N.J.S.A. 9:2-4." Bisbing v. Bisbing, 230 N.J. 309, 322 (2017). Here, Judge Testa expressly identified a category of circumstances that, if changed, could require a review of the appropriate school for N.M. This issue must thus be brought to Judge Testa. For this reason, I **CONCLUDE** the OAL does not have jurisdiction over this issue.[10]

ORDER

For the foregoing reasons, I **ORDER** that respondent's motion to dismiss the petition is **GRANTED**.

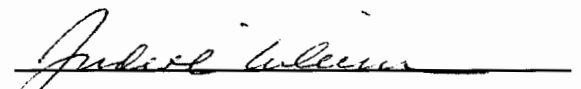
[10] The remainder of petitioner's claims, including claims of conflicts of interest, were not pled in the petition that was transmitted by the Department of Education to the OAL. They are thus not appropriate for disposition here.

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.

March 27, 2024
DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency: March 27, 2024

Date Mailed to Parties: March 27, 2024

JL/sg/sb/mg

APPENDIX

Exhibits

For petitioner:

P-A Order, A.M. v. C.W., Docket No. FD-04-549-15, Hon. Frank C. Testa, J.S.C., October 4, 2023

P-B Fax cover sheet with note, "contents of [N.M.'s] cumulative folder," with attachments. Messages between S.A. and CHOP staff, December 13, 2023, through December 14, 2023

P-C Non-resident tuition program applications, emails, address documentation

P-D Student records

P-E Report by New Jersey School Boards Association, "Boundary Lines," November/December 2017, Volume 48, No. 3

For respondent:

R-A Grade Interim Report, Yorkship Elementary School

R-B Petition

R-C Order, A.M. v. C.W., Docket No. FD-04-549-15, Hon. Frank C. Testa, J.S.C., October 4, 2023

R-D Email correspondence, Samantha Price, Esq., to A.M., December 3, 2023

R-E Certification of Samantha Price, Esq., March 11, 2024

175-24
Agency Dkt. No. 79-3/24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Tenure Hearing of
Maria Castellitto, School District of the
Township of North Bergen, Hudson County.

For the Petitioner, Jason M. Ryglicki, Esq.

No appearance by or on behalf of Respondent, Maria Castellitto

This matter was opened before the Commissioner of Education on March 25, 2024, through tenure charges of unbecoming conduct certified by George Solter, Superintendent of the North Bergen School District ("District"), together with supporting evidence against respondent, Maria Castellitto, a tenured teaching staff member in the District's employ.

The District attempted to serve respondent with written notice of such certification at the respondent's last known address. However, a private investigator employed by the District to effectuate service was unable to locate respondent. The investigator's efforts included surveilling respondent's last known address and attempting to obtain information from other residents of that location; contacting respondent's daughter, who advised that respondent had been missing without contact for the past two years; visiting locations respondent was reported to have frequented; and contacting local police, who advised that they had not had contact with respondent since a welfare check conducted in 2022. The District also served copies of the tenure charges on the president and attorney of the District's teachers' union via regular and

certified mail. No reply to the tenure charges was received from or on behalf of the respondent.

N.J.A.C. 6A:3-5.3 requires that tenure charges and related documents must be served on the respondent. However, that provision does not specify what occurs when a district is unable to effectuate service, so the Commissioner looks to the New Jersey Court Rules for guidance. Pursuant to *N.J.Ct.R.* 1:5-2, if no address is known for a party, despite diligent effort, the filing of papers with the clerk shall be deemed to satisfy the service requirement. The Commissioner concludes that the District made diligent efforts to effectuate service of the tenure charges upon respondent, and therefore accepts the filing of those charges with the Commissioner, through the Office of Controversies and Disputes, in satisfaction of the service requirement.

The certified tenure charges and statement of supporting evidence filed by the District in this matter indicate that the respondent was employed by the District as a tenured teacher. The charges indicate that following multiple instances of paranoid and troubled behavior, which led to at least two hospitalizations, the District placed respondent on medical leave and sought and was granted an Order compelling respondent to appear for a fitness for duty examination. *Bd. of Educ. of the Twp. of North Bergen, Hudson Co. v. Maria Castellitto*, Commissioner Decision No. 230-22E (decided Sept. 14, 2022). Respondent failed to appear for the examination and remains on medical leave. During this time, respondent has failed to perform the duties of her job.

Deeming the allegations to be admitted, the Commissioner finds that the District's charge of unbecoming conduct has been proven and warrants the respondent's dismissal. Accordingly, summary decision is hereby granted to the District, and the respondent is

dismissed from her tenured position with the North Bergen School District. This matter will be transmitted to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 29, 2024
Date of Mailing: May 1, 2024

[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.

176-24E
OAL Dkt. No. EDU 04777-24
Agency Dkt. No. 98-4/24

New Jersey Commissioner of Education

Order on Emergent Relief

Board of Trustees of the College Achieve Greater Asbury Park Charter School, Monmouth County,

Petitioner,

v.

Board of Education of the City of Asbury Park, Monmouth County,

Respondent.

The record of this emergent matter and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that the motion for emergent relief is moot.

Accordingly, the recommended Order of the OAL denying petitioner's application for emergent relief is adopted for the reasons stated therein. This matter shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 29, 2024
Date of Mailing: May 1, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
EMERGENT RELIEF
OAL DKT. NO. EDU 04777-24
AGENCY DKT. NO. 98-4/24

BOARD OF TRUSTEES OF THE COLLEGE ACHIEVE GREATER ASBURY PARK CHARTER SCHOOL, MONMOUTH COUNTY,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY OF ASBURY PARK, MONMOUTH COUNTY,

Respondent.

Thomas O. Johnston, Esq. and **Jaryda A. Gonzalez**, Esq. for petitioner (Johnston Law Firm, LLC, attorneys)

Eric L. Harrison, Esq., and **Kajal J. Patel**, Esq. for respondent (Methfessel & Werbel, P.C., attorneys)

BEFORE **KIMBERLEY M. WILSON**, ALJ:

On or around March 20, 2024, petitioner Board of Trustees of the College Achieve Greater Asbury Park Charter School, Monmouth County (Charter School) filed a petition with the Commissioner of the Department of Education (DOE), requesting the Commissioner to direct the State Treasurer to remit payments that respondent Board of Education of the City of Asbury Park, Monmouth County (Board) owed the Charter School to it and to deduct those amounts from the district's state aid. On or around April 12, 2024, the Charter School filed a motion for emergent relief, a letter brief, and certifications with exhibits with the Commissioner of the DOE, Office of Controversies and Disputes. On or around April 15, 2024, the DOE transmitted this emergent matter to the Office of Administrative Law, where it was filed as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F1 to -13.

On or around April 16, 2024, the Board submitted a written response to the Charter School's motion for emergent relief. After a status conference on April 17, 2024, to determine whether the parties could resolve their differences amicably, the parties presented oral argument on the emergent motion on April 18, 2024. The record remained open to allow the parties to provide supplemental information to the ALJ on April 19, 2024.

On April 19, 2024, counsel for the Charter School advised that on or around April 18, 2024, the Board had remitted payment to the Charter School for the funds the Board owed the Charter School. Given these developments, I **FIND** that the issues raised in this motion have been rendered moot. Based on the representations from counsel during oral argument, there are contested issues in the petition that remain for decision. I **CONCLUDE** that the Charter School's motion is **DISMISSED**, but the petition is not dismissed.

ORDER

Accordingly, **I ORDER** that the Charter School's motion for emergent relief be and hereby is **DENIED**. I further **ORDER** that the parties appear for an initial status conference for this matter on **June 3, 2024**, at 3:30 p.m. Our office will send separate notice of this status conference.

This order on application for emergency relief 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. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If the Commissioner of the Department of Education does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

April 19, 2024

DATE

KIMBERLEY M. WILSON, ALJ

Date Received at Agency: April 19, 2024

Date Mailed to Parties: April 19, 2024

KMW/dw

177-24
OAL Dkt. No. EDU 14258-23
Agency Dkt. No. 318-11/23

New Jersey Commissioner of Education

Final Decision

K.E., on behalf of minor child, J.C.,

Petitioner,

v.

Board of Education of the Township of Denville, Morris County,

Respondent.

The record of this matter, the proposed Settlement Agreement and Stipulated Consent Judgment (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 30, 2024
Date of Mailing: May 1, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 14258-23
AGENCY DKT. NO. 318-11/23

K.E. ON BEHALF OF THE MINOR CHILD J.C.,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWNSHIP OF DENVILLE

Respondent.

Laura A. Siclari, Esq., for petitioner (Santomassimo Davis, attorneys)

Frances L. Febres, Esq., for respondent (Cleary, Giacobbe, Alfieri, Jacobs, attorneys)

Record Closed: April 16, 2024 Decided: April 16, 2024

BEFORE **R. TALI EPSTEIN**, ALJ:

On or about November 21, 2023, petitioner K.E. on behalf of minor child J.C. filed a Petition of Appeal with the Commissioner of Education challenging the residency determination by respondent Board of Education of the Township of Denville

(Denville). The Department of Education transmitted the matter to the Office of Administrative Law (OAL) under the caption K.E. on behalf of minor children J.R. and J.C. v. Board of Education of the Township of Denville and Morris Hills Regional School District, Morris County, where it was filed for determination as a contested case under OAL Docket No. EDU 14258-23. On or about January 23, 2024, Denville filed an Answer and Counterclaim to the Petition of Appeal, which included a request for tuition and transportation costs.

During prehearing proceedings, petitioner and Denville advised the tribunal that they had reached an amicable resolution of their dispute. With the consent of the parties, by order dated April 15, 2024, the undersigned bifurcated the matter so that petitioner's claim regarding the minor child J.C. (and Denville's counterclaim) could proceed separately from petitioner's claim regarding the minor child J.R. (and the counterclaim asserted by Morris Hills Regional School District, Morris County). The bifurcation order directed that the matter against Denville, involving the minor child J.C., proceed under the caption K.E. on behalf of the minor child J.C. v. Board of Education of the Township of Denville, with OAL docket number EDU 14258-23, and that the matter against Morris Hills, involving the minor child J.R., proceed under the caption K.E. on behalf of the minor child J.R. v. Morris Hills Regional School District, Morris County, with OAL docket number EDU 04724-24.

Attached hereto is the executed Settlement Agreement and Stipulated Consent Judgment between petitioner and Denville and the certified resolution of the Denville Township Board of Education approving same.

Having reviewed the record and the settlement terms, I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and, therefore, **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

April 16, 2024
DATE

R. TALI EPSTEIN, ALJ

Date Received at Agency: April 16, 2024

Date Mailed to Parties: April 16, 2024

cc

Frances L. Febres, Esq. (Attorney ID 018542012)
CLEARY GIACOBBE ALFIERI & JACOBS, LLC
169 Ramapo Valley Road
Upper Level, Suite 105
Oakland, New Jersey 07436
Telephone: 973-845-6700
Facsimile: 201-644-7601
Attorneys for Respondent, Board of Education of the Township of Denville

K.E. o/b/o minor children J.R. and J.C., Petitioner, v. BOARD OF EDUCATION OF THE TOWNSHIP OF DENVILLE and MORRIS HILLS REGIONAL SCHOOL DISTRICT, Respondents.	STATE OF NEW JERSEY OFFICE OF ADMINISTRATIVE LAW OAL DOCKET NO. EDU 14258-2023 N AGENCY REF. NO. 318-11/23 **SETTLEMENT AGREEMENT AND STIPULATED CONSENT JUDGMENT BETWEEN PETITIONER AND DENVILLE TOWNSHIP BOARD OF EDUCATION**

This Settlement Agreement and Stipulated Consent Judgment ("Agreement") is entered into by and between K.E., individually and o/b/o minor child, J.C. ("Petitioner") and the Denville Township Board of Education ("Board"), having administrative offices at 1 Saint Mary's Place, Denville, New Jersey 07834 (the Board and Petitioner are collectively referred to as the "Parties").

WHEREAS, for the 2022-2023 and 2023-2024 academic years, the minor child, J.C. (hereinafter referred to as the "Child") was enrolled in the Denville Township Public School District ("District"); and

WHEREAS, during the 2023-2024 school year, the school district obtained evidence that Petitioner had been residing and established her domicile in Springfield, New Jersey; and

WHEREAS, following notices to Petitioner and a residency hearing conducted by the Board of Education on October 30, 2023, during which Petitioner appeared and participated, the Denville Township Board of Education found that the Child was not domiciled in Denville, New Jersey but was domiciled instead in Springfield, New Jersey since, at least, April 25, 2023; and

WHEREAS, Petitioner filed the instant Petition of Appeal to dispute the Child's removal from the District; and

WHEREAS, the Board of Education filed an Answer and Counterclaim to the Petition of Appeal, seeking tuition and transportation associated with J.C.'s ineligible attendance; and

WHEREAS, the Parties have conferred and reached an amicable resolution to the issues between the Parties pertaining to the above-captioned matter, and as stated in the Parties' pleadings; and

WHEREAS, the Parties have each determined that this resolution is their respective best interest, without the need to spend further time and resources in proceeding to an administrative hearing.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and sufficient consideration, and with no admission of liability or wrongdoing, the receipt and sufficiency of which is hereby acknowledged, the Parties now desire to memorialize the terms of their terms and conditions agreement in writing, as follows:

1. Petitioner agrees to pay the Board tuition in the amount of Five Thousand Dollars ($5,000.00) over a twenty-four month period beginning the first of the month following the Commissioner of Education's approval of this Settlement Agreement, in 24 equal installment payments of 208.33, with each such payment becoming due as of the 1st of the month in which it applies. For purposes of illustration, if the Commissioner of Education approves this Agreement

on April 15, 2024, Petitioner's first tuition payment shall become due on May 1, 2024 and payment must be made by or before May 1, 2024, with each subsequent payment also becoming due on the 1st of each month to follow: June 1st, July 1st, etc.

a. Petitioner agrees that the Settlement Amount, which incorporates a reduction in the overall tuition and transportation costs owed, is contingent on Petitioner's timely payment of the first installment and each installment payment thereafter.

b. Should the Board not receive the first or any subsequent installment payment timely and/or in full by the date when each becomes due, the Petitioner will have the opportunity to "cure" the default in accordance with the terms and procedure set forth herein. Petitioner's failure to comply with the payment requirements shall result in Petitioner owing the Board of Education the full tuition and transportation costs it incurred as a result of J.C. attending its schools since, at least, April 25, 2023, as follows: Two Thousand Dollars ($2,000) for the 2022-2023 school year tuition, Ten Thousand Dollars ("$10,000) for the 2023-2024 school year tuition, and transportation costs since April 25, 2023 in the amount of Twenty-Seven Thousand Nine Dollars and Eighty-Six Cents ($27,009.86), for a total owing amount of Thirty-Nine Thousand Nine Dollars and Eighty-Six Cents ($39,009.86).

c. All payments shall be made to the Board by personal or certified check, payable to the Denville Township Board of Education.

2. The Board shall terminate transportation services for J.C. effective April 15, 2024 or the date of the Commissioner of Education's decision approving this Agreement, whichever is

later. Petitioner acknowledges that she is solely responsible for getting J.C. to and from schools, including school-related activities and events.

3. J.C. may continue attending the Denville Public Schools through June 30, 2024 and attend graduation.

a. J.C.'s ability to attend graduation and participate in other school-related activities is contingent on her adherence to the code of conduct for students, the student handbook, and Board Policies and Regulations governing student expectations, conduct and behavior.

4. J.C. will not attend the Denville Public Schools following June 30, 2024 unless Petitioner establishes and demonstrates that she and J.C. are domiciled within Denville Township, New Jersey.

5. By executing this Agreement, and without admitting any liability or wrongdoing, Petitioner acknowledges and confirms that, since at least April 25, 2023, she and J.C. were domiciled in Springfield, New Jersey and continues to be domiciled in Springfield, to date. Petitioner further acknowledges and agrees that her domicile in Springfield, New Jersey has provided her and J.C. with, and continues to provide her and J.C. with a fixed, regular and adequate residence since, at least, April 25, 2024, as that term is understood with respect to State and federal student residency and enrollment eligibility criteria under the law, whether Section 18A of the New Jersey Statutes Annotated, the Department of Education Administrative Code, the federal McKinney-Vento Act and/or other State or federal law that applies to students' eligibility to attend public school without payment of tuition or related costs, and which term and application has been explained to Petitioner and J.C. by their attorney.

6. In the event Petitioner fails to pay in accordance with the terms set forth in this Settlement Agreement and Stipulation:

a. Petitioner shall be given thirty (30) days from Notice of Default to cure same;

b. Thereafter, the Board may submit an ex parte certification to the Superior Court of New Jersey with notice to Petitioner, setting forth her failure to pay in accordance with the terms set forth herein with a consent judgment in the Denville Township Board of Education's favor, in the form annexed hereto as Exhibit "A," for entry by the court (the "Consent Judgment"), and which Consent Judgment the parties authorize their attorneys to execute on their behalf. The Consent Judgment shall be for the tuition and transportation costs incurred by the Denville Township Board of Education since April 25, 2023, the period when the parties agree that Petitioner and J.C. has been domiciled in Springfield, New Jersey, and which costs amount to Thirty-Nine Thousand Nine Dollars and Eighty-Six Cents ($39,009.86), less any payments made by Petitioner to the Board pursuant to Paragraph 1 (above);

i. The original, fully-executed Consent Judgement shall be maintained with the Board's Attorney and shall not be filed with the Superior Court until/unless required to effectuate the payment of the tuition, and only after Petitioner was provided with notice of her default and provided with time to cure any such default, as specified herein.

ii. Petitioner is authorizing her attorney to execute and deliver the signed Consent Judgment to the Board's Attorney within ten (10) days of

Petitioner executing this Agreement. Petitioner understands and agrees that this is a condition of the instant Settlement Agreement.

iii. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.

c. Petitioner waives all rights to contest entry of the Consent Judgment, an unexecuted copy of which is attached as Exhibit "A" to this Agreement. The Consent Judgment may be docketed with the Clerk of the Superior Court of New Jersey; and

d. No delay or omission on the part of the Board in exercising any right under this Stipulation will operate as a waiver of that right or of any other right under this Stipulation.

7. In consideration of the terms of this Agreement, Petitioner hereby waives, releases and indemnifies the Board, its employees, and agents from all possible claims, including claims that may be raised by J.C. and/or 3rd parties with standing, that have or may have been accrued against the Board arising out of events or incidents that relate to the Petition of Appeal in this matter. Nothing in this Release or Indemnification set forth in this Paragraph shall be construed as a release or waiver of any claims between the Parties seeking to enforce any term or provision of this Agreement.

8. In consideration of the terms of this Agreement, which includes, but is not limited to a significant reduction in the payment of costs associated with J.C.'s attendance and enrollment in the Denville Public Schools as a nonresident student domiciled in Springfield, New Jersey, the Petitioner, on behalf of herself and J.C., and their successors and assigns, hereby holds the Board harmless, indemnifies, and releases and waives all rights and claims that she or

J.C. may have against the Board, which includes the Board's past or present officers, employees, agents and representatives ("Releasees"), which may have arisen or did arise out of and/or could relate to J.C.'s enrollment and attendance at the Denville Public Schools through June 30, 2024, such as, but not limited to claims under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12 et seq., Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6A:14-1.1 et seq., the New Jersey School Laws, the New Jersey State Constitution, any other federal, state or local law or ordinance, and/or any common law claim under tort, contract or any other theory now or hereafter recognized that relate to or arise under laws addressing the public education of students in New Jersey and/or the responsibilities of school boards and school officials to the students attending public schools. The release recited in this paragraph shall include any and all claims which Petitioner and J.C. may have had at the time of the execution of this Separation Agreement and General Release for any type of damages cognizable under any of the laws referenced herein, including, but not limited to, any and all claims for compensatory damages, compensatory services, related services, compensatory education, legal fees and/or expert costs, punitive damages, and/or attorneys' fees.

9. In consideration of Petitioners' release of the Board, and the other good, valuable and sufficient consideration recited herein, the Board releases and gives up any and all claims known and unknown and rights which it may presently have and be aware of against Petitioner and J.C. This release applies to claims resulting from anything which has happened up to now arising from or related to Petitioner's participation in J.C.'s education.

10. Petitioner acknowledges that she has had the opportunity to review this Agreement in detail with her Attorney. Petitioner fully understand its requirements and

limitations. Petitioner hereby states that she is signing this Agreement voluntarily, of her own free will, and not under duress or coercion of any kind.

11. The Parties additionally agree that neither will, during the term of this Agreement or beyond, make disparaging statements, in any form, about each other, including the Board's employees, officers, agents and representatives, nor shall either party make statements, in any form, about the other which the party knows or has reason to believe, are false or misleading. Parties understand and agree that the prohibition against disparaging, false and/or misleading comments shall also apply to information set forth in school and student records. Parties recognize this as a material term of the Agreement.

12. Each party shall bear its or his/her own counsel fees incurred in connection with this matter, including any attorney's fees and legal costs. Neither party shall be considered a prevailing party for purposes of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a, N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6A:14-1.1 et seq., New Jersey Law Against Discrimination, N.J.S.A. 10:5-12 et seq., the Americans with Disabilities Act, 42 U.S.C. 12101 set seq., or any other statute, regulation, or other legal authority providing for the reimbursement of attorney's fees and costs. The Petitioner waives, on behalf of herself and J.C., the right to pursue an award of attorney's fees and costs under any of these fee-shifting statutes for all claims settled by this Agreement.

13. This Agreement shall be construed fairly according to the plain language of its terms and not for or against any party hereto.

14. All parties are bound by this Agreement and each of its provisions. Anyone who succeeds their rights and responsibilities, such as their successors and assigns are also bound.

This Agreement is made for the benefit of all parties hereto and all who succeed to their rights and responsibilities, and expressly includes their officials, representatives, employees, agents, attorneys, successors or assigns.

15. This Agreement is to be kept confidential by both parties to the maximum extent permitted by Law.

16. This Agreement represents the entire Agreement between the Parties and will not be modified in whole or in part except by a mutual subsequent written and signed agreement.

17. This Agreement is governed by the laws of the State of New Jersey. The Parties agree that the courts of the State or District Court of New Jersey shall be the sole forum in which any legal action concerning or relating to this Agreement shall be brought.

18. In the event that any provision of this Agreement is held to be void or unenforceable by any court or regulatory authority having jurisdiction thereof, such ruling will not affect the validity of this Agreement; the remaining provisions shall continue to be in full force and effect.

19. This Agreement may be executed in one or more original, emailed or telecopied counterparts, all of which together shall be one instrument, and all of which shall be considered duplicate originals.

20. By signing this Agreement, the Petitioner and the Board each certify that (a) each has read the Agreement; (b) each has had the opportunity to discuss this Agreement with their respective attorneys; (c) each enters into this Agreement knowingly, willingly, and without coercion or improper inducement; and (d) both parties are satisfied with their legal representation in this matter.

21. **This Agreement is conditioned upon and subject to the review and approval of an Administrative Law Judge, and the Denville Township Board of Education.**

The parties hereby acknowledge their agreement to the terms set forth above by signing below.

PETITIONER:

Kristal Elliott

Date: 3/28/24

FOR THE DENVILLE TOWNSHIP BOARD OF EDUCATION:

James Kim
Board of Education

Date: 3/25/2024

Witness for Petitioner:

Laura Siclari, Esq.
Attorney at Law, State of NJ

Dated: March 28, 2024

DAMARIS GUROWSKY
Board Secretary

Date: 3/25/2024

EXTRACT FROM THE MINUTES
OF A MEETING OF THE BOARD OF EDUCATION
OF THE TOWNSHIP OF DENVILLE, MORRIS COUNTY, NEW JERSEY
AS RECORDED IN THE OFFICIAL MINUTES BOOK

The Board of Education of the Township of Denville in the County of Morris, New Jersey, convened in its Regular Meeting on **March 25, 2024**.

The following members of the Board of Education were present:
Mr. Andersen, Mrs. Zeydelis, Dr. Moore, Mr. Kim, Mr. Casse, & Dr. Arunajatesan,

The following resolution was offered and adopted by the Board of Education by the following Roll Call vote:

ROLL CALL:
Ayes: **Mr. Andersen, Mrs. Zeydelis, Dr. Moore, Mr. Kim, Mr. Casse, & Dr. Arunajatesan,**

Nays: 0

BE IT RESOLVED that the Board of Education hereby approves the Settlement Agreement regarding Student No. 20312675, and accepts the terms and conditions set forth therein; and

BE IT FURTHER RESOLVED that the Board of Education's approval is conditioned upon the parent of Student No. 20312675 approving this Settlement Agreement; and

BE IT FURTHER RESOLVED that the Board of Education's approval is further conditioned upon the New Jersey Commissioner of Education's approval of this Settlement Agreement; and

BE IT FURTHER RESOLVED that the Board of Education authorizes the Board President to execute the Settlement Agreement on its behalf.

STATE OF NEW JERSEY
COUNTY OF MORRIS

I, Damaris Gurowsky, Secretary of the Board of Education of the Township of Denville in the County of Morris, State of New Jersey, hereby certify that the foregoing extract from the minutes of the meeting of the Board of Education of said district duly called and held on March **25th, 2024**, has been compared by me with the original minutes as recorded in my office in the minutes book of said Denville Board of Education and is a true, complete copy thereof and of the whole of the said original minutes so far as the same relates to the subject matter referred to in said extract in witness I have hereunto set my hand and affixed the corporate seal of said Board of Education this **26th day of March 2024**.

D. Gurowsky

Damaris Gurowsky
School Business Administrator/Board Secretary

Frances L. Febres, Esq. (Attorney ID 018542012)
CLEARY GIACOBBE ALFIERI & JACOBS, LLC
169 Ramapo Valley Road
Upper Level, Suite 105
Oakland, New Jersey 07436
Telephone: 973-845-6700
Facsimile: 201-644-7601
Attorneys for Respondent, Board of Education of the Township of Denville

K.E. o/b/o minor children J.R. and J.C. Petitioner, v. BOARD OF EDUCATION OF THE TOWNSHIP OF DENVILLE and MORRIS HILLS REGIONAL SCHOOL DISTRICT, Respondents.	STATE OF NEW JERSEY OFFICE OF ADMINISTRATIVE LAW OAL DOCKET NO. EDU 14258-2023 N AGENCY REF. NO. 318-11/23 **STIPULATED CONSENT JUDGMENT** **BETWEEN** **KRISTAL ELLIOTT** **AND** **DENVILLE TOWNSHIP BOARD OF EDUCATION**

THIS MATTER having been opened to the Court by Cleary Giacobbe Alfieri Jacobs LLC. attorneys for the Plaintiff, Denville Township Board of Education ("Plaintiff"), with the consent of the Defendant, Kristal Elliott ("Defendant"), and it appearing that the parties entered into a Settlement Agreement on _____, 2024, which had been approved by an Administrative Law Judge and New Jersey Commissioner of Education, to

resolve a dispute before the New Jersey Commissioner of Education and, as part of the Settlement Agreement, the Plaintiff and the Defendant willingly executed this Consent Judgment, the entry of which is governed by the terms and conditions of the Settlement Agreement, and good cause appearing:

IT IS on this _____ day of _____, 20___, ORDERED AND ADJUDGED:

Judgment is entered in favor of Plaintiff and against Defendant, Kristal Elliott, in the amount of _____ Dollars ($_____.00), in addition to interest, attorneys' fees, and legal costs, as of _____, 20___, as follows:

a. Within _____ days of the execution of this Judgment, Kristal Elliott shall pay the Denville Township Board of Education $_____.00 less any monies already paid to the Plaintiff under the Settlement Agreement; and

_____
J.S.C.

We hereby consent to the form and entry of this Consent Judgment:

_____
LAURA SICLARI, ESQ.
Outside General Counsel Solutions
Attorneys for Defendant, Kristal Elliott

Date: _____

_____
FRANCES L. FEBRES, ESQ.
Cleary Giacobbe Alfieri Jacobs LLC
Attorneys for the Plaintiff,
Denville Twp. Board of Education

Date: _____

179-24
State Board of Examiners Dkt. No.
2021-163 OAL Dkt. No. EDE 06423-2021
Agency Dkt. No. 13-11/23A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of Nicole M. Maffucci, State Board of Examiners, New Jersey Department of Education.

Order of Suspension by the State Board of Examiners, dated October 27, 2023

For the Respondent-Appellant, Justin M. Schwam, Esq.

For the Petitioner-Respondent State Board of Examiners, Sadia Ahsanuddin, Deputy Attorney General (Matthew J. Platkin, Attorney General of New Jersey)

The Commissioner has reviewed the record, hearing transcripts, and papers filed in connection with Nicole M. Maffucci's appeal of the Order of the State Board of Examiners (Board), dated October 27, 2023, suspending her Teacher of Elementary K-6 Certificate of Eligibility with Advanced Standing, Teacher of Elementary K-6 Standard Certificate, Teacher of Students with Disabilities Certificate of Eligibility, Teacher of Students with Disabilities Standard Certificate, and Supervisor Certificate for a period of one year.

On or about May 13, 2021, the Board issued an Order to Show Cause (OSC) regarding the suspension of appellant's certificates. The OSC alleged that appellant applied for a Principal Certificate in October 2020. After being advised by an examiner at the New Jersey Department of Education (Department) that her Record of Professional Experience (ROPE) form was deficient,

appellant allegedly submitted a revised ROPE form to her employer for signature which contained inaccurate information. The OSC further alleged that appellant failed to notify her employer about the alterations she made to the ROPE form and indicated only that it required a signature and submission to the Department.

Although the ROPE form instructions state that the employer must complete Parts B, C, and D, it is uncontested that appellant filled out the ROPE forms herself (except for the employer's signature line). The record reflects that the ROPE form rejected as deficient by the Department's examiner, which was submitted in February 2021, listed her "Successful Professional Experience" in Part B as follows:

Position Held	**Name of certificate required for this position**	**If Teacher, indicate subject taught**	**Grade Level**	**Start Date**	**End Date**	**Check One: Full-Time | Part-Time** (50% or more) (less than 50%)
Special Education Teacher	Teacher of Students with Disabilities	Social Studies	9-12	12/1/14	Current	X

Part C of the February 2021 ROPE form, "Teacher Evaluation," stated that appellant's district evaluated her as a Special Education Teacher in 2016-2017, 2017-2018, 2018-2019, and 2019-2020, rating her as "4 – highly effective" in each school year.

Because appellant did not receive her Teacher of Students with Disabilities Standard Certificate until 2018, the Department's examiner advised appellant that Part B experience prior to 2018 needed to be under her Teacher of Elementary K-6 Standard Certificate and asked whether she had any additional experience under that certificate. This inquiry prompted appellant to prepare a revised ROPE form.

In March 2021, appellant prepared a revised ROPE form listing her "Successful Professional Experience" in Part B as follows:

Position Held	**Name of certificate required for this position**	**If Teacher, indicate subject taught**	**Grade Level**	**Start Date**	**End Date**	**Check One: Full-Time | Part-Time** (50% or more) (less than 50%)
Teacher	Elementary School Teacher K-6	Social Studies	6	12/1/14	6/8/18	X
Teacher	Teacher of Students with Disabilities	Social Studies	9-12	6/8/18	Current	X

Part C of the March 2021 ROPE form, "Teacher Evaluation," stated that appellant's employer evaluated her as a 6th grade Social Studies teacher in 2016-2017 and 2017-2018, rating her as "4 – highly effective." It further stated that appellant's employer evaluated her as a Special Education teacher in 2018-2019 and 2019-2020, rating her as "4 – highly effective."

During the contested hearing at the OAL, appellant admitted, contrary to what the March 2021 ROPE form indicated, that she never taught 6th grade on a full-time basis and was not evaluated by her employer specifically as a 6th grade Social Studies teacher. However, she credibly testified that she taught a group of 6th through 8th grade students during the 2016-2017 and 2017-2018 school years in U.S. Government and World Geography classes while also teaching high school Social Studies to grades 9 through 12. She produced copies of schedules from 2016-2017 and 2017-2018 which stated that she taught U.S. Government, among other courses, in 2016-2017 and World Geography, among other courses, in 2017-2018, several days per week. Two district administrators who supervised appellant between 2016 and 2020, whom the ALJ also found to be credible, testified that appellant never taught 6th grade.

Ultimately, the ALJ found that appellant had taught Social Studies classes (U.S. Government and World Geography) to 6th through 8th graders in addition to having taught Social Studies to high school students. The ALJ further found that the "errors" on appellant's March 2021 ROPE form "do not constitute a knowing and willful effort to misrepresent her credentials, but an inadvertent error in compilation of the information in the documentation." Initial Decision, at 16. The ALJ also noted the "lack of oversight by administration and abrogation of administration's responsibility in preparing the forms." *Ibid.*

Additionally, without expressly stating that appellant had committed unbecoming conduct, the ALJ concluded that a three-month suspension of appellant's certificates was warranted because she "unintentionally submitted inaccurate information in her certificate application." *Id.* at 19. The ALJ cited appellant's confusion over how to fill out the ROPE form and the fact that she "stated on a form that she teaches sixth grade social studies, and she does in fact teach history courses to sixth graders." *Ibid.* In the end, the ALJ characterized appellant's actions as "an honest and minor mistake." *Ibid.*

Upon considering appellant's exceptions and the Board's reply thereto, the Board voted to adopt the ALJ's findings of fact and to find unbecoming conduct based upon those facts. Additionally, the Board voted to modify the Initial Decision to impose a one-year suspension of appellant's certificates effective October 27, 2023. In determining the appropriate sanction, the Board found *In the Matter of the Certificates of Calvin J. Williams, Jr.*, OAL Dkt. No. EDE 3889-94, State Board of Examiners Dkt. No. 241 (May 18, 1995), to be instructive. It rejected the ALJ's reasoning that: (1) appellant was a much less "seasoned" teacher than Williams, who had nearly 25 years of teaching experience; and that (2) her misrepresentation was more ambiguous than

that in *Williams*, as Williams submitted documents implying he held a certificate he did not have. The Board concluded that appellant, who began teaching in 2014, was no less of a "seasoned" teacher than Williams. Order of Suspension, at 5. Moreover, the Board emphasized that appellant "misrepresented her experience with regard to the capacity her certifications authorized her to teach." *Ibid.*

On appeal, appellant maintains that no action should be taken against her certificates. She asserts that the facts as found by the ALJ do not support a finding of unbecoming conduct as she made an honest mistake on a draft ROPE form that was never submitted to the Department in support of her Principal Certificate application. Moreover, even if the facts supported a finding of unbecoming conduct, appellant argues that the Board unreasonably quadrupled the sanction from a three-month suspension to a one-year suspension of her certificates based upon the *Williams* case, which is distinguishable from the present matter.

In response, the Board argues that its decision was reasonable and supported by sufficient, credible evidence in the record. It emphasizes that appellant misrepresented her teaching experience on the March 8, 2021, ROPE form as she never taught 6th grade on a full-time basis between 2014 and 2018 and admitted same during the contested hearing. In reply, appellant requests that the Board's letter brief be stricken as it was overlength by four pages in violation of *N.J.A.C.* 6A:4-2.9(b); the Board ignored rule *N.J.A.C.* 6A:4-2.8(d)(4); the Board failed to include an appendix in violation of *N.J.A.C.* 6A:4-2.10(a); and the Board improperly attached exhibits.[1]

[1] The Commissioner denies appellant's request to strike the Board's letter brief. *See N.J.A.C.* 6A:4-4.4(a).

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute his judgment for that of the Board so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. The Commissioner's role in reviewing appeals is constrained by *N.J.A.C.* 6A:4-4.1(a), which specifies that "the Commissioner shall ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated that the State Board of Examiners . . . acted in a manner that was arbitrary, capricious, or contrary to law." The Commissioner finds that sufficient, credible evidence in the record supports the Board's determination that appellant committed unbecoming conduct.

"Conduct unbecoming" is an "elastic" concept that includes "conduct which adversely affects the morale or efficiency" of the public entity or "which has a tendency to destroy public respect for [public] employees and confidence in the operation of [public] services." *In re Emmons*, 63 *N.J. Super.* 136, 140 (App. Div. 1960). *Accord Bound Brook Bd. of Educ. v. Ciripompa*, 228 *N.J.* 4, 13 (2017). To maintain public confidence in the integrity of the Department's issuance of certificates to school employees, applicants must adhere to the Department's procedures and follow instructions. Here, although the ROPE form instructions state that Parts B, C, and D must be completed by the employer, appellant drafted both the February and March 2021 ROPE forms herself. She should not have done so. Moreover, appellant admitted during the contested hearing that she never taught 6th grade on a full-time basis. And yet, the March 2021 ROPE form she drafted indicates that she taught 6th grade on a full-time basis between December 2014 and June 2018. That is inaccurate. Furthermore, appellant indicated on the March 2021 ROPE form

that she was evaluated as a 6th grade Social Studies teacher in 2016-2017 and 2017-2018 and rated as highly effective in that area. That, too, is inaccurate.

Appellant's reliance upon *In the Matter of the Certificates of Sally Anne Mesh*, OAL Dkt. No. EDE 8424-04 (Initial Decision Jan. 30, 2006), State Board of Examiners Dkt. No. 0304-232 (May 10, 2006), is unpersuasive as that matter did not involve an application for a certificate. Mesh's employer questioned her use of "PhD" and EdD" on some Individualized Education Plans (IEPs) after her signature, as its files did not reflect that she held a doctorate degree, and it could not verify that she had obtained same. No evidence was produced at the contested hearing to dispute the authenticity of the doctorate degrees Mesh represented that she held. Thus, her use of "PhD" and "EdD" on IEPs was not proven to be inaccurate, and the Board concluded that the action to suspend or revoke her certificates should be dismissed. Here, appellant admitted that the March 2021 ROPE form she drafted contained inaccurate information and the Board found that her actions in this regard constituted unbecoming conduct. Even if the Commissioner would have decided the matter differently, he is not permitted to substitute his judgment for that of the Board so long as the Board's decision is supported by sufficient, credible evidence. *N.J.A.C.* 6A:4-4.1(a).

However, the Commissioner concurs with appellant that a one-year suspension of her certificates is unreasonable in light of the mitigating circumstances present in this case and because *Williams*, upon which the Board primarily relied, is factually distinguishable. Appellant's supervisor directed her to complete the ROPE forms and, as found by the ALJ, abrogated the employer's responsibilities in that regard. Appellant revised the ROPE form following an email exchange with a Department examiner who asked whether she had other teaching experience

under her Teacher of Elementary K-6 Standard Certificate. At that point, she recalled that she taught Social Studies to 6th grade students between 2014 and 2018. As the ALJ found, appellant's confusion about whether to include this information on the ROPE form is understandable.

While the March 2021 ROPE form did contain inaccurate information, appellant did not fail to notify her employer about the alterations to the form as alleged in the OSC, nor did she tell her supervisor only that it required a signature and submission to the Department. Appellant was transparent with her supervisor and, when questioned, explained why she added the 6th grade teaching experience to the March 2021 ROPE form. In fact, the record reflects that appellant was clearly confused about how to complete the ROPE form and was engaged in dialogue with both Department staff and her supervisor about how to proceed. Appellant never submitted the March 2021 ROPE form to the Department, and she expressed to her supervisor during their email exchange that she did not expect her to sign it if she believed it to be inaccurate.

In addition, the Board's reliance upon *Williams* in support of its one-year suspension of appellant's certificates is misplaced. Williams negligently submitted fraudulent information to the Department in pursuit of a School Administrator Certificate, which he ultimately received despite his ineligibility. The documents he submitted to the Department implied that he held a certificate he did not have. Finding that his actions harmed the integrity of the teacher certification system, the Board revoked his School Administrator Certificate and suspended his other certificates for two years. In contrast, here, appellant neither submitted fraudulent information to the Department nor received a Principal Certificate under false pretenses. She did not submit documents to the Department implying that she held a certificate that she did not

have. Furthermore, it was unreasonable for the Board to conclude that appellant, who began her teaching career in 2014, is "no less of a 'seasoned' teacher" than Williams, who had nearly 25 years of teaching experience. Order of Suspension, at 5. It is also noted that appellant has never been disciplined as an educator before and was generally regarded as an excellent teacher.

Accordingly, the Commissioner finds that a three-month suspension of appellant's certificates is appropriate given the nature and extent of the unbecoming conduct at issue. The decision of the State Board of Examiners is modified to reduce the sanction imposed for appellant's unbecoming conduct from a one-year suspension, effective October 27, 2023, to a three-month suspension, effective October 27, 2023.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 6, 2024
Date of Mailing: May 8, 2024

[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.

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF	:	STATE BOARD OF EXAMINERS
NICOLE M. MAFFUCCI	:	ORDER OF SUSPENSION
_____	:	DOCKET NO: 2021-163

At its meeting of May 13, 2021, the State Board of Examiners (Board) reviewed information it received from the Rutgers Day School (Rutgers) regarding Nicole M. Maffucci (Maffucci).

Maffucci currently is the holder of a Teacher of Elementary K-6 Certificate of Eligibility with Advanced Standing, a standard Teacher of Elementary K-6 certificate, a Teacher of Students with Disabilities Certificate of Eligibility, a standard Teacher of Students with Disabilities certificate, and a Supervisor certificate. In October 2020, Maffucci submitted an application for Principal certification to the Board. On May 13, 2021, the Board voted to block Maffucci's application and notified Maffucci on June 29, 2021 of its decision. On May 13, 2021, the Board also voted to issue an Order to Show Cause to Maffucci as to why her certificates should not be revoked or suspended. The Order to Show Cause was served upon Maffucci on June 29, 2021. Maffucci answered the Order to Show Cause on July 27, 2021. The Board transmitted the matter to the Office of Administrative Law (OAL) on August 2, 2021 for hearing as a contested case. The matter was heard before Administrative Law Judge Carl V. Buck, III (ALJ) on May 4, 6, and July 18, 2022. The record closed on April 13, 2023. *In the Matter of the Certificates of Nicole M. Maffucci*, Dkt. No. EDE 06423-2021 (Initial Decision, June 29, 2023).

After reviewing the testimony and the record, the ALJ found that from 2014 to 2018, Maffucci was employed at the Rutgers Day School teaching special needs grades six to twelve. (Initial Decision, slip op. at p. 15). A substantial portion of Maffucci's schedule was dedicated to teaching a class of sixth through eighth graders social studies courses including U.S. government and world geography. *Id.* In addition, Maffucci taught basic skills and history courses to high schoolers. *Id.* Throughout her tenure, respondent has consistently received good performance reviews and has never had a negative issue with either State regulations or the school's rules. *Id.*

On February 23, 2021, Maffucci applied for social studies and principal certificates. *Id.* Included in the application was a ROPE form in which respondent listed her experience as a special education teacher from 2016 to 2020. Maffucci's application was returned to her as deficient because, although she performed the same functions from 2016 to 2020, she did not receive her teacher of students with disabilities certificate until 2018. Maffucci thereafter revised the ROPE form and submitted the same to her supervisor on March 8, 2021, noting that she taught social studies to sixth graders from 2014 to 2018. *Id. At 16.* Maffucci's supervisor refused to sign the new ROPE form and reported the changed form to the Board. *Ibid.*

The ALJ ultimately found that the lack of oversight by the administration at Rutgers Day School and its abrogation of responsibilities in preparing the forms, Maffucci's errors in those submission do not constitute a knowing and willing to misrepresent her credentials, but an inadvertent error in compilation of the information in the documentation. *Id.* The ALJ determined that Maffucci unintentionally submitted inaccurate information in her certificate application. *Id. At 19.* The ALJ concluded that a three-month suspension of Maffucci's certificates was warranted. *Id.*

The Deputy Attorney General (DAG) representing the Board filed Exceptions to the Initial Decision. The DAG argued that the facts found by the ALJ warrant a finding of unbecoming conduct and that a penalty of suspension longer than the three motions imposed by the ALJ was warranted. *DAG Exceptions at pg.1.* The DAG noted that Maffucci taught social studies to grades nine through twelve when Maffucci started at Rutgers in 2014 and was evaluated as a special education teacher for grades nine through twelve and this occurred for the 2014-2015, 2015-2016, 2016-2017, and 2017-2018 school years. *Id. At 3.* As such, Maffucci was not assigned to teach sixth grade in any of those years on a full-time basis and that Maffucci was not evaluated for teaching sixth grade social studies for 2016-2017 and 2017-2018 school years. *Ibid.* The DAG further noted that Maffucci was evaluated for grades nine through twelve and that she was not evaluated for teaching sixth grade social studies for the 2016-2017 and 2017-2018 school years and that it is not possible for an individual to be evaluated as sixth grade teacher and a ninth to twelfth grade

teacher simultaneously in the same school year. *Id. At 6.* The DAG argues that the ALJ's conclusion that it is possible for both ROPE forms to be accurate is in error because there was no evidence in the record to support the finding that Maffucci taught sixth grade for the 2014-2015 and 2015-2016 school years. *Id. At 11.* As such, the DAG argues, Maffucci's conduct at issue does in fact amount to intentional deceit and that the testimony evidence as a whole establishes that Maffucci is culpable of conduct unbecoming that warrants a suspension for longer than three months. *Ibid.*

Maffucci filed Exceptions to the Initial Decision. In the exceptions, Maffucci does not challenge the factual findings in the Initial Decision, but takes exception to the imposition of a three month suspension. Maffucci Exceptions at pg.1. Maffucci argues that the ALJ rejected the Board's charge that Maffucci had engaged in conduct unbecoming conduct and as such no penalty is warranted. *Id.* At 2. Maffucci argues that the ALJ rejected the assertion that Maffucci acted with deceit and that the Board's evaluation of the circumstances was based upon a faulty understanding of the ROPE form and Mafffucci's intent. *Id. At 9.* Maffucci argues that despite this finding, the ALJ inexplicably recommended a three month suspension for what the ALJ found to be Maffucci's "honest and minor mistake." *Id. At 5.* Maffucci notes that Respondent was not found to have engaged in any unbecoming or unethical conduct and that the Initial Decision does not contain such a finding. *Ibid.* Maffucci further notes hat the ALJ relied upon In re Certificate of Calvin J. Williams, Jr., EDE 3889-94, final decision, (October 5, 1995), for the imposition of the suspension. Maffucci argues that reliance upon this case was misplaced, as said case involved an allegation of negligence, while she was accused of fraud, which was not proven. *Id. At 6.* Maffucci argues that In the Matter of the Certificates of Sally Anne Mesh, OAL Dkt. No. EDE 8424-04, at *5–6 (January 30, 2006), is more applicable to the facts here and should lead to a similar result. *Ibid.*

Maffucci submitted a response to the DAG's Exceptions. As an initial matter, Maffucci argues that the DAG's exceptions exceeded the brief length as set forth in N.J.A.C. 6A:9B-4.17(b). Maffucci Reply to DAG's Exceptions at pg.1. Maffucci notes that the record does not reflect that the DAG did not obtain or request written permission to file the overlength brief and as such it should be stricken. *Id. at 1-2.* As to the merits, Maffucci argues that the DAG's exceptions do not attack any of the ALJ's material factual findings,

but rather utilizes irrelevant issues to attack the ALJ's conclusion that Maffucci testified credibly and that Maffuci's errors on the ROPE form did not arise out of a motivation to deceive anyone. *Id. at 2.* Further, Maffucci argues that the ALJ's determination is premised on the finding that Maffucci only completed the ROPE forms because the District "abrogated their responsibility" to her has the employer and that this finding was wholly supported by the record and that Maffucci was neither trained or responsible for knowing how to complete a ROPE form. *Id. at 3-4.* Maffucci argues that a review of the record and the caselaw dealing with certificate holders who simply made documentation errors that were found to be reasonable under the circumstances, and under the principals of fairness, the Board should reject the ALJ's recommended sanction of a three-month suspension and dismiss the Order to Show Cause with prejudice. *Id. at 7.*

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of September 21, 2023, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the Decision and the other submissions, the Board voted to adopt the findings of fact contained in the Initial Decision, find unbecoming conduct based on the facts determined by the ALJ and modify the decision to impose a one year suspension of Maffucci's certificates. The Board denies to Maffucci's request that the DAG's exceptions brief be stricken for failure to comply with N.J.A.C. 6A:9B-4.7(b) and (c). The failure to conform with the procedural requirement was (1) de minis; and (2) Maffucci had the opportunity to reply to the DAG's exceptions and the Board finds that Maffucci did not allege that she any prejudice due to the overlength exceptions brief and as such, the Board finds that Maffucci suffers no prejudice by the Board's consideration of the overlength exceptions brief.

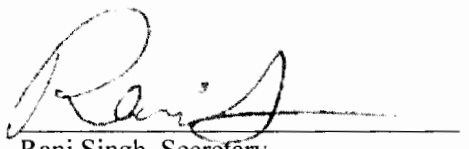
Educators must be held to a particularly "high standard of conduct because of the influence they exercise over the students." *State Bd. of Exam'rs v. Charlton*, 96 N.J.A.R. 2d (EDE) 18, 21; see also In re Tyler, 13 N.J.A.R. 297, 308. Teachers are "professional employees to whom the people have entrusted the care and custody of . . . school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972

S.L.D. 302, 321. "That school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as part of ordered society, cannot be doubted." *In re Grossman*, 127 *N.J. Super.* 13, 30 (App. Div. 1974) (citation omitted).

There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those credibility findings. Furthermore, the Board agrees with the ALJ that Maffucci's conduct warrants action against her certificates. The ALJ found the case In re Certificate of Calvin J.Williams, Jr., EDE 3889-94, Final Decision (October 5, 1995) to be instructive in determining the appropriate sanction, but decided that the two-year suspension given to Williams for unintentionally submitting inaccurate information was too harsh in this instance. *Id.* at 19. In concluding that Maffucci's suspension should be for three months, the ALJ noted that Williams was a "seasoned" teacher of 25 years and submitted documents implying he held a certificate he did not have while Maffucci was a much less "seasoned" teacher and her misrepresentation was more ambiguous. *Id.* However, the Board disagrees with the ALJ's reasoning regarding an appropriate sanction because Maffucci, who has been teaching since 2014, is arguably no less of a "seasoned" teacher than Williams. Furthermore, though the ALJ characterizes Maffucci's misrepresentation as more ambiguous than Williams', it does not negate that Maffucci misrepresented her experience with regard to the capacity her certifications authorized her to teach.

Accordingly, on September 21, 2023, the Board voted to adopt the adopt the factual findings in the Initial Decision, find unbecoming conduct and modify the penalty to a one-year suspension of Maffucci's certificates. On this 27th day of October 2023, the Board formally adopts the factual findings in the initial decision, finds unbecoming conduct, and modifies as to the penalty. It is therefore ORDERED that Nicole M. Maffucci's Teacher of Elementary K-6 Certificate of Eligibility with Advanced Standing, standard Teacher of Elementary K-6 certificate, Teacher of Students with Disabilities Certificate of Eligibility, standard Teacher of Students with Disabilities certificate, and Supervisor certificate are hereby suspended for one year, effective immediately. It is further ORDERED that Maffucci return her certificates to the

Secretary of the State Board of Examiners, Office of Recruitment, Certification and Preparation, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.



Rani Singh, Secretary
State Board of Examiners

RS/SMN

Date of Mailing:
via email, certified and regular mail

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.

180-24

New Jersey Commissioner of Education

Final Decision

R.P., on behalf of minor child, S.P.,

Petitioner,

v.

Board of Education of the Westwood Regional School District, Bergen County, Jill Mortimer, Frank Connelly, Heather Goffe, Michael Kenduck, Chris Mello, Dan Vivino, Shelley Laforgia, Margaret Montenare, and Andrew Phillips,

Respondents.

Synopsis

Petitioner appealed a May 2, 2023 final decision by the respondent Board which confirmed that acts of harassment, intimidation, and bullying (HIB) had been perpetrated against his minor son at Westwood Regional High School on October 4 and October 5, 2022. Petitioner's appeal, which was filed on November 6, 2023, sought financial damages from the Board in addition to the discipline imposed upon the students involved in the HIB incidents. The Board filed a motion to dismiss, contending that the petition was submitted more than 90 days after the issuance of the final decision in this matter and is therefore untimely pursuant to *N.J.A.C.* 6A:3-1.3(i).

The ALJ found, *inter alia*, that: the timeline of events in this case is effectively undisputed; pursuant to *N.J.A.C.* 6A:3-1.16, petitioner's appeal was required to be filed no later than July 31, 2023, which was 90 days from the issuance of the Board's final decision in the HIB matter; however, petitioner's appeal was not filed until November 6, 2023, after his attorney perfected the submission by providing proof of service to the Board; even if the appeal had been marked "FILED" on the date it was received by the Department of Education's Office of Controversies and Disputes, i.e., August 9, 2023, it was still received beyond July 31, 2023; and there is insufficient evidence to demonstrate that the ninety-day deadline as delineated in *N.J.A.C.* 6A:3-1.16 should be relaxed. Accordingly, the ALJ granted the Board's motion to dismiss and ordered the petitioner's appeal dismissed.

Upon review, the Commissioner concurred with the ALJ that the petitioner's appeal was untimely filed. Accordingly, the Initial Decision was adopted as the final decision in this matter, and the petition of appeal was dismissed.

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.

180-24
OAL Dkt. No. 14011-23
Agency Dkt. No. 219-8/23

New Jersey Commissioner of Education

Final Decision

R.P., on behalf of minor child, S.P.,

Petitioner,

v.

Board of Education of the Westwood Regional School District, Bergen County, Jill Mortimer, Frank Connelly, Heather Goffe, Michael Kenduck, Chris Mello, Dan Vivino, Shelley Laforgia, Margaret Montenare, and Andrew Phillips,

Respondents.

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

In this matter, petitioner challenges the May 2, 2023 harassment, intimidation, and bullying (HIB) determination made by the Westwood Regional School District Board of Education (Board) regarding HIB actions perpetrated by five Westwood Regional High School students against petitioner's minor child on October 4 and October 5, 2022.

Petitioner, through his attorney, mailed the petition of appeal on July 28, 2023; it was received by the Office of Controversies and Disputes (C&D), which processes petitions on behalf

[1] Petitioner filed a sur-reply to the Board's reply, which was not considered by the Commissioner as sur-replies are not permitted under the applicable regulations.

of the Commissioner, on August 9, 2023. That same day, C&D emailed petitioner's attorney to inform him that he must provide proof that the petition was served on the Board and the full names of petitioner and his minor child. No response was received, and a follow-up email was sent by C&D to petitioner's attorney on August 28, 2023, advising petitioner's attorney that the petition would not be processed until C&D received proof of service and the full names of the parties. Again, no response was received, and a formal deficiency notice was emailed and mailed to petitioner's attorney on October 2, 2023. Petitioner's attorney mailed the proof of service and names of the parties on October 27, 2023, and it was received by C&D on November 6, 2023.

Following the Board's motion to dismiss, the Administrative Law Judge (ALJ) concluded that the petition of appeal was untimely pursuant to *N.J.A.C.* 6A:3-1.3(i). The ALJ found that the petition of appeal was due by July 31, which was 90 days after the Board's disclosure of its HIB determination. However, the petition was not received by C&D until August 9. Furthermore, the petition was deficient and, despite being notified of same, petitioner's attorney did nothing to address the deficiency until C&D advised on October 2 that the matter would be automatically closed if proof of service was not provided by October 31. The ALJ noted that petitioner's attorney did not send the proof of service until October 27, and purportedly did so "By Priority Express Mail," although no such service is offered by the United States Postal Service (USPS), and the mailing included no tracking information or proof of delivery. When C&D finally received the proof of service on November 6, 188 days had passed since the Board's determination, and 89 days had passed since petitioner's attorney was first notified of the deficiency in the original filing. The ALJ found that "this was not timely under any

interpretation of 'timely submitted'." Initial Decision at 16 (internal citation omitted). Finally, the ALJ concluded that there was no basis to relax the 90-day deadline. Accordingly, the ALJ granted the Board's motion to dismiss the petition.

In his exceptions, petitioner argues that mail sent on July 28 should have been received the Department of Education (DOE) by July 31, and that if the DOE did not receive the appeal until after that date, there must have been some sort of delay by the USPS or a backlog at the DOE, for which petitioner should not be held responsible. Petitioner contends that the August 2023 email notices sent by C&D did not provide a deadline to provide proof of service and, when a deadline was ultimately given, petitioner complied with it.

In reply, the Board urges the Commissioner to adopt the Initial Decision in its entirety and to dismiss the petition of appeal as untimely.

Upon review, the Commissioner concurs with the ALJ that the petition of appeal was untimely filed. Initially, the record demonstrates that petitioner's original submission was untimely. Although petitioner asserts that his mailing of July 28 should have been received by July 31, the fact remains that the petition must be filed by the due date and filing means "receipt . . . by an appropriate officer of the Department," as provided for in *N.J.A.C.* 6A:3-1.2. Mailing a petition via regular mail on a Friday, when it must be received by Monday, risks running afoul of the deadline. Petitioner could have availed himself of faster mail services to ensure receipt by July 31, or taken advantage of the recommended option to file by electronic mail, which is permitted by *N.J.A.C.* 6A:3-1.2, but he neglected to do so.[2]

[2] Indeed, C&D's website clearly indicates that "it is strongly encouraged that all filings and general correspondence be submitted electronically." *See* https://www.nj.gov/education/cd/ (last visited April 10, 2024).

Furthermore, petitioner's original submission was deficient, such that even if it had been received by July 3, it would not have been filed on that date. *N.J.A.C.* 6A:3-1.3 clearly requires that a petitioner must file proof of service along with the petition and supporting materials. In the absence of proof of service, a petition is not "filed." There is no dispute here that petitioner failed to provide proof of service with his original filing.[3] The petition was filed by petitioner's counsel, who should have been well aware of the regulatory requirements; proof of service is not a requirement unique to the DOE or the administrative dispute resolution process. Moreover, petitioner offers no explanation for his failure to respond to communications from C&D regarding the deficiency for almost three months.[4]

The Commissioner rejects petitioner's argument that by failing to list a specific deadline in its communications, C&D was invoking *N.J.A.C.* 6A:3-1.16 and was relaxing the rules for proof of service. To the contrary, all communications from C&D indicated that the petition would not be processed until proof of service was received.

Nor is this matter similar to *T.R. and T.R. v. Bd. of Educ. of the Bridgewater-Raritan Reg. Sch. Dist.*, Commissioner Decision No. 269-13 (decided July 22, 2013). In *T.R.*, a deficient petition was received by the DOE within 90 days of the date of the decision at issue, and the DOE notified the petitioners that if the deficiencies were timely corrected, that date would be deemed the filing date of the appeal. Here, the original petition was not received within 90 days of the date of the decision at issue. Furthermore, in this matter, C&D did not indicate to petitioner that timely correction of the deficiency would affect the filing date of the petition.

[3] The original submission also failed to provide petitioner's name and the name of the child on whose behalf the petition was filed, which is required by *N.J.A.C.* 6A:3-1.4.

[4] The emails were sent to the email address listed on petitioner's attorney's letterhead, and there has been no assertion that the emails were not received.

Additionally, under no circumstances can 89 days from first notice to filing of the proof of service be considered a timely correction. Finally, the petitioners in *T.R.* were *pro se*, and therefore were afforded more leeway, while the petition in this matter was filed by an attorney.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[5]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 6, 2024
Date of Mailing: May 8, 2024

[5] 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
DISMISSAL
OAL DKT. NO. EDU 14011-23
AGENCY DKT. NO. 219-8/23

R.P., ON BEHALF OF MINOR CHILD, S.P.,
Petitioner,
v.
WESTWOOD REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION, BERGEN COUNTY, MORTIMER, JILL; CONNELLY, FRANK; GOFFE, HEATHER; KENDUCK, CHRIS MELLO; VIVINO, DAN; LAFORGIA, SHELLEY; MONTENARE, MARGARET; SPELDA, THOMAS
Respondents.

Darius Marzec, Esq., and **Joshua Neil Rubin**, Esq., for petitioner (Marzec Law Firm, P.C., attorney)

Jessika Kleen, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: January 29, 2024 Decided: February 22, 2024

BEFORE **MATTHEW G. MILLER,** ALJ:

STATEMENT OF THE CASE

Petitioner, R.P., the parent of minor child S.P., has challenged the decision made by the respondent, Westwood Regional School District Board of Education, Bergen County, et al. (respondent or Board), concerning its determination of a harassment, intimidation and bullying (HIB) complaint made against non-party students that was brought per N.J.S.A. 18A:37-13.2 et seq. (the Anti-Bullying Bill of Rights Act).

PROCEDURAL HISTORY

On October 4 and 5, 2022, five students at Westwood High School are alleged to have hacked S.P.'s Google Classroom account and posted "slurs based on religion, race, disability, sexual orientation, gender and national origin" directed at multiple individuals and groups. On December 28, 2022, petitioner filed a Notice of Claim[1] with respondent concerning this occurrence (and others) and were advised by letter dated January 6, 2023, that an HIB investigation had been instituted by the District.

On February 1, 2023, the District advised petitioner that an HIB violation had been found and that the following measures had been taken; "Student Counseling, Student Conference, and Parent Conference." On March 1, 2023, petitioner notified respondent "that they were exercising their right to have the claim considered by the Board of Education."

On April 27, 2023, petitioner met with the Board of Education and on May 2, 2023, respondent's Final Decision on the HIB complaint was emailed to R.P. On July 28, 2023, petitioner sent its appeal of the determination to all parties via regular mail. The appeal was marked as "received" by the Department of Education's Office of Controversies and Disputes (OC&D) on August 9, 2023. That same day, OC&D emailed petitioner's counsel and notified him that the petition was deficient. A follow-up email was sent by OC&D to counsel on August 28, 2023. A formal deficiency notice was then sent to counsel by the

[1] Apparently, a claim filed per N.J.S.A. 59:1-1, the New Jersey Tort Claims Act.

Department of Education (DOE) on October 2, 2023. On October 27, 2023, petitioner responded to the October 2, 2023, email, providing the missing documentation and forwarding same "By Priority Express Mail." The appeal was then noted to be filed as of November 6, 2023.

The DOE acknowledged the November 6, 2023, filing of the appeal petition on November 13, 2023, and on December 5, 2023, a Motion to Dismiss in Lieu of Answer was filed by respondent. That filing was acknowledged by the DOE on December 6, 2023, and the Department transmitted this matter to the Office of Administrative Law (OAL) on December 12, 2023, for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On or about December 15, 2023, petitioner filed opposition to the Motion to Dismiss, and submitted additional opposition on January 9, 2024. An initial conference was held on January 18, 2024, and on January 29, 2024, respondent filed a reply brief, at which time the record closed.

FACTUAL BACKGROUND

The basic facts and nature of the case are not in dispute. S.P. was a student at Westwood High School when on October 4 and October 5, 2022, five students are alleged to have utilized his Student Identification Number to gain control of his Google Classroom account and thereafter posted "hateful speech in [his] name to other students and to S.P.'s teachers, including, but not limited to religious, ethnic, and gender slurs." (Exhibit P-C.)

On December 28, 2022, petitioner reached out to respondent and was advised that an HIB investigation had already been opened per N.J.S.A. 18A:37-13.2. Ultimately, the petitioner was advised by letter dated February 1, 2023 that it had been determined the five students had indeed committed acts of HIB and that the remedial actions taken had been "Student Counseling, Student Conference, and Parent Conference." (Exhibit P-A.)

Following the receipt of that letter, petitioner exercised his right per N.J.S.A. 18A:37-15(b)(6)(d), for a hearing before the Westwood Board of Education. Following that hearing, on May 2, 2023, the District emailed petitioner a letter advising of the Board's final determination to uphold the original finding. The letter also advised petitioner of his right to appeal the decision and the time frame in which to do so. (Exhibit P-B.)

MOTION

Respondent has filed a Motion to Dismiss the appeal of the HIB determination, arguing that petitioner failed to comply with the ninety-day time limit encoded in N.J.A.C. 6A:3-1.3(i) to appeal the actions taken by it concerning the HIB complaint.

If respondent prevails on this motion, it is argued that the merits of the case are never reached and that the appeal must be dismissed.

Petitioner opposes the motion for reasons that will be set forth below and argues that his appeal was timely served.

I emphasize that the decision on this motion should not be interpreted as a reflection that any conclusions have been reached concerning the underlying merit of petitioner's claims.

LEGAL ARGUMENTS

RESPONDENT:

Respondent argues that petitioner failed to comply with the ninety-day time limit encoded in N.J.S.A. 18A:37-15(b)(6)(e) and N.J.A.C. 6A:3-1.3(i) to appeal the result of the HIB investigation and that per N.J.A.C. 1:1-1.3(c), this statutory requirement cannot be relaxed or disregarded.

More specifically, it is argued that from May 2, 2023 (the acknowledged day that petitioner was advised of the Board's final decision), it took 188 days, until November 6,

2023, for the appeal to be filed and that petitioner unduly and unjustifiably delayed the filing despite having multiple opportunities to correct the initial deficiency.

Respondent further argues that case law supports its position that a deficient filing does not toll the ninety-day deadline. T.R. ex rel. E.R. v. Bridgewater-Raritan Reg'l Sch. Dist., 2013 N.J. AGEN LEXIS 523 (July 22, 2013); DeMario v. State Bd. of Exam'rs, 2012 N.J. AGEN LEXIS 192 (April 17, 2012), aff'd, Comm'r (May 11, 2012).

PETITIONER:

Petitioner argues that his appeal was filed and served on timely basis, "on or before July 31, 2023," and was therefore compliant with the timing dictates of N.J.A.C. 6A:3, et seq.

Petitioner noted:

> On August 9, 2023, the NJDOE acknowledged by email that it had received Petitioners' Petition of Appeal . . . . That email acknowledgment was three months before the date on which Respondents contend that Petitioners filed their Petition of Appeal, i.e., November 6, 2023. Resp. Ltr., second page, first full paragraph. In other words, the District claims that Petitioners did not file their Petition of Appeal until three months after the NJDOE acknowledged that it had received that very petition.

Petitioner claims that by forwarding the appeal to the OAL, the DOE was acknowledging that the appeal was timely filed and cites the same cases as respondent in support of his position.

TIMELINE

Perhaps the best way to understand the issues raised by this motion is to create a timeline from the onset of the events in question to the disclosure of the results of the HIB investigation by the school on February 1, 2023, and through the forwarding of the matter to the OAL. There is no real dispute as to the timeline below.

10/04/22 & 10/05/22—Incident(s) occur.

12/28/23—Filing of "Notice of Claim" by petitioner.

01/06/23—Westwood superintendent confirms investigation has been instituted.

02/01/23—Letter from superintendent to R.P. conveying results of the HIB investigation. (Exhibit P-A.)

03/01/23—Petitioners advise the BOE that they are asserting their right to a hearing.

04/27/23—Petitioners appear with counsel before the BOE meeting concerning the HIB investigation.

05/02/23—BOE final decision emailed to R.P. by superintendent. (Exhibit P-D.)

07/20/23—S.P. appeal dated. (Exhibit P-C.)

07/28/23—S.P. appeal sent to all parties via regular mail.[2] (Exhibit P-F.)[3]

07/31/23—Ninety days from May 2, 2023.

08/09/23—Appeal marked as "Received" by the OC&D.[4] (Exhibit P-D.)

08/09/23—Email from the OC&D to petitioner's counsel:

> We have received the petition of appeal filed in the above captioned matter. Please provide proof that the petition was served on the Board of Education. Following receipt, your petition will be processed. Additionally, please provide the full names of petitioner and his child.

---

[2] July 28, 2023, was a Friday.
[3] Counsel's certification of service was supplied as part of Exhibit P-F.
[4] Ninety-nine days from May 2, 2023.

[Exhibit P-D.]

08/28/23—Email from the OC&D to petitioner's counsel "following up" on the August 8, 2023, email and advising that the petition would not be processed "until we receive proof of service." (Exhibit C-A.)

10/02/23—Deficiency notice sent to petitioner by DOE, noting that proof of service and the name of the petitioner and child have still not been provided and that

> [t]his matter will not move forward until the deficiencies listed above have been resolved. If the required documents are not received by October 31, 2023, this matter will be deemed withdrawn, and no further action will be taken.

There is a notation that the "Document filed by XX Petitioner" and an Agency Docket No. had been assigned. (Exhibit P-E.)

10/27/23—Petitioner responds to the October 2, 2023, deficiency notice "By Priority Express Mail" and provides the missing documentation/information. (Exhibit P-F.)

11/06/23—Appeal petition noted by the DOE to be filed.[5] (Exhibit P-G.)

11/13/23—Acknowledgement of November 6, 2023, filing of the Petition of Appeal by DOE. (Exhibit P-G.)

12/05/23—Motion to Dismiss in Lieu of Answer filed by respondent.

12/06/23—Acknowledgement of December 5, 2023, motion filing by DOE.

12/12/23—Matter forwarded to the OAL by the DOE.

[5] 188 days from May 2, 2023.

LAW AND ANALYSIS

The regulation concerning appeals is N.J.A.C. 6A:3-1.3(i), which reads as follows:

> Filing and service of petition of appeal - 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.
>
> [Emphasis added.]

This rule (along with others in this chapter of the Administrative Code) can 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.

Specifically, as to the filing of HIB appeals, N.J.S.A. 18A:37-15(b)(6)(e) reads as follows:

> at the next board of education meeting following its receipt of the report pursuant to subparagraph (c) of paragraph (6) of this subsection, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent's decision. The board's decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and regulation, *no later than 90 days after the issuance of the board's decision . . . .*
>
> [Emphasis added.]

Further, per N.J.A.C. 1:1-1.3(c):

> Statutory procedural requirements shall not be relaxed or disregarded except when permitted by the controlling Federal or State statutes.

In the realm of "failure to timely appeal" cases, the complexity of the issues here is more limited than usual. Most importantly, there is no dispute that May 2, 2023, is the date that petitioner received notice of the final determination on the HIB complaint and was further made aware of the ninety-day deadline in which to final an appeal of same.

Further limiting the scope of this decision is petitioner's argument that the deadline was met, not that the ninety-day time limitation should be relaxed.

As a baseline and before delving into the facts of the case, the purposes of the ninety-day limitation were reviewed in the seminal case of Kaprow v. Board of Education of Berkeley Township, 131 N.J. 572 (1993):

> The first is to stimulate litigants to pursue a right of action within a reasonable time so that the opposing party may have a fair opportunity to defend, thus preventing the litigation of stale claims. Ochs v. Federal Ins. Co., 90 N.J. 108, 112, 447 A.2d 163 (1982). The second purpose is "'to penalize dilatoriness and serve as a measure of repose'" by giving security and stability to human affairs. Ibid. (quoting Farrell v. Votator Div., 62 N.J. 111, 115, 299 A.2d 394 (1973)).
>
> > When a plaintiff knows or has reason to know that he has a cause of action against an identifiable defendant and voluntarily sleeps on his rights so long as to permit the customary period of limitations to expire, the pertinent considerations of individual justice as well as the broader considerations of repose, coincide to bar his action. [Farrell, supra, 62 N.J. at 115.]
>
> [Kaprow, 131 N.J. at 586–87.[6]]

[6] See also R.H. ex rel. Minor Child v. Bd. of Educ. of Hackettstown, 2022 N.J. AGEN LEXIS 299 (Feb. 17, 2022).

In support of their respective positions, both parties cite the same cases: DeMario and T.R.

DeMario v. State Board of Examiners, 2012 N.J. AGEN LEXIS 192, concerned the appeal of a denial of an application for principal and business administrator endorsements. The pro se petitioner had received the respondent's final determination on December 10, 2009, and had filed his appeal on or about March 2, 2010 (day 81). On March 4, 2010, the Bureau of Controversies and Disputes acknowledged receipt of the appeal, but notified DeMario that it was procedurally deficient and listed what needed to be done to make it compliant, which included providing proof of service on each respondent. He was advised that if the deficient materials were "timely submitted," March 2, 2010, would be deemed to be the filing date. DeMario, 2012 N.J. AGEN LEXIS 192 at *4–6.

On June 1, 2010, DeMario forwarded an amended petition to the Board which was filed on June 7, 2010, and a motion to dismiss from the respondent followed almost immediately. The matter was then transmitted to the OAL as a contested case. Id. at *1–2.

DeMario argued that he was confused and had multiple communications with the Bureau as to whether he should utilize an attorney but was never told of the time urgency of the supplying of the requested materials. He claimed that because he "was following advice of the Bureau regarding submissions and schedules," the ninety-day rule should have been relaxed. Id. at *9.

The judge held that there was no compelling reason to relax the ninety-day rule. It was determined that the March 4, 2010, letter was clear as to what materials needed to be supplied in order for the appeal to be considered complete and that while the exact meaning of the phrase "timely submitted" was not defined, "the fact is that DeMario did not submit a proper petition of appeal until approximately three months after the applicable ninety-day rule expired. Under any interpretation of 'timely submitted,' DeMario failed to cooperate." Id. at *17.

In T.R., an HIB case, it was found that the petitioners received the final determination from the Board on August 31, 2012, and filed their petition on November 27, 2012 (day 88). They were advised by letter dated November 29, 2012, that the filing was deficient, but that if the materials were "timely submitted, November 27, 2012 will be deemed the filing date." It is undisputed that the additional materials were received by the Board on December 6, 2012. T.R., 2013 N.J. AGEN LEXIS 523 at *3–4.

Comparing the case to DeMario, the Commissioner found that while he had waited three months to correct the petition's deficiencies, T.R. had "cur(ed) the deficiencies in a few days," which was determined to be quickly enough to be considered timely submitted. T.R. at *8. Therefore, he found that "the holding in DeMario . . . is not relevant to a determination of timeliness in the case at bar." Id. at *8–9.

While petitioner claims that the nature of the documentary deficiencies in this case pale in comparison to those in DeMario and T.R., he ignores the timing issue, which clearly does not inure to his benefit. Petitioner tries to distinguish DeMario by noting that DeMario's initial "appeal" was only a "letter purporting to be an Appeal," while here, the appeal was much more detailed and in a more professional format. A similar argument is made concerning T.R.

However, neither of those cases (either in the Initial Decision[7] or Final Decision) mentioned the scope of the appeal deficiencies. Rather, they focused exclusively on how quickly those deficiencies were addressed. In fact, in T.R., they were described as "various deficiencies" and there was no indication that their nature had any impact on the outcome of the case. T.R., 2013 N.J. AGEN LEXIS 523 at *1. In both cases, the petitioners were advised as to what specific issues needed to be addressed and were provided a general timeframe as to how quickly it had to be done for the appeal to be considered "filed" as of the date of receipt. There, as here, the initial appellate filing was not rejected as if it had never been sent. Rather, on all three occasions, the petitioner was told to correct deficiencies and if they did so in a timely manner, the deadline issue would not come into play.

[7] T.R. ex rel. Minor Child, E.R. v. Bd. of Educ. of the Bridgewater-Raritan Reg'l Sch. Dist., Somerset Cnty., 2013 N.J. AGEN LEXIS 116 (June 6, 2013).

It should also be noted that the "relation back" doctrine was explicitly rejected in DeMario, where the Commissioner undertook a detailed analysis of Gringeri v. Board of Education of the Ramapo-Indian Hills Regional High School District, 1988 S.L.D. 158. That case involved a pro se petitioner who filed "a document entitled 'Petition.'" He was advised that the document was insufficient on three separate occasions before finally filing a perfected petition fifty-five days after the original non-compliant filing and 128 days following the Board's final action. The respondent filed a motion for summary decision, which was granted. DeMario, 2012 N.J. AGEN LEXIS 192 at *12–17.

The administrative law judge (ALJ) in Gringeri explained:

> While a liberal approach with respect to amendments to petitions is a principle which often is followed, it cannot and should not be used to overcome deficiencies which are patent on their face. Cf., F. Bogart v. Board of Education of East Orange, OAL DKT. EDU 6245-82 (Jan. 26, 1983), aff'd Commissioner of Education (March 14, 1983).
>
> [Gringeri, 1988 S.L.D. at 166.]

As in Gringeri, the ALJ in DeMario saw no reason to relax the ninety-day rule, and the argument that the late submission "was simply a 'perfected' pleading which relates back to his earlier submissions" was soundly rejected. DeMario, 2012 N.J. AGEN LEXIS 192 at *14 (citing Gringeri, 1988 S.L.D. at 166).

As noted above, the ninety-day deadline can 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.

However, in exploring the case law surrounding the relaxation of the ninety-day rule, it becomes very apparent, very quickly, that the courts do not look indulgently on same. Kaprow involved the termination of a tenured assistant superintendent effective

June 30, 1981. After a rather complicated series of events involving RIF[8] rights and the "re-creation" of assistant superintendent positions years later, Kaprow filed a petition with the Commissioner on August 1, 1988, asserting a claim to one of the re-created positions. He amended that petition on December 16, 1988, to assert, for the first time, that the 1981 RIF was improper and had been made in bad faith. Kaprow, 131 N.J. at 576–78.

In the face of a partial victory for Kaprow in the underlying OAL case, the Commissioner dismissed the petition, finding, in part, "that the bad-faith claim was untimely instead of unsupported." That decision was affirmed by the State Board of Education, which found that the August 1, 1988, petition "was time barred by the ninety-day limitations period of N.J.A.C. 6:24-1.2(c)," and the Appellate Division affirmed the Board's decision. Id. at 579.

While no explicit argument has been made that the ninety-day deadline should be extended, a review of the case law would have quashed that assertion in any event. This issue was explored in detail in my case of R.H. ex rel. Minor Child v. Board of Education of the Town of Hackettstown, 2022 N.J. AGEN LEXIS 299 (Feb. 17, 2022), from which this portion of the decision liberally borrows.

There are a multitude of reported court and administrative cases that explore this issue, one of the most cited being Pacio v. Board of Education of Lakeland Regional High School District, 1989 S.L.D. 2060.

In Pacio, a terminated high school teacher filed an action well past the ninety-day deadline. While the case discusses multiple issues,[9] in granting the respondent's motion for summary decision, the ALJ noted the strict standard applied by the Commissioner in relaxing that deadline. It would only happen;

---

[8] Reduction in force.

[9] Including the "statutory entitlement" argument which is not applicable here. In essence, this argument concerns a request for an exception to the deadline in cases where the petitioner is seeking a denied benefit to which they were statutorily entitled. Kaprow at 584–85; see also Lavin v. Hackensack Bd. of Educ., 90 N.J. 145 (1982); Polaha v. Buena Reg'l Sch. Dist., 212 N.J. Super. 628 (App. Div. 1986).

> [w]here a substantial constitutional issue was presented, where judicial review is sought of an informal administrative determination, and where a matter of significant public interest is involved.
>
> [Pacio, 1989 S.L.D. at 2063 (citations omitted); see also Morris-Union Jointure Commission v. Bd. of Educ. of S. River, 92 N.J.A.R.2d (EDU) 453 (1992); Balwierczak v. Bd. of Educ. of Berkeley Heights, 1999 N.J. AGEN LEXIS 707 (Dec. 16, 1998).]

The bar can also be relaxed "when strict adherence would possibly result in an injustice." Grompone v. State-Operated Sch. Dist. of Jersey City, 1999 N.J. AGEN LEXIS 786 (Dec. 20, 1999) at *17, aff'd, 2000 N.J. AGEN LEXIS 1634 (February 28, 2000), aff'd, 2000 N.J. AGEN LEXIS 1635 (August 2, 2000).

Morris-Union also confirmed that "it is petitioner's burden to show that it will suffer injustice if the 90-day rule is strictly enforced." 92 N.J.A.R.2d (EDU) at 471. Further, "the fact that application of the rule may result in the dismissal of a meritorious claim does not warrant relaxation of the rule." K.B. v. Bd. of Educ. of Rancocas Valley Reg. High Sch. Dist., 2002 N.J. AGEN LEXIS 52 (March 1, 2002), at *43–44.

Cases where the rule is relaxed are extremely rare and involve circumstances much different than those presented here, and even then, after the decision in some of these cases, that rule has been tightened. See Bey v. Bd. of Educ. of Newark, 1993 N.J. AGEN LEXIS 164 (March 5, 1993).

While in Bey the rule was relaxed in a case involving the delinquent filing of an appeal involving the Board's failure to recommended tenure charges against "a teaching staff member who had been accused of misusing, mismanaging, and possibly misappropriating school funds entrusted to him in his capacity as school treasurer,"[10] the judge saw this case as unique since the prior cases discussed in the decision

> ha[ve] dealt with an individual concern of the involved petitioner only, such as a refusal to re-employ. None of these

[10] Id. at 44.

> precedents dealt with concerns that could affect a wider spectrum of the public.
>
> [Bey, 1993 N.J. AGEN LEXIS 164 at *44.]

Other "relaxation" cases involved a student expulsion where a pro se parent's timely appeal was technically deficient (J.N. v. Elizabeth Bd. of Educ., 2005 N.J. AGEN LEXIS 814 (July 8, 2005)) and where illegal conduct was being alleged against the respondent, when that conduct was discovered after the expiration of the ninety days (Eisenberg v. Fort Lee Bd. of Educ., 2008 N.J. AGEN LEXIS 45 (Jan. 9, 2008)).

In analyzing the effectively uncontested timeline of events in this case, I **CONCLUDE** that there is no real question that the appeal was filed past the ninety-day deadline. In fact, even if the original appeal had not been deficient, I **FIND** that petitioner had likely already missed the deadline.

Counsel has certified that the original appeal was "served . . . by First Class Mail" Friday, July 28, 2023. (Exhibit P-F.) That is eighty-seven days post-notification. With July 29 & July 30 being a weekend, in order to be timely filed, it HAD to have been received on Monday, July 31, 2023. Instead, it was marked as "received" by OC&D on August 9, 2023 (Day 99). Therefore, irrespective of any deficiencies, it was already late.

Then, when counsel was advised of the deficiencies later that day and then reminded of same on August 28, nothing was done. It was only after the October 2, 2023, Notice of Deficiency was sent that any action was taken and that did not even occur until Friday, October 27, 2023, and even *then*, when facing automatic dismissal on October 31, 2023, the response was purportedly sent "By Priority Express Mail" with no proof of service or tracking.[11] (Exhibit P-F.)

In its November 13, 2023, letter, the DOE acknowledged receipt of the now-compliant appeal on November 6, 2023. (Exhibit P-G.) This is a full 188 days since

[11] The United States Postal Service offers "Priority Mail Express" and "Priority Mail." It does not offer a service called "Priority Express Mail." https://www.usps.com/ship/mail-shipping-services.htm (last accessed February 1, 2024.)

petitioner received notice of respondent's final determination and eighty-nine days from when petitioner was first advised of the deficiency in the original filing. As noted in DeMario, this is not timely "[u]nder any interpretation of 'timely submitted.'" DeMario, 2012 N.J. AGEN LEXIS 192 at *17.

Ultimately, I **FIND** that there is insufficient evidence to demonstrate that the ninety-day deadline as delineated in N.J.A.C. 6A:3-1.16 should be relaxed. While the petitioner sets forth a litany of allegations about and violations by respondent in his appeal, the only issue before the OAL is a very basic one that is limited to a single event (albeit taking place over two days) in which a single person was the victim, which led to a single HIB complaint. Further, the appeal itself is limited to a single issue; the adequacy of the disciplinary actions taken against the perpetrators following the finding that an act of HIB had occurred.

While petitioner's other grievances against respondent may well be justified and encompass conduct that affected more than just S.P., the correct forum to adjudicate same is not in the administrative arena, but rather likely in a trial court. There is simply no broad public interest or grave injustice in and concerning the disciplinary decision by respondent concerning a single HIB complaint and with no constitutional issues having been articulated, there is nothing to justify an extension of the deadline or a denial of respondent's motion.

FINDINGS AND CONCLUSIONS

Given the totality of the evidence, I **FIND** that petitioner's appeal was not filed until November 6, 2023.

I further **FIND** even if the appeal had been marked as "FILED" on the date it was received by OC&D (August 9, 2023), it was still received outside of the ninety-day appellate deadline.

I further **FIND** that even if the August 9, 2023, appeal had been timely, petitioner failed to "timely submit" corrections to the deficiencies it had been advised of that day until November 6, 2023.

I therefore **CONCLUDE** that petitioner's appeal was filed out of time in violation of N.J.A.C. 6A:3-1.3, and I further **CONCLUDE** that petitioner has supplied insufficient evidence to demonstrate that the rule should be relaxed per the dictates of N.J.A.C. 6A:3-1.16.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's motion to dismiss petitioner's appeal be and is hereby **GRANTED**, and;

It is hereby **ORDERED** that petitioner's appeal be and is hereby **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 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.

February 22, 2024
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency: February 22, 2024

Date Mailed to Parties: February 22, 2024

sej

APPENDIX

EXHIBITS

FOR COURT:

C-A Email from OC&D to petitioner "following up" on the August 9, 2023, email (August 28, 2023)

FOR PETITIONER:

P-A Letter to petitioner advising of the result of the HIB investigation (February 1, 2023)

P-B Letter to petitioner, final determination of HIB investigation (May 2, 2023)

P-C Appeal Petition

P-D Email from OCD to petitioner (August 9, 2023)

P-E Deficiency Notice (October 2, 2024)

P-F Response to Deficiency Notice (October 27, 2023)

P-G Letter from DOE to parties (November 13, 2023)

FOR RESPONDENT:

None

181-24R
Agency Dkt. No. 1-1-24A
SEC Dkt. No. T17-23

New Jersey Commissioner of Education

Final Decision

In the Matter of Christopher Defilippis,
Ringwood Board of Education,
Passaic County.

This matter involves an appeal of the School Ethics Commission's (SEC) December 19, 2023 determination that appellant, Christopher Defilippis – a member of the Ringwood Board of Education (Board) – violated the School Ethics Act (Act) for failure to timely complete board member training in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1. The SEC notified appellant that if he did not complete the training by November 17, 2023, an Order to Show Cause (OTSC) would be issued. The SEC found that appellant completed the training after November 17, 2023 but prior to its December 19, 2023 decision. The SEC recommended a penalty of censure for the violation. Appellant appealed the SEC's determination, challenging both the finding of a violation and the recommended penalty.

In his appeal to the Commissioner, appellant argues that he completed his training before the November 17, 2024 deadline set by the SEC, but that fact was not properly recorded in the system of the New Jersey School Boards Association (NJSBA) due to technical difficulties. Respondent further states that he attempted to rectify the error with the NJSBA and provides multiple emails documenting those attempts. Respondent contends that the NJSBA reported inaccurate information to the SEC, stating that respondent completed the training on November 21, 2023 – after the deadline – rather than on or before November 16, 2023 – before

the deadline. A screenshot submitted by respondent shows a submission date of November 16, 2023.

In opposition, the SEC argues that its decision was not arbitrary, capricious, or unreasonable. The SEC notes that although it indicated to appellant that it would issue an OTSC if he did not complete the training by November 17, 2023, the statutory deadline for completion was December 31, 2022. The SEC contends that it is undisputed that appellant did not complete the required training by December 31, 2022. The SEC also argues that appellant's alleged technical difficulties do not provide an excuse when he only attempted to address those issues on November 16, 2024, despite having been warned of the impending OTSC on October 24, 2023. The SEC also disputes appellant's claim that his email exchanges with the NJSBA confirmed that he had completed the training as of November 16, 2023.

Upon a comprehensive review of the record, the Commissioner is constrained to remand this matter to the SEC. Pursuant to *N.J.A.C.* 6A:4-2.5(a)(i), the SEC must certify the record and provide a copy to the Commissioner. None of the documents provided by appellant in support of his argument that he completed training prior to November 17, 2023, were a part of the record of the proceedings before the SEC. Appellant was aware that the SEC had issued an OTSC, but nonetheless failed to provide the SEC with the screenshot allegedly showing his completion of the training on November 16, 2023, so that it could be fully and fairly considered by the SEC when issuing its decision. The Commissioner cannot conclude that the SEC's decision was arbitrary, capricious, or unreasonable when it relied on all of the information that it possessed at the time.

However, pursuant to *N.J.A.C.* 6A:4-2.5(c), if it appears that evidence unadduced in the proceedings before the SEC may be material to the issues on appeal, the Commissioner may

order, in his own discretion, that the SEC make additional findings of fact. Here, the screenshot allegedly showing that appellant completed the training on November 16, 2023 may be material. Accordingly, the Commissioner remands this matter to the SEC for further consideration, consistent with this opinion. In doing so, the Commissioner does not make any findings or reach any conclusions regarding the accuracy of the screenshot presented by appellant or the effect it may have on the SEC's decision on remand.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 6, 2024
Date of Mailing: May 8, 2024

Before the School Ethics Commission
Docket No.: T17-23
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Christopher Defilippis,
Ringwood Board of Education, Passaic County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on November 28, 2023, directing Christopher Defilippis (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on November 28, 2023, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Ringwood Board of Education, located in Passaic County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance II[1] training program by December 31, 2022.

On or about September 19, 2023, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2022, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on March 17, 2023, and May 8, 2023, as well as postings in *School Board*

[1] While NJSBA initially indicated that Respondent did not complete his Governance IV, it was clarified after the issuance of the Order to Show Cause that Respondent was required to complete Governance II by December 31, 2022.

Notes on 12 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated October 24, 2023, and November 15, 2023, advising Respondent that the Commission required completion of the training by November 17, 2023, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its meeting on November 28, 2023.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2022, and did not complete the training prior to the Commission's final deadline of November 17, 2023, and therefore, the Commission issued an OTSC at its meeting on November 28, 2023. After having been served with the OTSC, Respondent notified the Commission on November 29, 2023, that he completed his training requirement on November 21, 2023. Further, Respondent did not respond to the Commission's OTSC as to why he did not complete training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the issuance of an Order to Show Cause, but before the Commission issues its decision, receives a censure." *N.J.A.C.* 6A:28-4.3(b). For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **censure**.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to

( ). A copy must also be sent to the Commission
( ) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: December 19, 2023

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T17-23

Whereas, Christopher Defilippis (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2022; and

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2022, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent completed his training requirement, but did not respond to the Commission's OTSC as to why he did not complete training by December 31, 2022; and

Whereas, at its meeting on December 19, 2023, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on December 19, 2023, the Commission recommended that the Commissioner of Education impose a penalty of censure on Respondent; and

Whereas, at its meeting on December 19, 2023, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

_____
Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on December 19, 2023.

_____
Brigid C. Martens, Director
School Ethics Commission

182-24R
OAL Dkt. No. EDU 03883-24
Agency Dkt. No. 75-3/24

New Jersey Commissioner of Education

Final Decision

Biruthan Ganaganayagam,

Petitioner,

v.

New Jersey Department of Education, Office of Student Protection,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by respondent pursuant to *N.J.A.C.* 1:1-18.4, have been reviewed and considered. Petitioner did not file a reply.

In this matter, petitioner challenges respondent's decision to permanently disqualify him from public school employment pursuant to *N.J.S.A.* 18A:6-7.1. Petitioner sought emergent relief, which was granted by the Administrative Law Judge (ALJ) and the Commissioner based upon the limited record available at that time. In the interim, the ALJ issued a revised decision, captioned as an Initial Decision, repeating the findings and conclusions rendered following the hearing on the emergent application and informing the parties of the opportunity to file exceptions.

Respondent submitted new information to the Commissioner with its exceptions in support of its determination that petitioner was convicted in New York of a crime that is substantially equivalent to a New Jersey disqualifying crime enumerated in *N.J.S.A.* 18A:6-7.1. Because this information was not considered by the ALJ during the hearing on the emergent application, the Commissioner finds that a remand to the OAL is necessary to address the merits of the underlying petition. The remand will allow

respondent to present its proofs to the ALJ so that pertinent findings of fact and conclusions of law may be rendered.

Accordingly, the matter is remanded to the OAL for further proceedings.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 6, 2024
Date of Mailing: May 8, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
GRANTING EMERGENT RELIEF
OAL DKT. NO. EDU 03883-24
AGENCY DKT. NO. 75-3/24

BIRUTHAN GANAGANAYAGAM,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,
OFFICE OF STUDENT PROTECTION,

Respondent.

Biruthan Ganaganayagam, pro se

David Kalisky, Deputy Attorney General, for Respondent, (New Jersey Department of Education, Office of Student Protection, Matthew J. Platkin, Attorney General of New Jersey)

BEFORE **DANIELLE PASQUALE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, a newly-hired teacher of the Newark City Board of Education (The "Petitioner" or "Mr. Ganaganayagam") requests emergent and final relief from the New Jersey Department of Education's, Office of Student Protection's ("NJDOE" or "OSP") disqualification from his employment with the Newark City Board of Education at the North Star Academy Charter School and OSP's subsequent denial of the Petitioner's request

to rescind their termination of his employment due to an arrest found during his background check.

The case was transmitted to the Office of Administrative Law (OAL) for emergent relief on March 21, 2024 and assigned to me that day. I then conferenced the case on March 22, 2024 in an attempt to identify the issues and possibly resolve the matter. I heard the oral argument on March 26, 2024 via Zoom as the parties could not reach a resolution.

As the facts surrounding the timeline are largely undisputed, they will be discussed and found as **FACT**. Petitioner had a charge in New York that resulted in a Conditional Discharge. Accordingly, I took Judicial Notice that pursuant to N.J.S.A. 2C:36A-1 Conditional Discharge is available for certain first offenses. When that supervisory period after the sentence of conditional discharge is entered, (as there is no plea of guilt, factual basis, admission, or elocution required) "upon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes or disqualifications, or disabilities if any imposed by law upon conviction of a crime or disorderly personas offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. As such, and because there is no affidavit or proof to the contrary, I **FIND** as fact that the New York charge lodged against the petitioner when he was eighteen (18) (almost twenty years ago) resolved in a conditional discharge.

Petitioner submitted a detailed and thorough verified Petition of Appeal for Emergent Relief addressing each of the Crowe v. DeGioia, 90 NJ 126 (1986) factors as will be outlined below. Petitioner moved here from New York for his job at the Charter School in Newark and taught as a teacher in New York for seven (7) years prior where he passed a background check. Petitioner worked at the Charter school for ten (10) days before this note from the investigator of OSP inquired as the "amount" involved in his

charge in New York which might bring the New Jersey equivalent charge up to a third degree. I noted that there was no written argument submitted or affidavit offered by the Deputy Attorney General (DAG) disputing a resolution other than a conditional discharge which, as I note above, shall not be considered a conviction and I so **FIND** that there is no conviction here upon which can be considered here for the disqualification.

The Petitioner cooperated with the OSP investigator as per his verified appeal and is undisputed by the DAG. The DAG has not submitted opposition in this matter. The DAG presented the proofs that the Petitioner sent in good faith to the OSP investigator. In fact, these documents that shall not be considered, shall only be mentioned as the OSP wanted Petitioner to reveal the amount in question. The only thing he could show is that it was under a $1,000 and New Jersey's equivalent criminal code would require a showing of over $500. The Petitioner is the only verified documentation and attestation I have that he cannot put a number on the amount in question. In fact, when I found out that we were discussing a matter that resulted in a Conditional Discharge I instructed any discussion regarding the matter to cease in accordance with law as it is not a conviction, not an admission of guilt and improper for the Petitioner to comment on even though he was cooperative and certified that he did not know the amount in the paperwork prior to my being assigned the file, and thus I so **FIND.**

Without a brief, affidavit or any supporting caselaw to the contrary, Respondent argues that the "conviction" in New York from 2005 should equal a third-degree crime in New Jersey. However, as noted above, Respondent's argument is that this supposes that he can even refer to that incident. There is no dispute that there is no plea, no factual basis and no elocution was given regarding the circumstances surrounding that incident. Further, the DAG did not cite any law that requires that any of these assumptions or speculations apply specifically to Petitioner's termination or disqualification. Notably, the DAG was not aware that Petitioner was appealing a disqualification or termination, but rather that he was appealing the investigation itself, which is not the case. At oral argument the DAG was made aware when Petitioner sent him the e-mail disqualifying him from employment at the Charter School in Newark after the OSP notified them to do

so. The Respondent has not presented any affidavits or certified exhibits of the allegation that the arrest amounted in anything other than a conditional discharge which is as a matter of law, a legal nullity and not up for discussion, and thus I so **FIND**.

Petitioner's representation of the alleged irreparable harm to him and his family is clear. He moved to New Jersey for his job. He is counting on his health insurance as his wife is pregnant and going through many pre-natal appointments. In addition, if the facts or allegations of a conviction that does not exist and a resulting disqualification from employment at the Charter School get out, it would be harmful to his reputation in the education community and certainly amongst his co-workers. This could also have an effect on any future employment and thus I so **FIND**. In addition, if he does not win this emergent appeal, his boss who is attempting to hold the position open now will have to fill the position. This information is attached to the petitioner's verified petition, was in his sworn testimony at oral argument and it remains unopposed as the DAG could not dispute same and did not submit any paperwork to the contrary; as such I **FIND** it as **FACT.**

It should be noted that I have reviewed all corresponding certifications and documentation from both sides in this matter and discussed the matter at length in an attempt to resolve the matter. It should be noted that the DAG did not submit any written documentation other than to forward emails he received that were already forwarded to him and the OSP investigator by the petitioner regarding the 2005 charge (which was a conditional discharge and thus not a conviction). He did not submit an affidavit from the investigator or any potential witnesses discussing the charge from 2005 or any of the details. The DAG did not brief a legal argument as to why the laws surrounding conditional discharge as a legal nullity should not apply under the circumstances. The document regarding any details is hearsay and I **FIND** that the Petitioner's arguments against the OSP's disqualification hold up against the reason cited for his termination.

In accordance with N.J.A.C. 6A:3-1.6 and 1:1-12.6, emergency relief may be granted "where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case . . . ." My determination in this matter is further governed by the standard

for emergent relief set forth by our Supreme Court in Crowe v. DeGioia, 90 NJ 126 (1986), as follows:

> The judge may order emergency relief ... if the judge determines from the proofs that:
>
> 1. The petitioner will suffer irreparable harm if the requested relief is not granted.
> 2. The legal right underlying the petitioner's claim is settled.
> 3. The petitioner has a likelihood of success on the merits of the underlying claim; and
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the relief is not granted.

ANALYSIS AND CONCLUSIONS

The issue before me is whether, based on the largely undisputed facts and procedural history before me, the criteria for the granting of emergency relief has been met for me to reinstate the petitioner to the Newark City Public Schools after a disqualification where Petitioner has no conviction and thus the OSP cannot prove that the disqualification was appropriate. The applicable regulation incorporates the well-established standard for injunctive relief set forth in Crowe v. DeGioia, 90 N.J. 126 (1982):

> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
> 2. The legal right underlying petitioner's claim is settled;
> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.
>
> [N.J.A.C. 6A:3-1.6]

With respect to the first prong, I **FIND** that petitioner will suffer irreparable harm if the requested relief is not provided. It is undisputed that Petitioner moved to New Jersey after teaching in New York for seven (7) years. He never had a blemish on his employment record in New York and moved to New Jersey for the position at the Newark Charter School which is a coveted position. He cooperated with the investigation in a timely manner and checked off "arrest" on his background investigation which he did not have to do. Regardless, he cooperated and provided the documents regarding an arrest for a charge that he received conditional discharge for which as defined above is not a conviction and thus a legal nullity. To that end, this case is somewhat unique in that I am not required to do a comparability analysis of a New York crime to a New Jersey crime as when it resolves in a Conditional Discharge; I am required by law not to consider it a crime; and thus, it becomes almost impossible for the OSP to provide further proof for Petitioner's disqualification as I cannot consider it under these circumstances, and thus I so **FIND.** In short, I find that Petitioner will suffer irreparable harm if he is disqualified from his employment with the Newark Charter Schools for the reasons cited above. I also **FIND** that any substantive discussion of the alleged conviction in this case would also cause him irreparable harm to his reputation and cause speculation and possibly affect his chances of finding future employment. I also **FIND** that if this disqualification is not undone, that the Newark Charter school will find a replacement thereby costing him this position.

I have reviewed the second and third prongs of Crowe together because the merits and rights are intertwined here. Petitioner has the burden on this application with respect to proving that this forum is likely to reverse the determination of OSP in keeping with the opinion of NJDOE and their legal obligation under the NJ regulations to provide a safe education to residents. To that end, Petitioner's rights are well-settled. In fact, as Respondent notes, there is no statutory or regulatory authority that permits Petitioner to opt out of this requirement. As such, I acknowledge that the NJDOE and OSP are merely reporting what they find and doing their job. However, the DAG has not submitted any sworn documentation or any legal arguments upon which he argues any of the merits other than the existence of a "crime" without a proved amount and without a potential witness for trial. As a result of the DAG's lack of evidence or legal arguments, Petitioner

clearly meets the second and third prongs. The law is clearly settled, and there is a strong likelihood of his prevailing on the merits of his underlying claim and thus I so **FIND.**

On the last prong, I **FIND** that there is demonstrated irreparable harm to the Petitioner as he will not only suffer economic harm but also reputational harm and loss of medical coverage while his wife is pregnant. In addition, he left his last job and moved to New Jersey for his role at the Newark Charter School. That harm certainly outweighs OSP's as there is no right or requirement to disqualify a teacher in New Jersey based upon the lack of a conviction we are discussing here. To that end, I agree with Petitioner that his disqualification of employment was unlawful. In fact, as there was no brief or legal argument to the contrary, I am persuaded that there is no other way for the Petitioner to get relief and he was entirely cooperative, and thus I so **FIND.**

In balancing these interests, I **CONCLUDE** that petitioner has satisfied his burden of proof as to all of the Crowe factors with regard to his desire to overturn his disqualification from his employment at the Newark Charter School and that as a result, the interests clearly weigh in favor of granting the relief sought herein as all four prongs are needed to meet the Petitioner's burden, and have been met accordingly.

ORDER

Accordingly, it is hereby **ORDERED** that the emergent application for relief of the petitioner is hereby **GRANTED** and this resolves the case as no further issues remain.

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.

March 27, 2024
DATE

DANIELLE PASQUALE, ALJ

Date Received at Agency: March 27, 2024

Date E-Mailed to Parties: March 27, 2024

lr

EXHIBITS

Petitioner:

Verified Pro Se Petition of Appeal for Emergent Relief

Respondent:

None except the hearsay document regarding the charge resulting in Conditional Discharge. No brief, no affidavits.

185-24

New Jersey Commissioner of Education

Final Decision

Boonton Education Association and
Robert Davis,

Petitioner,

v.

Board of Education of the Town of Boonton,
Morris County,

Respondent.

Synopsis

In this matter on remand, originally filed in 2021, petitioners alleged that the respondent Board failed to provide an employee health plan equivalent to the New Jersey Educators Health Plan (NJEHP). Petitioners asserted that because the date of termination for dependent coverage in the Board's health plan differs from that of the NJEHP, the Board failed to fulfill its statutory obligation to provide a NJEHP-equivalent plan to its employees. Specifically, petitioners argued that while the NJEHP extends coverage for dependents until the end of the calendar year in which they turn 26 years old, the Board's plan terminates coverage for dependents at the end of the month in which they turn 26 years old, and that this difference violates *N.J.S.A.* 18A:16-13.2(a)(1) and (2). After the matter was dismissed by the Office of Administrative Law (OAL) on jurisdictional grounds in October 2021, the Commissioner reversed the decision and remanded to the OAL for supplementation of the record, which lacked the detail necessary for the Commissioner to reach a decision on the merits of whether the Board's health plan is equivalent to the NJEHP. The parties filed cross motions for summary decision.

On remand, the ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; based upon the plain language of *N.J.S.A.* 18A:16-13.2 and *N.J.S.A.* 52:14-17.46.13, the termination date of coverage for dependents described at *N.J.A.C.* 17:9-3.1 is not part of the plan design; therefore, the Board was not required to offer a plan which extends coverage for dependents until the end of the calendar year in which they turn 26 years old in order to comply with *N.J.S.A.* 18A:16-13.2(a)(1) and (2); rather, the Board's plan must comport with the plan design elements listed at *N.J.S.A.* 52:14-17.46.13(f) to be deemed an NJEHP-equivalent plan; *N.J.S.A.* 18A:16-13.2 does not require that the Board offer an "identical" plan, and it limits "the equivalent of" to "as that plan is described in *N.J.S.A.* 52:14-17.46.13—which description does not reference dependent age. Accordingly, the ALJ granted the Board's cross-motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ that the plain language of *N.J.S.A.* 18A:16-13.2(a)(1), limits the plan equivalency determination to the plan design elements listed at *N.J.S.A.* 52:14-17.46.13(f)—none of which reference dependent age or eligibility for coverage. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

185-24
OAL Dkt. No. EDU 09844-21 (EDU 04105-21 on remand)
Agency Dkt. No. 45-3/21

New Jersey Commissioner of Education

Final Decision

Boonton Education Association and
Robert Davis,

Petitioners,

v.

Board of Education of the Town of Boonton,
Morris County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioners pursuant to *N.J.A.C.* 1:1-18.4, the Board's reply thereto, as well as the reply thereto from participant State Health Benefits Commission, have been reviewed and considered.[1]

Petitioners allege that respondent Board is in violation of *N.J.S.A.* 18A:16-13.2(a)(1) and (2) by failing to provide a health plan to its employees that is equivalent to the New Jersey Educators Health Plan (NJEHP). That statute states:

> (1) Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning January 1, 2021 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with P.L.1979, c.391 (C.18A:16-12 et seq.) shall offer to its employees, and their

[1] On January 11, 2023, the Administrative Law Judge (ALJ) denied the State Health Benefits Commission's (SHBC) motion to intervene but granted SHBC leave to participate pursuant to *N.J.A.C.* 1:1-16.6.

> dependents if any, the equivalent of the New Jersey Educators Health Plan in the School Employees' Health Benefits Program [SEHBP] as that plan design is described in subsection f. of section 1 of P.L.2020, c.44 (C.52:14-17.46.13).
>
> Beginning January 1, 2022 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with P.L.1979, c.391 (C.18A:16-12 et seq.) shall also offer a plan for its employees, and their dependents if any, that is the equivalent of the Garden State Health Plan in the School Employees' Health Benefits Program. The board shall provide an enrollment period prior to January 1, 2022.
>
> (2) The plans under this section shall be offered by the employer regardless of any collective negotiations agreement between the employer and its employees in effect on the effective date [July 1, 2020] of this act, P.L.2020, c.44, that provides for enrollment in other plans offered by the employer.
>
> No new health care benefits plans, other than those specified in paragraph (1) of this subsection, shall be added by the employer from January 1, 2021 through December 31, 2027 unless the provisions of any collective negotiations agreement entered into before or after the effective date of this act, P.L.2020, c.44, results in additional premium cost reductions. Nothing in this section shall prohibit an employer from offering health care benefits plans that existed prior to the effective date of this act.
>
> [*N.J.S.A.* 18A:16-13.2(a) (emphasis added).]

Petitioners assert that because the date of termination for dependent coverage in the Board's private plan differs from that of NJEHP, the Board has not fulfilled its statutory obligation to provide a NJEHP-equivalent plan to its employees. While NJEHP extends coverage for dependents until the end of the calendar year in which they turn 26 years old, the Board's plan terminates coverage for dependents at the end of the month in which they turn 26 years old.

The Board maintains that it has offered an NJEHP-equivalent plan in accord with *N.J.S.A.* 52:14-17.46.13(f). It asserts that the date of termination of coverage for dependents is an eligibility criterion described in *N.J.A.C.* 17:9-3.1 rather than a part of the plan design mandated by *N.J.S.A.* 52:14-17.46.13. Title 17, Chapter 9 of the New Jersey Administrative Code, which contains regulations pertaining to the State Health Benefits Program (SHBP), defines "Dependents" in part as "an employee's spouse, eligible domestic or civil union partner and the employee's children through the end of the calendar year in which they reach the age of 26 years." *N.J.A.C.* 17:9-3.1 (emphasis added). However, dependent eligibility is not referenced within *N.J.S.A.* 52:14-17.46.13(f), which dictates that "[t]he plan design of the New Jersey Educators Health Plan" must include over twenty specific plan elements listed in the statutory text. Those elements include in-network and out-of-network coverage, out-of-pocket maximums, deductibles, and copayment amounts, and pharmacy coverage, among others.

As the parties agree that the material facts are undisputed, they filed cross-motions for summary decision. The ALJ concluded that petitioners' claim was not supported by the applicable statutes. Specifically, the ALJ reasoned that based upon the plain language of *N.J.S.A.* 18A:16-13.2 and *N.J.S.A.* 52:14-17.46.13, the termination date of coverage for dependents described at *N.J.A.C.* 17:9-3.1 is not part of the plan design. Therefore, the Board was not required to offer a plan which extends coverage for dependents until the end of the calendar year in which they turn 26 years old in order to comply with *N.J.S.A.* 18A:16-13.2(a)(1) and (2). Rather, the Board's plan must comport with the plan design elements listed at *N.J.S.A.* 52:14-17.46.13(f) to be deemed an NJEHP-equivalent plan. Consequently, the ALJ granted the Board's cross-motion for summary decision and dismissed the petition of appeal.

In their exceptions, petitioners acknowledge that *N.J.S.A.* 52:14-17.46.13(f) sets forth the plan design for the NJEHP. However, they contend that "the plan design is not the only aspect of the NJEHP plan which must be equivalent," and that the meaning of "equivalent plan . . . extends to the level and type of health care benefits provided." Petitioners' Exceptions, at 3. To conclude otherwise, they assert, leads to an absurd result wherein the Board's plan provides coverage for dependents that differs from the SEHBP's coverage for dependents. *Id.* at 3-4. They argue that "the Legislature clearly intended that the benefits, not just the plan design, provided in the Board's NJEHP plan be identical to those in the state's NJEHP." *Id.* at 4. They rely upon the SHBP definition of "Dependents" at *N.J.A.C.* 17:9-3.1, which they claim applies to employees in the SEHBP; a 1982 published Appellate Division opinion issued long before the enactment of Chapter 44; and an unpublished Appellate Division opinion which lacks precedential value. Ultimately, they contend that the ALJ's interpretation of the statutory scheme was unreasonably narrow.[2]

In reply, the Board argues that petitioners "rely on a broad definition of the word 'equivalent,' which has no basis in the statute." Board's Exceptions, at 2. They assert that, pursuant to the plain language of the statutory scheme, "[t]he only aspects of the NJEHP for which the statute specifically requires private plans to match are the specified benefits spelled out in" *N.J.S.A.* 52:14-17.46.13(f). *Id.* at 4-5. Accordingly, the Board contends that the ALJ correctly determined that the equivalency determination is limited by *N.J.S.A.* 52:14-

[2] Petitioners' contention—raised in a footnote on page 5 of their exceptions—that the Board violated the square corners doctrine was not addressed by the ALJ in the Initial Decision and will not be considered by the Commissioner herein. *See Sullivan v. Port Auth. of N.Y. & N.J.*, 449 *N.J. Super.* 276, 281 (App. Div. 2017) (holding that legal issues raised in footnotes without adequate briefing will not be considered on appeal).

17.46.13(f), which does not reference dependent coverage eligibility or termination of dependent coverage.

Similarly, participant SHBC asserts that *N.J.A.C.* 17:9-3.1 is not part of the plan design of the NJEHP. They claim that petitioners' arguments ignore the plain language of *N.J.S.A.* 18A:16-13.2(a)(1), which expressly limits the Chapter 44 equivalency determination to the point-of-service out-of-pocket costs enumerated in *N.J.S.A.* 52:14-17.46.13(f). They disagree with petitioners that benefits offered to employees of non-SEHBP participating local employers must be uniform, in all respects, to the benefits offered by the SEHBP to employees of its participating employers. They contend that if the Legislature had desired equivalency in every respect, then it could have forced all local education employers to participate in the SEHBP, which it did not. They also contend that the statutorily created SEHBP plan design committee, not the SHBC via *N.J.A.C.* 17:9-3.1, has the sole authority to create, modify, or terminate any plan or plan element pursuant to *N.J.S.A.* 52:14-17.27(b) and 17.46.3(e).

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter for the reasons stated therein. It is well-settled that a statute's plain language "is typically the best indicator" of the Legislature's intent. *Facebook, Inc. v. State*, 254 *N.J.* 329, 353 (2023). The Commissioner concurs with the ALJ that, by its plain language, *N.J.S.A.* 18A:16-13.2(a)(1), limits the plan equivalency determination to the plan design elements listed at *N.J.S.A.* 52:14-17.46.13(f)—none of which reference dependent age or eligibility for coverage. The SHBP definition of "Dependents" at *N.J.A.C.* 17:9-3.1 is not a plan design element under this statutory scheme. Petitioners' contention that the Legislature did not intend for this result, or that this result is absurd, is unsupported by the statute's plain language or published case law.

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

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 10, 2024
Date of Mailing: May 10, 2024

[3] 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.

186-24

New Jersey Commissioner of Education

Final Decision

U.C. and E.C., on behalf of minor child, N.C.,

Petitioners,

v.

Board of Trustees of the Thomas Edison EnergySmart Charter School, Somerset, County, and Jessica Graf,

Respondent.

Synopsis

Petitioners appealed the results of the respondent charter school's lottery system for selecting 3rd grade students for the 2023-2024 school year and sought a declaratory judgment that the actions and practices of the school and its enrollment coordinator violated New Jersey's charter school laws; further, petitioners demanded that their child, N.C., be admitted to Thomas Edison EnergySmart Charter School (TEECS) as a third-grade student for the 2023–2024 school year.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioners received written notice on February 6, 2023 that their child had not been selected in the 3rd grade lottery and had instead been waitlisted; the February 6, 2023 notice constituted a final order, ruling, or other action of a board of education as set forth in *N.J.A.C.* 6A:3-1.3(i); therefore, petitioners were required to file their petition of appeal within ninety days of the final notice, i.e., by May 7, 2023, but did not file the petition until August 14, 2023; further, petitioners' arguments regarding alleged illegal actions and practices of TEECS in conducting the 3rd grade lottery were without merit. Accordingly, the ALJ granted TEECS's motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ that the petition was filed more than 90 days after petitioners received notice that N.C. was not selected in the 2023-2024 lottery and was therefore untimely pursuant to *N.J.A.C.* 6A:3-1.3(i); further, the Commissioner concurred that petitioners failed to provide any legal basis for their argument that respondents' lottery system was unlawful. Accordingly, the respondent's motion for summary decision was granted, and the petition was dismissed.

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.

186-24
OAL Dkt. No. 07604-23
Agency Dkt. No. 222-8/23

New Jersey Commissioner of Education

Final Decision

U.C. and E.C., on behalf of minor child, N.C.,

Petitioners,

v.

Board of Trustees of the Thomas Edison EnergySmart Charter School, Somerset County, and Jessica Graf,

Respondent.

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 the petition of appeal was untimely pursuant to *N.J.A.C.* 6A:3-1.3(i), as it was filed more than 90 days after petitioners received notice that N.C. was not selected in the 2023-2024 lottery.[1] The Commissioner further concurs with the ALJ that petitioners failed to provide any legal basis for their argument that respondents' lottery system was unlawful, and that summary judgment in favor of respondents is therefore appropriate.

[1] As such, the Commissioner does not reach the issue of whether petitioners' claim regarding the 2023-2024 school year is moot.

Accordingly, respondents' motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 10, 2024
Date of Mailing: May 10, 2024

[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 GRANTING MOTION FOR SUMMARY DECISION
OAL DKT. NO. EDU 07604-23
AGENCY REF. NO. 222-8/23

U.C. AND E.C. ON BEHALF OF MINOR CHILD N.C.,
Petitioners,
v.
BOARD OF TRUSTEES OF THE THOMAS EDISON ENERGYSMART CHARTER SCHOOL, SOMERSET COUNTY, AND JESSICA GRAF,
Respondents.

U.C., petitioner and attorney

David L. Disler, Esq., for respondents (Porzio, Bromberg & Newman, P.C., attorneys)

Record closed: January 26, 2024 Decided: March 8, 2024

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, U.C. and E.C. on behalf of minor student, N.C., appeal the results of the respondents' lottery system for selecting students for third grade for the school year 2023--2024 at Thomas Edison EnergySmart Charter School, Somerset County (respondents or TEECS), and seek a declaratory judgment that the actions, conduct, and practices of respondents Graf and TEECS violated the charter school laws of the State of New Jersey, and that minor child N.C. be admitted to the TEECS third-grade program for the 2023–2024 school year.

Petitioners filed a due process petition as well as a motion for emergent relief on August 14, 2023, with the New Jersey Department of Education (DOE), Office of Controversies and Disputes (OCD). These matters were transmitted to the Office of Administrative Law (OAL), where they were filed on August 15, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. An emergent hearing in this matter took place via Zoom on August 21, 2023, and on August 22, 2023, the motion was denied.

Petitioners filed an Amended Petition on August 29, 2023, and respondents filed the within motion for summary decision in lieu of an Answer. Oral argument was conducted on January 11, 2024, supplemental letter briefs were submitted on January 26, 2024, and the record closed.

FINDINGS OF FACT

Based on the parties' briefs and the testimony offered by the parties and their representatives, I **FIND** the following to be the undisputed facts:

1. TEECS, a charter school for grades K−12 in Franklin, New Jersey, accepted students from three area school districts: Franklin, North Brunswick and South Brunswick Townships. Each year, more students applied than there was room for, and TEECS implemented an admissions policy using a lottery. Preference was given to students who resided in either Franklin, North Brunswick or South

Brunswick Townships, and TEECS entered the names of economically disadvantaged students four times in the lottery to provide a weighted advantage.

2. Petitioners have been residents of Franklin Township, Somerset County, New Jersey since 2022. They were the parents of minor child N.C., an eight-year-old. Petitioners identify racially as "Black African and American." From 2021 through 2023, petitioners applied for and were denied admission for N.C. to attend TEECS. By letter dated February 6, 2023, petitioners were notified that N.C. had not been chosen in the lottery for enrollment in TEECS for 2023–2024, that he would be waitlisted, and that no further correspondence would be forthcoming unless N.C. was later chosen from the waitlist. (The "Notice".) As enrollment was full, a child could only be admitted from the waitlist if a student at TEECS disenrolled.

LEGAL ANALYSIS

The issue is whether respondents had proven by a preponderance of the evidence that there was no genuine issue as to any material fact challenged and that they were entitled to prevail as a matter of law, pursuant to N.J.A.C. 1:1-12.5(b).

N.J.S.A. 18A:6-9 authorizes the Commissioner of Education to consider controversies between a parent and a school board. The OAL is the appropriate venue for hearing an appeal of a school board's findings, and the DOE properly forwarded this matter to the OAL for this matter to be heard.

Summary decision may be granted when the papers and discovery that have been filed show that there is no genuine issue as to any material fact challenged, and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). No evidentiary hearing needs to be held if there are no disputed issues of material fact. Frank v. Ivy Club, 120 N.J. 73, 98, cert. denied, 498 U.S. 1073 (1991). "When the evidence is so one-sided that one party must prevail as a matter of law, the [tribunal] should not hesitate to grant summary [decision]." Della Vella

v. Bureau of Homeowner Protection, OAL Dkt. No. CAF 17020-13, 2014 WL 1383908 (N.J. Adm. 2014) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995)).

Further, the non-moving party has the burden "to make an affirmative demonstration . . . that the facts are not as the movant alleges." Spiotta v. William H. Wilson, Inc., 72 N.J. Super. 572, 581 (App. Div. 1962). This requirement, however, does not relieve the moving party from having to initially establish in its moving papers that there was no genuine issue of fact and that they were entitled to prevail as a matter of law. It is the "movant's burden to exclude any reasonable doubt as to the existence of any genuine issue of fact." Conti v. Bd. of Educ., 286 N.J. Super. 106 (App. Div. 1995) (quoting Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954)).

For an adverse party to a motion for summary decision to prevail, they must, by responding affidavit, set forth specific facts showing that there was a genuine issue which could only be addressed in an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

It must be noted that in their oral argument summation brief of January 26, 2024, petitioners requested a second amendment of their original petition, asking this court to issue a stay of TEECS's kindergarten lottery to be conducted on February 3, 2024. On January 31, 2024, petitioners asked this court whether their second amendment to the petition (the stay request) had been granted. However, such a request to amend needed to be filed pursuant to the guidelines of the New Jersey Court Rules and the New Jersey Administrative Code, and not as a comment in the body of a summation brief summarizing the oral argument. Although petitioners are pro se in this matter, petitioner U.C. is a New Jersey attorney and should be familiar with the rules and requirements for motions, pleadings and amendments to pleadings.

Further, and most importantly, this court never approved a first amendment of the petition; the within matter is a motion for summary decision filed by respondents in lieu of an answer to petitioners' attempt to amend their petition a first time.

On January 31, 2024, before this court had addressed petitioners' informal attempt to amend their petition a second time, petitioners copied this court on an email to respondents, in which they stated that in lieu of formal papers, petitioners were notifying respondents that it was their intention on February 1, 2024, to apply to this court for an entry of an order to show cause for an emergent injunction staying TEECS's kindergarten lottery on February 3, 2024. Petitioner attempted to cite to Crowe v. DeGioia factors (the four-prong test for emergent relief) and stated that motion papers would be forthcoming.

This court cannot waive the filing and notice requirements of the New Jersey Rules of Court or the New Jersey Administrative Code in order to accommodate the petitioners. While amendments of initial pleadings may be made by motion, petitioner was attempting a second amendment of a petition for which no first amendment had been granted. Accordingly, this court issued a Letter Order on January 31, 2024, denying petitioners' attempt to informally request a second amendment to their initial pleadings. It must be further noted that petitioners failed to file either an order to show cause or other formal request for injunctive relief with this court, nor did they indicate that this court had the legal authority to unilaterally stay a school board's admissions lottery. This court was never noticed as to whether petitioners filed an order to show cause or other formal request for injunctive relief with the New Jersey Superior Court.

Petitioners also attempted, via their briefs in response to respondents' motion for summary decision, to "reserve" the right to add additional parties to this litigation. This was an attempt to add another child of theirs to their petition, a child who had not been entered into the third-grade TEECS lottery for which they filed their initial pleading. Petitioners cited to N.J.A.C. 6A:3-1.8, which allows parties to intervene in a matter subject to compliance with the New Jersey Administrative Code. Petitioners have not complied with the New Jersey Administrative Code, nor is this a situation where an outside party sought to intervene in a docketed case; petitioners were attempting to conflate a second child's case with their first child's case, as a means to expedite the formal filing and notice requirements set forth in the New Jersey Rules of Court and the New Jersey Administrative Code. No legal support for a right to add extra litigants in the instant case was supplied by petitioners; no such right was in fact "reserved" by

this court, and, again, such a request is subject to the formal legal procedures set forth in the New Jersey Court Rules and New Jersey Administrative Code. No addition of a second case and a second child, I.C., to the within case had ever been granted.

Additionally, even if petitioners had complied with the proper procedural rules and regulations for amending petitions and adding parties, petitioners failed to provide any proof to this court that they had actually entered their kindergarten-aged child I.C. into the February 3, 2024, TEECS kindergarten lottery, and did not advise this court as to the results of any such entry into the kindergarten lottery, and therefore there was no demonstrable negative result or harm to child I.C. from which petitioners could appeal.

To reiterate the language of this court's Letter Order of January 31, 2024, petitioners' informal request for a second amendment to their original petition of appeal, seeking to add a second child (I.C.) as a petitioner and challenge the TEECS 2024–2025 kindergarten lottery, has been **DENIED**.

I **FIND** that the relief sought by petitioners, requiring respondents to accept N.C. into their third-grade program for the 2023–2024 school year, is now moot, as the 2023–2024 school year is already well underway and will end before a full due process hearing can be heard and decided in this matter.

Petitioners also requested that the entire TEECS lottery system be nullified by this court, which relief is not currently moot. Towards that end, petitioners claimed two genuine issues of fact for which, they argued, a full due process hearing was warranted. First, petitioners claimed that they had never received notice that N.C. had not been selected in the 2023–2024 TEECS third-grade lottery; therefore, the ninety-day time period for filing their petition never started. Second, petitioner reiterated their primary claim from their original pleadings that TEECS's lottery system was an unlawful selection system.

Regarding the ninety-day filing rule, respondents argued that a petition of appeal before the Commissioner of Education must be brought within ninety days of receipt of "notice of a

final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the contested case hearing." N.J.A.C. 6A:3-1.3(i). Caselaw indicates that this requirement is strictly enforced, only to be relaxed with a showing of exceptional or compelling circumstances. M.N. & E.Y. o/b/o K.N. v. State-Operated Sch. Dist. of Jersey City, OAL Dkt. No. EDU 11136-03 (June 17, 2004), aff'd (Comm. Ed. July 21, 2004). In Kaprow v. Bd. of Ed. of Berkeley Tp., 131 N.J. 572, 582 (1993), the New Jersey Supreme Court explained the rationale for strict enforcement of the ninety-day rule as being a means to provide school districts with "a measure of repose, an essential element in the proper and efficient administration of the school laws" and to give "school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days."

Respondent TEECS's third-grade lottery for the 2023-24 school year was held on February 4, 2023. The lottery was broadcast online in order to provide maximum transparency. The Notice was sent by respondents to petitioners and was dated February 6, 2023. (Petitioner's December 12, 2023, Brief Exhibit B). The Notice was entitled "2023-2024 Lottery Results and Waiting Lists" and was addressed by respondent Jessica Graf to the petitioners, the parents of N.C. The Notice confirmed that petitioners entered N.C. into the third-grade lottery for 2023-2024. The Notice stated in its first sentence that waiting lists can be viewed online and gave the address for petitioners to check N.C.'s status on the waiting list.

It must be noted that petitioners never claimed that they were unaware that N.C. had been waitlisted instead of chosen for TEECS third grade; in fact, petitioner U.C. confirmed through her testimony at oral argument that she was aware that N.C. had been waitlisted instead of being chosen in the TEECS third-grade lottery.

The main paragraph of the Notice explained the waiting list and stated that "[s]tudents on the waiting list are **NOT** guaranteed enrollment." It explained that the waiting list would be used for the entire 2023-2024 school year and that seats would be filled as they became available. Key to the letter was the bolded statement, "**Parents will receive an email if enrollment is being offered.**"

I **CONCLUDE** that it was clear from the Notice that N.C. had not been chosen in the third-grade lottery, that he had been added to the waiting list, that this was the last notice petitioners would receive from respondents regarding the 2023–2024 third-grade lottery unless N.C. was later chosen from the waiting list, and that petitioners were aware as of February 6, 2023, that N.C. had been waitlisted instead of chosen in the lottery.

While petitioners seemingly argued that they received no final order because T.C. still could have been selected from the waiting list even after the school year began, this did not comport with a plain reading of either the Notice or the statute. Respondents properly set forth that the Commissioner of Education considered even "informal awareness" of an action by a public body as starting the appeal timeline when a prospective petitioner had "reason to know that he has a cause of action against an identifiable respondent." Mazzeo v. Bd. of Ed. of Tp. of Barnegat, OAL Dkt. No. EDU 4561-05, Agency Dkt. No. 151-6/05 (August 18, 2005), aff'd (Comm. Ed. September 29, 2005). Again, petitioners were aware that N.C. had been waitlisted instead of being chosen in the lottery as of February 6, 2023.

I **CONCLUDE** that the February 6, 2023, Notice from respondents to petitioners served as final notice that N.C. had not been chosen in the third-grade lottery and that, instead, T.C. had been added to the waiting list. I **CONCLUDE** that the Notice of February 6, 2023, constituted a notice of a final order, ruling or other action by the district board of education, as set forth in N.J.A.C. 6A:3-1.3(i), and that therefore petitioners were to have filed their appeal within ninety days of the Notice, that being by May 7, 2023. I **CONCLUDE** that petitioners failed to file the within petition in a timely manner, having filed their appeal on August 14, 2023, after the May 7, 2023, deadline.

I **CONCLUDE** that, regarding petitioners' failure to file the within appeal in a timely manner, there is no genuine issue of material fact for which a full hearing is required.

As to petitioners' second argument, even if, arguendo, petitioners had filed this appeal in a timely manner, there was no genuine issue of fact regarding petitioners' claim that respondents' lottery selection system was unlawful.

Petitioners argued that TEECS's lottery system failed to comply with New Jersey law because it failed to apportion seats properly between the three constituent school districts, it failed to consider an applicant's race, and its sibling preference and other policies violate the School Ethics Act. Petitioners did not challenge the waitlist process itself, but essentially argued that if the lottery had been carried out lawfully in the first instance, N.C. would have been enrolled in the TEECS third-grade program, and not waitlisted. In other words, petitioners would not have been concerned that the third-grade lottery system was unlawful if their child had been selected for third grade, but since he was not selected, petitioners thereby challenged the entire lottery system.

N.J.S.A. 18A:36A-8 provides that charter schools may use a "random selection process" to select students if there are more applicants than available seats. Such was the situation in the within matter; respondents employed a lottery system because there were more applications than there were available seats in their third-grade program. On its surface, TEECS's lottery complied with N.J.S.A. 18A:36A-8. However, petitioners argued that the third-grade lottery was unlawful because it used a sibling preference system. However, N.J.S.A. 18A:36A-8(c) states that a "charter school may give enrollment priority to a sibling of a student enrolled in the charter school." The applicable regulation, N.J.A.C. 6A:11-4.5, has identical language. I **CONCLUDE** that respondents have met their burden of proving by a preponderance of the credible evidence that there was no genuine issue of material fact as to a charter school's ability to conduct an admissions lottery and give priority to siblings.

Petitioners argued that TEECS only selecting twenty-five students during the third-grade lottery and then waitlisting the remainder of the applicants was unlawful but offered no basis for that argument. They vaguely pointed to the School Ethics Act. However, respondents correctly argued that neither the School Ethics Act nor any regulations regarding equality and equity addressed the issue of available seats in charter schools, nor the actual operation of the charter school selection and lottery processes. Even if petitioners had been able to show there was any genuine issue of material fact as to violations of the School Ethics Act, respondents correctly argued that the within matter would have to be dismissed for lack of jurisdiction, pointing out that the School Ethics Commission has exclusive jurisdiction over matters arising

under the School Ethics Act. N.J.A.C. 6A:28-1.4; Kubricki v. Pinelands Reg. Sch. Bd. of Educ., OAL Dkt. No. EDU 4612-20; Agency Ref No. 42-2/20 (Dec. 30, 2020); aff'd Comm'r, 42-21 (Feb. 16, 2021) (dismissing a complaint alleging a violation of the School Ethics Act which was filed with the OCD because violations of the School Ethics Act were solely within the jurisdiction of the School Ethics Commission.)

Petitioners also faulted TEECS for not employing "equal apportionment" in its third-grade lottery system. However, respondents correctly argued that petitioners were wrong to conclude that New Jersey law required "equal apportionment"; such a requirement was not in the statute, and the statute cited by petitioners, N.J.A.C. 6A:11-2.1(b)(4), was not applicable to the within scenario. N.J.A.C. 6A:11-4.5 permits a random selection process with a waitlist if the number of applicants exceeds the available number of spots. The lottery regulation does not reference apportionment by district, nor does it provide for a separate waitlist for each constituent district, and therefore petitioners' argument that a separate admissions lottery was legally required for each of the three constituent sending townships was not supported by a plain reading of the applicable regulations. TEECS had advertised its admissions lottery to all three of its sending townships, Franklin, North Brunswick and South Brunswick, and proffered statistics indicating that in fact petitioner's hometown, Franklin Township, was over-represented at TEECS, with 65% of TEECS students coming from that town.

As to petitioners' claim that race should be a factor in setting up a lottery system, petitioners offered no legal grounds for the application of race as a factor in school admissions. They offered statistics from 2015 as to the racial makeup of TEECS but failed to provide any more recent statistics. Respondent TEECS pointed out that it publishes these statistics on its website, but petitioners simply failed to research these numbers and proffer current statistics. Conversely, TEECS offered the most recent statistics available as of the end of the 2022 school year: the three townships served by respondent had a total of 21,112 students. Of these students, 4,328 were African American, equaling 20%. Of the 599 students enrolled at TEECS, 114 were African American, equaling 19%. Therefore, it is undisputed that the percentage of African Americans closely reflected the percentage of African Americans in the three sending townships. Respondent TEECS also pointed out that despite undisputed facts showing that it

lawfully executed its third-grade lottery, petitioners sought to have race be a factor in having their child admitted to the TEECS third-grade program, despite a recent (uncited) United States Supreme Court case prohibiting the use of race in admissions.[1]

It is also worth noting that in its 2020 Renewal Summary for respondent TEECS, the DOE gave a score of "Meets Standard" for "Access and Equity," noting that TEECS "demonstrates a commitment to serving and meeting the needs of all students," while providing examples of TEECS's exhaustive outreach efforts to the community. Respondents were right to argue that this certification from DOE negated any argument that TEECS did not have any plan or engage in any efforts to recruit students of diverse backgrounds throughout its constituent-sending districts.

I **CONCLUDE** that respondents met their burden of proving by a preponderance of the credible evidence that there was no genuine issue of fact in question for which a full due process hearing would be required because respondents have proven that petitioners failed to file the within appeal in a timely manner, and respondent has shown that TEECS acted lawfully in effectuating a lottery admissions system with waitlisting that gave preference to sibling admissions. I **CONCLUDE** that respondents are entitled to have the within appeal summarily dismissed, and therefore respondents' motion for summary decision is **GRANTED**.

ORDER

Respondents' motion for summary decision is hereby **GRANTED**, and the within appeal is **DISMISSED**.

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

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[1] Respondents were referring to the as-yet-unpublished decision in Students for Fair Admissions, Inc. *(SFFA)* v. President & Fellows of Harvard Coll. (Harvard) and SFFA v. Univ. of North Carolina (UNC), Nos. 20-1199 & 21-707 (June 29, 2023), concerning college admissions.

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.

March 8, 2024
DATE

JEFFREY N. RABIN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JNR/jm

APPENDIX

WITNESSES

For petitioners

U.C., parent and attorney

For respondents

David L. Disler, Esq.

BRIEFS/EXHIBITS

For petitioners

- Petition, dated August 14, 2023
- Brief in Response to Opposition Brief, dated August 21, 2023
- Amended Petition and Brief, dated August 29, 2023
- Brief in Response to Motion for Summary Decision, December 12, 2023
- Summation Brief, dated January 26, 2024

For respondents

- Brief in Response to Petition for Emergent Relief, dated August 20, 2023
- Motion for Summary Decision with Brief, dated August 29, 2023
- Summation Brief, dated January 26, 2024

187-24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificate of Kamber Chaiken, Board of Education of the Borough of Elmwood Park, Bergen County.

and

In the Matter of Suspension of the Teaching Certificate of Evelyn Cordova, Board of Education of the Borough of Elmwood Park, Bergen County.

Synopsis

These consolidated matters were opened before the Commissioner of Education by way of Orders to Show Cause served by the petitioner, the Elmwood Park Board of Education (Board), upon the respondents, Kamber Chaiken and Evelyn Cordova – formerly non-tenured teachers in the Board's school district – requiring respondents to show cause why an order should not be entered suspending their teaching certificates for unprofessional conduct pursuant to *N.J.S.A.* 18A:26-10 after they resigned without giving 60 days' notice. Counsel for respondents moved to dismiss the Orders to Show Cause, claiming that respondents' employment contracts expired at the end of the 2022-2023 school year and that they never signed new employment contracts for the 2023-2024 school year. Although the expired contracts contained a 60-day notice provision, respondents maintained that they were not required to provide the Board with 60 days' notice as they resigned after their 2022-2023 employment contracts expired and thus had already fulfilled their contractual obligations to the Board.

The ALJ found, *inter alia*, that: respondents fulfilled their obligations to the Board under their 2022-2023 employment contracts and never signed new employment contracts for the 2023-2024 school year; because respondents were nontenured teachers whose employment contracts expired on June 30, 2023, they were not required to provide 60 days' notice prior to resigning; further, respondents' part-time summer employment with the Board was not connected to their 2022-2023 expired employment contracts or their unsigned 2023-2024 employment contracts. The ALJ concluded that the notice provision does not apply to these teachers, and the relief sought by the District asking for a suspension of up to one year of their teaching licenses was an inappropriate and frivolous use of the tenure statute. Accordingly, the Orders to Show Cause were dismissed with prejudice.

Upon review, the Commissioner concurred with the findings and conclusion of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. Accordingly, the Orders to Show Cause were dismissed.

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.

187-24
OAL Dkt. Nos. EDU 13289-23 and 13290-23
Agency Dkt. Nos. 277-10/23 and 278-10/23 (consolidated)

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Kamber Chaiken, Board of Education of the Borough of Elmwood Park, Bergen County.

And

In the Matter of the Suspension of the Teaching Certificates of Evelyn Cordova, Board of Education of the Borough of Elmwood Park, Bergen County.

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

Respondents were previously employed by the Board as nontenured teachers. The Board filed Orders to Show Cause to suspend respondents' teaching certificates for wrongful cessation of duties in violation of *N.J.S.A.* 18A:26-10, which provides that "[a]ny teaching staff member employed by a board of education . . . who shall, without the consent of the board . . . cease to perform his duties before the expiration of the term of his employment, shall be deemed guilty of unprofessional conduct, and the commissioner may, upon receiving notice thereof, suspend his certificate for a period not exceeding one year."

Counsel for respondents moved to dismiss the Orders to Show Cause, claiming that respondents' employment contracts expired at the end of the 2022-2023 school year and that they

never signed new employment contracts for the 2023-2024 school year. Although the expired contracts contained a 60-day notice provision, respondents maintained that they were not required to provide the Board with 60 days' notice as they resigned after their 2022-2023 employment contracts expired and thus had already fulfilled their contractual obligations to the Board.

The Administrative Law Judge (ALJ) granted respondents' motions to dismiss the Orders to Show Cause upon finding that respondents fulfilled their obligations to the Board under their 2022-2023 employment contracts and never signed new employment contracts for the 2023-2024 school year. The ALJ held that because respondents were nontenured teachers whose employment contracts expired on June 30, 2023, they were not required to provide 60 days' notice prior to resigning. The ALJ also found that respondents' part-time summer employment with the Board was not connected to their 2022-2023 expired employment contracts or their unsigned 2023-2024 employment contracts.

In their exceptions, the Board admits that respondents never signed employment contracts for the 2023-2024 school year. However, the Board maintains that under common law principles, contracts may be formed without executed writings. The Board asserts that the ALJ should have considered its detrimental reliance upon respondents' actions—including their summer employment with the Board—which led the Board to believe that respondents would return to teach full-time for the 2023-2024 school year. Additionally, the Board asserts that the ALJ should have considered the harm that befell the Board due to respondents' failure to provide 60 days' notice when they resigned just prior to the start of the 2023-2024 school year. Furthermore, the Board denies that it is relying upon *N.J.S.A.* 18A:18-8, which applies to tenured teachers, and denies that it filed the Orders to Show Cause in bad faith. The Board maintains that it is entitled to proceed under *N.J.S.A.* 18A:26-10 to

protect vulnerable children and ensure non-disruptive educational programming at the start of a school year.

In reply, respondents argue that the Commissioner should adopt the Initial Decision and dismiss the Orders to Show Cause. They reiterate that their employment contracts expired on June 30, 2023, and that they were not employed under contract thereafter. Because they fulfilled their contractual duties to the Board prior to resigning, they were not required to provide 60 days' notice. Moreover, they contend that common law contract principles are inapplicable where, as here, there are specific statutory requirements governing contracts between nontenured teaching staff members and boards of education.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter. As nontenured teachers, respondents' notice obligations are established by the terms of their employment contracts. *In re Suspension of Teaching Certificates of Melissa Van Pelt, Gray Charter Sch., Newark, Essex Cnty.*, Commissioner Decision No. 170-09 at 3 (May 29, 2009), *aff'd*, 414 *N.J. Super.* 440 (App. Div. 2010). *N.J.S.A.* 18A:27-10 requires boards of education to provide nontenured teaching staff members with a written offer of a contract for employment, or a written notice that employment will not be offered, on or before May 15 of each year. *In re Suspension of Teaching Certificates of Jesenia Chester, Bd. of Educ. of Twp. of S. Brunswick, Middlesex Cnty.*, Commissioner Decision No. 276-23 at 2-3 (Sept. 14, 2023). *N.J.S.A.* 18A:27-12 requires employees to accept offers in writing on or before June 1. *Id.* at 3. If employees do not accept offers in writing, then their employment is not renewed. *Ibid.* The Commissioner has previously held that "[t]he principles pertaining to implied contracts do not apply when the applicable statute specifically requires acceptances to be in writing." *Ibid.*

The Board's reliance upon common law contract principles lacks merit as *N.J.S.A.* 18A:27-12 specifically requires acceptance of employment offers to be in writing. Here, respondents did not accept the Board's offers of employment for the 2023-2024 school year in writing. In fact, the Board concedes that the employment contracts for the 2023-2024 school year were never signed by respondents. Because respondents did not accept the offers of employment in writing, they were not under contract at the time of their resignations and had no notice obligations to the Board. *Ibid.* Therefore, respondents—who resigned after June 30, 2023—did not violate *N.J.S.A.* 18A:26-10 because they did not cease to perform their duties before the expiration of their terms of employment.

Accordingly, the Orders to Show Cause to Suspend the Teaching Certificates of Kamber Chaiken and Evelyn Cordova are hereby dismissed with prejudice.[1]

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 10, 2024
Date of Mailing: May 10, 2024

[1] The Commissioner denies the Board's letter request to reopen the record pursuant to *N.J.A.C.* 1:1-18.5(b) for consideration of a social media post purportedly written by respondent Kamber Chaiken. The Commissioner finds that because the new evidence, if considered, would have no impact upon the outcome of this case, it is unnecessary to reopen the record. *In re Div. of Assets and Liabilities Among Constituent Dists. of Lower Camden Cnty. Reg'l High Sch. Dist. No. 1, Camden Cnty.*, 2003 N.J. AGEN LEXIS 1372, State Bd. of Educ. Decision (Sept. 5, 2003).

[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

IN THE MATTER OF KAMBER CHAIKEN,
ELMWOOD PARK BOARD OF EDUCATION
BERGEN COUNTY,

OAL DKT. NO EDU 13289-23
AGENCY DKT. NO. 277-10/23

CONSOLIDATED

IN THE MATTER OF EVELYN CORDOVA,
ELMWOOD PARK BOARD OF EDUCATION
BERGEN COUNTY,

OAL DKT. NO. EDU 13290-23
AGENCY DKT. NO. 278-10/23

Alfred F. Maurice, Esq., for Petitioners (Springstead & Maurice, attorneys)

Arsen Zartarian, Esq., for Respondent (Cleary Giacobbe Alfieri Jacobs, LLC, attorneys)

Record closed: February 1, 2024 Decided: February 29, 2024

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Kamber Chaiken ("Chaiken") and Evelyn Cordova ("Cordova") are former non-tenured teachers with the Elmwood Park School District. On October 16, 2023, they were both served with an Order to Show Cause issued by the Commissioner based on an application filed by the District seeking suspension of their respective licenses due to their alleged failure to report to work at the start of the 2023-24 school year.

On October 27, 2023, motions to dismiss both Orders to Show Cause were respectively filed on behalf of Chaiken and Cordova. Thereafter, the files were transmitted as contested matters to the Office of Administrative Law. On November 7, 2023, counsel for Chaiken and Cordova moved to have the matters consolidated, to which the District gave its consent on November 8, 2023. Opposition to the motions was filed and an oral argument without testimony was heard on February 1, 2024.

FACTUAL DISCUSSION AND FINDINGS OF FACT AS TO KAMBER CHAIKEN

Most of the facts are undisputed. As such, I make the following **FINDINGS OF FACT:**

On June 29, 2022, Kamber Chaiken was hired as a non-tenured special education teacher by the Elmwood Park School District pursuant to a contract which commenced on September 1, 2022 ending June 30, 2023. The salary for this position was $52,809.00.

The contract was mutually signed by Chaiken and the president of the Elmwood Park Board of Education.

Based on the documents presented, including Chaiken's Certification, **I FIND** that Chaiken fulfilled her duties under the contract, and though not obligated to do so, and with no contractual obligation, she agreed to stay on and work separately part time as a member of the of the District's Extended Summer Program staff. **I FURTHER FIND** that she completed those duties, which were not part of her original contract, at the end of July 2023. **I FIND** there I nothing in her original contract which she completed, or in the part-time Summer ESY position, that committed her to return to the District for the 2023-24 school year.

A few days prior to the end of the first contract and shortly before the commencement of the summer program, the District tendered a new contract to Chaiken for the 2023-24 school year. Under basic principles of contract law, **I FIND** this was an

offer to enter into a new contract, with new terms, which **I FIND** was not accepted by Chaiken.

Though the District says Chaiken verbally agreed and made it seem like she would remain with the District, Chaiken never signed the second contract, and formally submitted a resignation to the District following completion of her ESY duties on August 1, 2023. Although she agreed to teach during the 2023 summer ESY program, **I ALSO FIND** there is no dispute that this position was separate and apart from her primary contract which ended on June 30, 2023.

Following a series of emails with other District officials, on September 1, 2023, the District Superintendent, Dr. Anthony Iachetti informed Chaiken that it was the District's position that since she worked the Summer ESY program, which went past the original June 30th expiration of Chaiken's original contract, the District was imposing the 60 day statutory notice deadline against her, effective August 4, 2023 even though Chaiken had not signed the renewal contract for the coming school year. According to Dr. Iachetti, should Chaiken fail adhere to this timeline, the District would seek a one year suspension of her teaching license. On August 15, 2023, Dr. Iachetti sent Chaiken another communication advising her to report to the school on September 5, 2023 to complete the exiting process, and that he would attempt to release her from any further teaching obligations before September 30, 2023. As a seasoned veteran who had achieved the highest level entrusted to individuals who work in the field of education, **I FIND** that these were **bad faith actions** by the Superintendent against a non-tenured teacher who had just completed her first year of work with the District, the outcome of which would have no useful purpose other than to try to intimidate a younger less seasoned employee into returning to the District after they had already decided not to return.

Having accepted a new non-tenured position with another District, Chaiken advised District officials that she would be unable to appear for the final exit meeting.

The communication from Dr. Iachetti was followed by another communication dated September 14, 2023 this time from Danielle Sharples, the principal of the Sixteenth Avenue School where Chaiken had been employed advising her that since she failed to

report for work on September 5th in accordance with the unsigned contract, the District would be moving to have her license suspended for up to one year. While District officials including the Superintendent may have been unhappy with Chaiken about her decision not to return for a second untenured year of employment, **I FURTHER FIND** that does not constitute grounds under the law to abuse the suspension statute against a less experienced employee who had fulfilled all of her obligations to the District in good faith.

On September 7, 2023, attorney Alfred Maurice informed District officials in writing that any subsequent action the District threatened to take against Chaiken's license would be deemed overzealous and frivolous and Chaiken would seek appropriate relief against the District for taking such action.

I FIND the District ignored the notice sent by attorney Maurice, and the within litigation seeking a suspension was commenced against Chaiken by the District on or about October 14, 2023.

FACTUAL DISCUSSION AND FINDINGS OF FACTS AS TO EVELYN CORDOVA

Similar to the facts which apply to Ms. Chaiken, most of the facts which pertain to Ms. Cordova are also undisputed. As such, I make the following **FINDINGS OF FACT:**

Respondent Evelyn Cordova is the holder of a standard instructional certificate with endorsements as a teacher of social studies, teacher of students with disabilities and elementary school teacher Grades K-6. She also holds a standard administrative certificate with a supervisor endorsement.

On November 30, 2022, Ms. Cordova executed a contract with the Elmwood Park Board of Education for employment as a non-tenured teacher during the 2022-23 school year. Based on the documents provided, **I FIND** the terms of the contract concluded on June 30, 2023. Although no new contract was signed by both parties for Respondent to return for the 2023-24 school year, the District says that as early as May 2023 before the expiration of the current contract, Ms. Cordova indicated her intent to return by responding yes to a question in a written survey, and she was formally advised the District intended

to renew her contract during her annual evaluation conference on May 4, 2023. Under basic principles of contract law, while **I FIND** this constitutes an offer to enter into a new contract, **I ALSO FIND** Cordova **never accepted** the new contract.

Shortly thereafter, upon the Superintendent's recommendation, the Board unanimously voted to reappoint her by Resolution dated May 23, 2023. Despite these expressions of intent to rehire Cordova for the next school year, a new proposed contract was not received by Cordova until early July 2023.

Cordova who was still working for the Board outside the scope of her primary contract as a Summer ESY instructor never signed the new proposed contract a she had reservations about returning for the next school year. The summer program ended on July 27, 2023, and similar to the situation with Chaiken above, **I FIND** that part-time position was not connected in any way to either Cordova's expired contract or the new contract which remained unsigned and was not due to commence until September 1, 2023.

In her Certification, Cordova says that in June and July 2023 she repeatedly expressed her concerns and reservations to the building principal Sharples which is part of the reason why she failed to sign the new contract. In and of itself, **I FIND** that under basic contract law, there was no" meeting of the minds" between the parties that Cordova had committed to return for the 2023-24 school year. It was during this time that she began to explore other teaching opportunities. Pursuant to standard practice the underlying Petition which gave rise to this cause of action was signed Certified and Verified by Dr. Iachetti after the attorney for Chaiken and Cordova had put the District on notice that any subsequent action seeking suspension of their respective licenses would be deemed frivolous. Cordova also submitted a Certification by Luis Rojas the Assistant Superintendent of Schools for the Paterson School District which tendered an offer to Cordova in July 2023 after checking to make sure she was not under contract with Elmwood Park or any other district. The Certification, which was also not countered, sets forth the process under which Cordova was hired, and the potential hardship and prejudice to both Paterson and Cordova if the requested suspension was implemented. Among other things, Mr. Rojas represented in his Certification that Paterson would not

have hired Ms. Cordova if she was under contract with Elmwood Park, but his vetting process led Paterson officials to the conclusion that Ms. Cordova was not under contract as a non-tenured teacher who had fulfilled her contractual obligations to Elmwood Park at the end of June 2023.

Recognizing that the contract remained unsigned, on August 3, 2023, Cordova received a communication from the District asking her to return the signed contract. **I FURTHER FIND** this constitutes an acknowledgment by the District that there was no new contract for the 2023-24 school year between the parties. Later that month, Cordova picked up her personal belongings and submitted a formal resignation to the District.

On September 7, 2023, Cordova's attorney Alfred Maurice put the District on notice that any subsequent proceeding seeking to suspend Cordova's license would be deemed overzealous and frivolous and appropriate relief would be sought against the District.

I FIND the District ignored the written notice issued by attorney Maurice, and similar to the Chaiken matter above, filed the within action against Cordova, which **I ALSO FIND** was brought in **bad faith,** as it was intended to intimidate a less experienced, on-tenured employee into returning for another year, after she had already fulfilled her obligations to the District, and had made a decision to seek employment elsewhere.

LEGAL DISCUSSION AND ANALYSIS

The Elmwood Park Board of Education, by its Superintendent Dr. Anthony Iachetti, seeks relief from the New Jersey Department of Education under its jurisdiction to impose a one-year suspension against both respondents Kamber Chaiken and Evelyn Cordova for their alleged respective failure to comply with the 60-day notice requirements as set forth under the New Jersey teacher tenure law.

In so doing, the Board relies on the language of N.J.S.A. 18A 26-10 which states that " a teaching staff member employed by a board of education who shall, without the consent of the board, cease to perform his duties before the expiration of his employment,

shall be deemed unprofessional conduct, and the commissioner may, (not shall) upon receiving notice thereof, suspend his certificate for a period not exceeding one year."

As to a teacher's obligations with respect to resignation of employment, N.J.S.A. 18A:8-8 defines Notice of intention to resign as applicable to: Any teaching staff member, under tenure of service (emphasis added) desiring to relinquish his position, shall give the employing board of education at least 60 days written notice of his intention, unless the board shall approve a release on shorter notice and if he fails to give such notice, he shall be deemed guilty of unprofessional conduct and the commissioner may (not shall) suspend his certificate for not more than one year".

Here, it is undisputed that both Chaiken and Cordova, each of whom had only been employed for one year by Elmwood Park, were both non-tenured teachers, whose contracts ended on June 30, 2023. The Board seeks to apply the notice provisions of the tenure law to each of these non-tenured teachers, and also seeks to start the 60-day notice provision at the conclusion of their non-tenured additional service as Summer ESY teachers, even though those positions were part-time and non-contractual.

While important to promoting the integrity of providing consistent and reliable teaching to meet the needs of a district's students, our courts have consistently held that the notice provisions apply to tenured teachers, especially those who leave their positions in the middle of a school year. See: Penns Gove-Carney Point Bd. of Ed. v. Leinen, 94 N.J.A.R. 2d (EDU) 405. See also: Stokes v. Gray Charter School, (2011 WL 13812) (App. Div 2010), wherein the Court ruled that the 60-day notice requirement does not apply to a non-tenured teacher.

Applying the undisputed facts to the applicable law, **I CONCLUDE** that since both sides have essentially submitted the same relevant documents, I would not learn anything further from a full hearing on the merits, and **I THEREFORE CONCLUDE** that the case can be decided as a matter of law. **I CONCLUDE** the District has both misapplied and improperly interpreted that tenure law which it seeks to enforce against two non-tenured teachers. The facts are clear that neither Chaiken nor Cordova had signed a contract to return for a second year starting September 1, 2023. Accordingly, **I CONCLUDE** there

was no mutually signed contract which both teachers and the District agreed upon, therefore under basic principles and concepts of contract law, **I CONCLUDE** there was no "meeting of the minds" that a new contract existed after June 30, 2023. In order for a contract to be enforceable, a contract must meet several legal requirements. Such criteria include, offer, acceptance, meeting of the minds and performance are some of the critical aspects of contract law. See: Tyler at Frist Street LLC, App. Div. A-2234-20 Decided March 23, 2023. A party bringing a breach of contract claim must demonstrate i) that a contract existed between the parties, ii) that the defendant breached a duty imposed by the contract, iii) the plaintiff performed their obligations under the contract and iv) the plaintiff was damaged as a result of the breach. King v. GNC Franchising, Inc., Civ. No. 04-5125 2007 WL 1521253 (D. N.J. May 23, 2007).

I am unable to **CONCLUDE** that the District has demonstrated that any of those four elements exist, and/or that there is a mutually signed contract to enforce. While there may have been an offer from the District to both teachers, **I CONCLUDE THERE WAS NO ACCEPTANCE** by either non-tenured teacher. Accordingly, with the expiration of both Chaiken's and Cordova's first contracts, **I CONCLUDE** that as non-tenured teachers whose contracts had expired**,** they had no further obligations to the District, and there was no legitimate basis for the Superintendent to seek this relief against them seeking suspension of their teaching certificates before the Commissioner of Education. Thus, **I CONCLUDE** the Order to Show Cause and any related Respondent appeal **must be Dismissed with prejudice.**

Further, **I CONCUDE** The Stokes decision stands for the proposition that the 60-day notice requirement does not apply to non-tenured teachers. As non-tenured teachers who have completed their first year of service to the District, and who did not sign a new contract, **I THEREFORE CONCLUDE** the notice provision does not apply to these teachers, and the relief sought by the District asking for a suspension of up to one year of their teaching licenses was an inappropriate and frivolous use of the tenure statute the intent of which is supposed to be utilized in situations where tenured teachers seek to leave employment in the middle of a contract and not after a contract has expired. Thus, **I CAN ONLY CONCLUDE** that the District's attempt to use the statute and Order to Show Cause mechanism strictly as a penal measure was frivolous, unfair, ill-suited and

unprofessional. Accordingly, **I CONCLUDE** that the Order to Show Cause must and should be **DISMISSED with prejudice as should any related District appeal**

Finally, **having Concluded** this proceeding was a frivolous and overzealous use of the tenure statute, and having **Further Concluded** that on September 7, 2023, attorney Alfred Maurice, counsel for both Respondents Chaiken and Cordova put the District on notice that they should either withdraw the action or it would be considered a frivolous matter, in the event this Decision is adopted by the Commissioner, both Respondents shall have the right to apply for counsel fees in the appropriate forum.

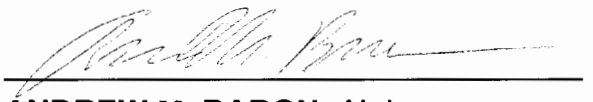
ORDER

I hereby **FILE** this initial decision **DISMISSING THE ORDER TO SHOW CAUSE and any related District appeal with prejudice together with the relief requested therein** with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration. Having **ORDERED** that the underlying action was disingenuous and frivolous, in the event this Decision is adopted by the Commissioner, both respondents shall have the right to apply for counsel fees and costs in the appropriate forum.

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.

February 29, 2024
DATE



ANDREW M. BARON, ALJ

Date Received at Agency: February 29, 2024

Date E-Mailed to Parties: February 29, 2024

lr

APPENDIX

WITNESSES

None

EXHIBITS

For Petitioner as to Kamber Chaiken:

P-1 Kamber Chaiken Contract dated June 29, 2022
P-2 Board resolution dated May 23, 2023 as to Chaiken
P-3 Proposed Chaiken contract dated June 5, 2023 for 2023-24 school year
P-4 8/1/23 Chaiken email to Dr. Iachetti
P-5 8/4/24 Iachetti email to Chaiken
P-6 8/15/23 Iachetti email to Chaiken
P-7 8/31/23 Chaiken email to Iachetti
P-8 9/1/23 Iachetti email to Chaiken advising of non-release
P-9 8/31/23 Chaiken email to Iachetti
P-10 9/1/23 Iachetti email to Chaiken
P-11 9/14/23 Sharples email to Chaiken

For Petitioner as to Evelyn Cordova:

P-1 Contract dated November 23, 2022
P-2 Board resolution May 23, 2023
P-3 Proposed contract dated June 5, 2023
P-4 8/14/23 Cordova email to Sharples
P-5 8/28/23 Cordova email to Iachetti
P-6 8/31/23 Iachetti letter to Cordova
P-7 9/6/23 Sharples email to Cordova
P-8 9/14/23 Sharples email to Cordova

For Respondent Kamber Chaiken

R-1 Contract dated June 29, 2022
R-2 Proposed unsigned contract dated June 5, 2023
R-3 Chaiken email to Iachetti 8/1/23
R-4 Iachetti email to Chaiken 8/4/23
R-5 Chaiken email to Iachetti 8/31/23
R-6 Iachetti email to Chaiken 9/1/23
R-7 Attorney Maurice letter to Iachetti 9/7/23
R-8 Sharples email to Chaiken 9/14/23
R-9 Chaiken Certification

For Respondent Evelyn Cordova

R-10 Atty Maurice 9/7/23 letter to Sharples
R-11 Unsigned proposed contract dated June 5, 2023
R-12 6/15/23 Iachetti letter to Cordova with postmark
R-13 8/28/23 Cordova email to Iachetti
R-14 Cordova Certification
R-15 Luis Rojas Certification

188-24

New Jersey Commissioner of Education

Final Decision

Christopher Crocco,

Petitioner,

v.

Board of Education of the Township of Cranford, Union County,

Respondent.

Synopsis

Petitioner alleged that respondent, Board of Education of the Township of Cranford (Board), is not providing students with the mandatory curriculum in the arts "...set forth by the New Jersey Department of Education". The Board filed a motion to dismiss the petition because neither the New Jersey Department of Education nor New Jersey statutes and regulations mandate a specific curriculum for visual and performing arts. Petitioner opposed the motion to dismiss, asserting that there are State-mandated standards and curriculum for music, visual arts, dance, and theater, but provided no evidence of any mandatory curriculum.

The ALJ found, *inter alia*, that: while the State may require district boards of education to align their curriculum to assist students in achieving the skills and knowledge specified in the New Jersey Student Learning Standards (NJSLS), there is no mandatory curriculum in Music, Visual Arts, Dance or Theater in New Jersey; instead, school districts are free to design and implement programs in the arts so long as they align with the standards outlined in the NJSLS; and the rules of procedure governing petitions of appeal permit a respondent to submit a motion to dismiss in lieu of an answer "on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason." In this case, petitioner has failed to advance a cause of action because there is no State-mandated curriculum in the arts that the Board is required to offer its students, and the ALJ concluded that the petition should be dismissed. Accordingly, the ALJ granted the Board's motion and dismissed petitioner's appeal.

Upon review, the Commissioner concurred with the findings and determination of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

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.

188-24
OAL Dkt. No. EDU 13740-23
Agency Dkt. No. 305-11/23

New Jersey Commissioner of Education

Final Decision

Christopher Crocco,

Petitioner,

v.

Board of Education of the Township of Cranford, Union County,

Respondent.

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 respondent Board's reply thereto, have been reviewed and considered.

This matter involves petitioner's claim that the Board is not offering the "mandatory curriculum governing Music, Visual Arts, Dance, and Theater" to its students. The Board filed a motion to dismiss the petition, asserting that neither the New Jersey Department of Education (Department) nor New Jersey statutes or regulations mandate a specific curriculum for Visual and Performing Arts. The Administrative Law Judge (ALJ) granted the Board's motion upon concluding that petitioner had not advanced a cognizable cause of action because there is no State-mandated curriculum in Visual and Performing Arts that the Board is required to offer. Rather, school districts are free to design and implement their arts curricula so long as they align with the New Jersey Student Learning Standards (NJSLS) for Visual and Performing Arts.

In his exceptions, without specifically identifying what the discrepancy is, petitioner now argues that the Board's curriculum does not align with the NJSLS for Visual and Performing Arts. He also asserts that children attending school in the district are not literate in music and fine arts. In reply, the Board reiterates that districts are given the discretion to develop curricula that will enable students to demonstrate the knowledge and skills specified in the NJSLS.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter for the reasons stated therein. The Commissioner concurs with the ALJ that petitioner did not advance a cognizable cause of action in his petition because there is no State-mandated curriculum in Visual and Performing Arts that the Board is required to offer. Although petitioner contends in his exceptions that the Board's curriculum does not align with the NJSLS for Visual and Performing Arts, vague and conclusory allegations unsupported by facts are not sufficient to withstand a motion to dismiss for failure to state a claim.

Accordingly, the Board's motion to dismiss the petition is granted.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 10, 2024
Date of Mailing: May 10, 2024

[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
DISMISSING THE PETITION
OAL DKT. NO. EDU 13740-23
AGENCY DKT. 305-11/23

CHRISTOPHER CROCCO,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF CRANFORD, UNION COUNTY,
Respondent.

Christopher Crocco, petitioner, pro se

Jennifer Osborne, Esq., for respondent (Cornell, Merlino, McKeever & Osborne, attorneys)

Record Closed: January 22, 2024 Decided: March 4, 2024

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Petitioner, Christopher Crocco (Crocco or petitioner), filed a petition alleging that respondent, Board of Education of the Township of Cranford (the Board or respondent) is not

providing students with mandatory curriculum in the arts. The Board filed for dismissal, asserting that petitioner advanced no cause of action, because no such State-mandated curriculum exists.

PROCEDURAL HISTORY

The petitioner filed his petition with the New Jersey Department of Education, Office of Controversies and Disputes on or around November 13, 2023. On of around December 1, 2023, the respondent filed a Motion to Dismiss in lieu of an answer. The Office of Controversies and Disputes subsequently transmitted the matter to the Office of Administrative Law (OAL), where it was filed on December 5, 2023. The petitioner filed an opposition to the Motion to Dismiss, and the respondent filed a reply, which was received by the undersigned on January 22, 2024.

FACTS AND CONCLUSIONS OF LAW

Crocco filed a Petition of Appeal specifically alleging that the Board and Superintendent: "have failed to insure [sic] the mandatory curriculum governing Music, Visual Arts, Dance, and Theater. The curriculum must be taught to each grade level K-12. Teachers all across Cranford are not teaching the mandatory curriculum set forth by the New Jersey Department of Education." Pursuant to the Petition of Appeal, Crocco asserts that the Board "should be held accountable and provide the mandatory education for every single K-12 student encompassing Music, Visual Arts, Dance and Theater under the law." He also requests that the Department of Education investigate Cranford's Music and Arts program, and he seeks a "formal plan and timeline" from the Superintendent and Board as to how they will "implement the required changes to bring the curriculum up to date." Moreover, Crocco seeks "in-service and supplemental education" for Board teachers, and an "in-depth audit" of all music and fine arts teachers to hold them individually accountable "for the proper implementation of the state[-]mandated curriculum."

Respondent filed a Motion to Dismiss because, it asserts, neither the State of New Jersey Department of Education nor New Jersey statutes and regulations mandate a

specific curriculum for visual and performing arts. This is also reflected in a certification signed by the Board's superintendent. The respondent references the New Jersey Student Learning Standards (NJSLS), which "specify expectations" in nine academic content areas, including visual and performing arts, and the New Jersey Student Learning Standards - Visual and Performing Arts (NJSLS-VPA). The Department describes the NJSLS as offering "the foundation on which districts build coherent curriculum and plan instruction," and NJSLS-VPA as being "designed to guide the delivery of arts education in the classroom." The Board asserts that while there may be standard-based guideposts in the area of the visual and performing arts, there is no mandated curriculum. The respondent also asserts that the petitioner's requested relief cannot be provided.

Petitioner filed an opposition to the motion to dismiss. He asserts that there are State-mandated standards and curriculum for music, visual arts, dance and theater, but he provided no evidence of any mandatory curriculum. In opposition to the motion, Crocco references at least three legal cases and a regulation, none of which expressly mandate curricula in the arts, as well as guidelines approved by the State Board for music education. He also recounts alleged hearsay statements by Cranford principals in which they agree that the curricula at their schools do not meet State standards for visual and performing arts.

The Board filed a reply in which it repeats its position that there is no mandated specific curriculum for the visual and performing arts in New Jersey, and that the petitioner's arguments are without merit. The Board notes that while New Jersey regulations, including N.J.A.C. 6A:8-1.1, et. seq., specify expectations in nine academic content areas, including Visual and Performing Arts, school districts maintain the discretion to determine the manner in which educational instruction is delivered, referencing N.J.A.C. 6A:8-3.1. It acknowledges that the NJSLS offer a "foundation on which districts build coherent curriculum and plan instruction," but that there is no law requiring a district to teach Visual and Performing Arts in a particular way so long as its curricula enables students to demonstrate the knowledge and skill specified in the NJSLS.

Having considered the papers submitted in support of and in opposition to the Motion to Dismiss, I **FIND as FACT** that the Petition of Appeal expressly asserts that the

Board and its teachers have failed to teach "mandatory curriculum" for Music, Visual Arts, Dance and Theater, and the petitioner seeks accountability for the Board's alleged failure to offer and properly implement State-mandated curriculum. While New Jersey may require district boards of education to align their curriculum to assist students in achieving the skills and knowledge specified in the NJSLS, I **FIND** that there is no mandatory curriculum in Music, Visual Arts, Dance or Theater in New Jersey. Rather, school districts are free to design and implement programs in the arts so long as they align with standards outlined in the NJSLS.

The rules of procedure governing petitions of appeal filed with the New Jersey State Board of Education permit a respondent to submit a motion to dismiss in lieu of an answer "on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason." N.J.A.C. 6A:3-1.5(g); N.J.A.C. 6A:3-1.10. Here, even accepting the petitioner's allegations, as set forth in the Petition, as true, I **CONCLUDE** that the petitioner has advanced no cause of action because there is no State-mandated curriculum in the arts that the Board is required to offer its students. Consequently, I **CONCLUDE** that the Petition for Due Process should be dismissed.

ORDER

It is hereby **ORDERED** that the motion to dismiss filed by the Board of Education of the Township of Cranford is **GRANTED**. It is further **ORDERED** that the petition be and hereby is **DISMISSED** without prejudice.

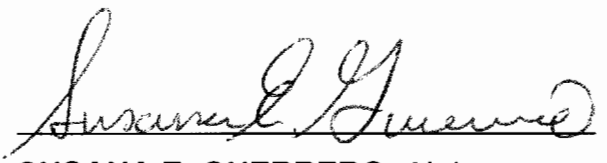
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

March 4, 2024
DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency: March 5, 2024

Date Mailed to Parties:

jb

189-24R
OAL Dkt. No. EDU 00882-24
Agency Dkt. No. 365-12/23

New Jersey Commissioner of Education

Final Decision

T.G., on behalf of minor child, A.G.,

Petitioner,

v.

Board of Education of the West Essex Regional School District, Essex County,

Respondent.

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.

Petitioner challenges a harassment, intimidation, and bullying determination made by the West Essex Regional Board of Education. The Administrative Law Judge (ALJ) scheduled a telephone conference regarding petitioner's appeal for March 18, 2024. After petitioner failed to appear, a second telephone conference was scheduled for March 26, 2024. Petitioner again failed to appear, and the ALJ dismissed the matter.

Upon review, the Commissioner disagrees with the ALJ that the matter should be dismissed based on petitioner's failure to appear. The Initial Decision indicates that the scheduling notices were sent to the parties via email. Pursuant to *N.J.A.C.* 1:1-9.5(c), scheduling notices must be sent by regular mail unless emergent needs require otherwise. There is no indication in the record that the telephone conferences were emergent. Moreover, while

sending scheduling notices via email may be acceptable in many circumstances, such as in cases when all parties or attorneys routinely communicate with the OAL via email, the record here demonstrates that the incorrect email address was used to send notices to petitioner.[1] Given the lack of certainty that petitioner ever received the scheduling notices, the Commissioner finds that dismissal is inappropriate.[2]

Accordingly, this matter is remanded to the OAL for further proceedings consistent with this opinion.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 10, 2024
Date of Mailing: May 10, 2024

[1] The Commissioner acknowledges that the ALJ used the email address listed for petitioner on the transmittal form and apologizes for the inconvenience caused by the typographical error on that form. Petitioner's correct email address is reflected elsewhere in the file.

[2] If the scheduling notices were also sent to petitioner via regular mail, the ALJ may clarify that fact on remand.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
DISMISSAL
OAL DKT. NO. EDU 00882-24
AGENCY DKT. NO. 365-12/23

T.G., ON BEHALF OF MINOR CHILD, A.G.
Petitioner,
v.
WEST ESSEX REGIONAL SCHOOL District BOARD OF EDUCATION,
Respondent.

T.G., parent of **A.G.**, petitioner, pro se

Patrick F. Carrigg, Esq., for respondent (Lenox, Socey, Formidoni, Giordano, Carrigg, Lang & Casey, LLC, attorneys)

Record Closed: March 26, 2024 Decided: April 17, 2024

BEFORE **WILLIAM COURTNEY**, ALJ:

This matter was transmitted to the Office of Administrative Law (OAL) on January 17, 2024. Petitioner alleges that her minor son A.G. was the subject of harassment, intimidation, bullying ("HIB") and discrimination by one of his teachers employed by the West Essex District Board of Education ("District"). Petitioner filed this action as an

appeal to a determination by the District that the actions of A.G.'s teacher did not constitute HIB.

Notice that a prehearing telephone conference would take place at 2:30 pm on March 18, 2024 was sent via email to petitioner on March 1, 2024. Counsel for the District appeared for the prehearing conference on March 18, 2024 and no one appeared on behalf of petitioner. There was also no communication from petitioner indicating she would not or could not attend. A second prehearing conference was then scheduled for March 26, 2024 and notice was again sent to petitioner via email. Included in this second notice was the following statement:

> **NOTICE** - You failed to appear at the initial prehearing conference scheduled for March 18, 2024. **YOUR FAILURE TO APPEAR AT THIS RESCHEDULED PREHEARING CONFERENCE ON MARCH 26, 2024 AT 2:00 PM MAY RESULT IN THE DISMISSAL OF YOUR APPEAL.**

Despite receipt of specific notice that their complaint might be dismissed, petitioner failed to appear for the rescheduled prehearing conference. There has also been no communication from petitioner indicating why she did not appear or if she intended to pursue this appeal.

As a result of petitioner's failure to appear at both scheduled prehearing conferences and failure to provide this tribunal with any reason for her absence, I **CONCLUDE** that this is no longer a contested case before the OAL.

ORDER

Accordingly, It is **ORDERED** that this matter be and is hereby **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 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.

William A. Courtney

April 17, 2024

DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

J.B.

190-24
OAL Dkt. No. EDE 05711-22
State Board of Examiners Dkt. No. 2122-141
Agency Dkt. No. 03-01/24A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of
David Haggerty, State Board of Examiners,
New Jersey Department of Education.

Order of Revocation by the State Board of Examiners, dated December 8, 2023

For the Respondent-Appellant, Matthew B. Wieliczo, Esq., and Amy L. Gillette, Esq.

For the Petitioner-Respondent State Board of Examiners, David L. Kalisky, Deputy Attorney General (Matthew J. Platkin, Attorney General of New Jersey)

The Commissioner has reviewed the record and submissions filed in connection with David Haggerty's appeal of the Order of the State Board of Examiners (Board) revoking his Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, standard Teacher of Health and Physical Education certificate, and Principal Certificate of Eligibility. Following the issuance of an Order to Show Cause (OTSC) and a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) found that appellant held a license issued by the Ohio Department of Education that was issued in 2013, marked inactive in 2018, and extended through 2021 due to the Covid-19 pandemic. The ALJ further found that appellant submitted a copy of his certificate to a potential employer called Edmentum, showing that it was issued in 2020 and effective through 2025. In response to an inquiry from Edmentum,

an administrative professional from the Ohio Department of Education indicated that appellant had not applied in 2020 and that he believed appellant may have altered the dates on the certificate. Thereafter, appellant voluntarily surrendered his Ohio educator credentials. The Board was notified of the surrender, whereupon it issued the OTSC.

The ALJ determined that the issue in this matter was whether appellant surrendering his Ohio license was conduct unbecoming a teacher in New Jersey. The ALJ found that appellant had not admitted to submitting a fraudulent document and Ohio had not adjudicated the allegation that he had altered the dates on his certificate. The ALJ concluded that appellant had not engaged in unbecoming conduct and that revocation of his certificates was not warranted. Accordingly, the ALJ granted appellant's motion for summary decision.

Upon its review, the Board found that the ultimate issue in this matter is whether the act of submitting an altered or inaccurate document for purposes of employment is conduct unbecoming a certificate holder. The Board acknowledged that Ohio did not adjudicate the allegations against appellant and that appellant denies that he acted knowingly or fraudulently in submitting the certificate to Edmentum. Nonetheless, the Board concluded that submitting a bogus, altered, or inaccurate document for the purposes of employment is unbecoming conduct. Accordingly, the Board concluded that appellant had committed unbecoming conduct warranting the revocation of his certificates.

On appeal, appellant argues that the underlying conduct was never substantiated in the context of a tenure arbitration or any other proceeding, nor did they touch on appellant's New Jersey teaching certificates or employment. Appellant indicates that when he was applying for employment with Edmentum, he was no longer in possession of a copy of his teaching

certificate, so he contacted a friend and requested a copy that was saved to a spare computer in her possession. Appellant indicates that he submitted the certificate to Edmentum without reviewing it. According to appellant, he voluntarily surrendered his Ohio certificate because he did not need it, having been teaching in New Jersey since 2001. Appellant contends that the Board was arbitrary, capricious, and unreasonable in determining that its burden of proof had been met based on unsubstantiated allegations from another state agency. Additionally, appellant argues that even if the Commissioner concludes that he committed unbecoming conduct, the penalty of revocation is overly punitive and inconsistent with penalties in other matters. Appellant argues that the Board did not acknowledge his prior good conduct and deprived him of a hearing on the allegations at issue.[1]

Upon review, the Commissioner concludes that the record contains insufficient information to determine whether the Board's decision was arbitrary, capricious, or unreasonable, as appellant asserts. Both parties moved for summary decision before the ALJ. However, the Commissioner concludes that there were disputed issues of material fact regarding how the certificate came to be altered that are critical to the determination in this matter. The issue in this case is not, as the ALJ found, whether appellant surrendering his Ohio license was conduct unbecoming a teacher in New Jersey, but rather whether the underlying action of submitting a certificate to Edmentum that was at best inaccurate and at worst fraudulent was

[1] Appellant also argues that the Board's deadline to adopt, modify, or reject the Initial Decision was December 29, 2023, but the Order of Revocation was not issued until January 2, 2024. Therefore, according to appellant, the Initial Decision should be deemed adopted. The Commissioner rejects appellant's argument, as there is no evidence that the Board acted in bad faith, with inexcusable negligence, or gross indifference. *See King v. N.J. Racing Comm'n*, 103 *N.J.* 412 (1986). The record reflects that the Board voted to revoke appellant's certificates on December 8, 2023, in advance of the deadline, and that the decision memorializing the vote was issued only three days after the deadline.

unbecoming conduct, and what the appropriate penalty should be. Appellant has proffered an explanation for the altered certificate, but he has not testified under oath regarding that explanation, nor has an ALJ had the opportunity to listen to his testimony and make a credibility determination.

Accordingly, this matter is remanded to the State Board of Examiners for further fact-finding consistent with this opinion.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 10, 2024
Date of Mailing: May 10, 2024

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF	:	STATE BOARD OF EXAMINERS
DAVID HAGGERTY	:	ORDER OF REVOVCATION
_____	:	DOCKET NO: 2122-141

At its meeting of March 4, 2022, the State Board of Examiners (Board) reviewed information it received from the National Association of State Directors of Teacher Education and Certification and the Ohio State Board of Education (Ohio) regarding David Haggerty (Haggerty). Haggerty voluntarily surrendered his Ohio educator certificate after it was alleged that he modified a license to secure employment.

Haggerty currently is the holder of a Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, issued October 2001, a standard Teacher of Health and Physical Education certificate, issued July 2002, and a Principal Certificate of Eligibility, issued March 2016. After reviewing the above information, the Board voted to issue an Order to Show Cause (OTSC) to Haggerty as to why his certificates should not be suspended at its meeting on April 7, 2022.

The Board sent Haggerty the Order to Show Cause by regular and certified mail on April 12, 2022. The Order provided that Haggerty must file an Answer within 30 days. Haggerty answered the Order to Show Cause on May 3, 2022. Because there were material facts in dispute, the Board transmitted the matter to the Office of Administrative Law (OAL) on July 11, 2022 for hearing as a contested case. The matter was heard by Administrative Law Judge (ALJ) Kim C. Belin on cross motions for summary decision filed by the parties on April 21, 2023, and fully briefed on June 6, 2023. *In the Matter of the Certificates of David Haggerty*, Dkt. No. EDE 05711-22 (Initial Decision, August 16, 2023).

After reviewing the evidentiary materials presented by the parties in their respective motions, the ALJ found the relevant facts, that no material facts were in dispute as to whether Haggerty engaged in conduct unbecoming of a teacher and the matter was ripe for summary decision. (Initial Decision, slip op. at p. 2-6, 8). Specifically, the ALJ found that Haggerty held a five-year Multi-Age, Health and Physical Education license, issued by the Ohio Department of Education in 2013, that was marked inactive in 2018, but extended through 2021, due to Covid-19; that the Ohio certificate that Haggerty sent to Edmentum showed an issue date of

October 16, 2020, and effective through June 30, 2025; that Edmentum sent an inquiry to the Ohio Office of Educator Licensure seeking to verify the effective dates of Haggerty's teaching credentials; and that an administrative professional with the Ohio Office of Educator Licensure responded that Haggerty had not applied in 2020 and that he believed Haggerty may have altered the issue year and effective years on the Ohio certificate. *Id.* at 2-3.

Further, the ALJ found that "the Board received notice from the Ohio Department of Education that Haggerty voluntarily surrendered his Ohio educator credentials after it was alleged that he proffered a fraudulent Ohio educator certificate to Edmentum for employment purposes." *Id.* at 8. The ALJ determined that the issue in this matter was "whether [Haggerty] surrendering his out-of-state license was conduct unbecoming a teacher in New Jersey." *Id.* at 9. Following a discussion of case law presented on behalf of the board, the ALJ reasoned that each was distinguishable because Haggerty had not admitted to submitting a fraudulent document nor had Ohio adjudicated the allegations that Haggerty had altered the issue and effective dates on his Ohio credential that he submitted to Edmentum. *Id.* at 9-11. Due to the foregoing, the ALJ found that the Board did not meet its burden to prove that Haggerty's decision to relinquish his Ohio certificates is evidence of unbecoming conduct in New Jersey and concluded revocation of Haggerty's certificates was not warranted. *Id.* at 11-12. As a result, the ALJ denied the Board's motion for summary decision and granted Haggerty's motion for summary decision. *Id.* at 12.

The Deputy Attorney General (DAG) representing the Board filed Exceptions to the Initial Decision. The DAG argued that the facts found by the ALJ warrant a finding of unbecoming conduct and a penalty of revocation. In his Exceptions, the DAG recounted the documentary evidence presented that Edmentum had emailed the Ohio Department of Education to request clarification regarding the license Haggerty submitted as part of a job application. (Exceptions, p. 2). Following a review of its records, the Ohio Department of Education discovered that it issued Haggerty an Ohio certificate in 2013, which was marked inactive in 2018, but had been extended through 2021 due to Covid. *Id.* at 3. And the certificate that Haggerty submitted to Edmentum had the same credential number as the one it issued in 2013, although it had an issue date of October 16, 2020. *Ibid.* The Ohio Department of Education also discovered that Haggerty submitted an application in

July 2021 which was declined because Haggerty held a license that should be properly renewed. *Ibid.* The DAG noted that the OTSC stated that Haggerty voluntarily surrendered his Ohio educator credential following allegations that he proffered a fraudulent educator credential to Edmentum, and that the nature and level of Haggerty's alleged conduct, and the surrender of his Ohio certificates provides just cause for the consideration of the revocation of his New Jersey certificates. *Id.* at 6-7. In his responses to discovery requests, Haggerty admitted that his Ohio five-year certificate was issued in 2013 and that the certificate he submitted to Edmentum had an issue date of 2020. *Id.* at 7.

The DAG had asserted in the motion for summary decision that the "Board has consistently revoked the certificates of teachers who were unable to proffer any explanation for how a falsified document that they admittedly submitted for employment came to be forged or altered, regardless of whether that teacher claimed to have done so inadvertently or unknowingly." *Id.* at 8-9. However, the ALJ rejected the Board's reliance on *IMO the Certificate of William Beltran*, Agency Dkt. No. 1011-156 (Sept. 20, 2013), *In re Shaffer*, 92 N.J.A.R. 2d (EDE) 1, State Bd. Of Educ. (May 2, 1991), and *IMO the Certificate of Sandi I. Tannen*, Agency Dkt. No. 471-04/98-161 (Sept. 24, 1998) as misplaced because she found these matters "inapposite and factually distinguishable" from the Haggerty matter. *Id.* at 9.

The DAG argued that the ALJ failed to fully account for evidence presented establishing that Haggerty admitted to submitting a fraudulent teaching certificate when applying for employment at Edmentum. *Id.* at 11. The DAG recounted the evidence demonstrated that Haggerty admitted that: he was issued his Ohio certificate in 2013, which was extended to June 2021 due to Covid-19; he was never granted an Ohio certificate with an issuance date of October 16, 2020; the certificate Edmentum received from Haggerty had an issue date of October 16, 2020; his July 2021 application for a new Ohio certificate was declined because he held a license that should be properly renewed; and he personally submitted the fraudulent Ohio certificate, with the October 16, 2020 issue date, to Edmentum but denied he did so on purpose and "the reason he did so was because 'he did not review the document' before submitting it, and therefore, he 'was not aware of the dates reflected on the certificate.'" *Id.* at 12-13. As a result, the DAG maintained that while Haggerty claims he never intended to submit a fraudulent version of his Ohio certificate to Edmentum, the evidence demonstrated that because

Haggerty never received a new Ohio certificate following his application in July 2021, he must have been aware that he no longer held a valid Ohio certificate when he submitted his job application to Edmentum in September 2021. *Id.* at 13. And contrary to the ALJ's conclusion, the DAG emphasized that the Board's authority to revoke or suspend an individual's teaching credentials is not dependent on the determinations of other agencies, i.e. the Ohio Department of Education. *Id.* at 16-17.

Regarding the ALJ's determination that the case law cited was inapposite, the DAG stressed that in *Schaffer* and in *Tannen*, the Board rejected claims of inadvertent error because where no credible explanation is provided as to where they obtained the "bogus certificate" guilty knowledge can be imputed. *Id.* at 16. Further, the DAG underscored that in *IMO Certificate of William Green*, Agency Dkt. No. 506-01/99-213 (April 6, 2000), the Board rejected Green's statement as not credible – that he never applied for a job at a district that received an application from him along with fraudulent standard certificate with his name on it – and revoked his certificates reasoning that, pursuant to *Shaffer*, "Green's inability to explain the existence and submission of the bogus certificate is sufficient to impute culpability." *Id.* at 18. The DAG stressed that, based on *Green*, *Shaffer* and *Tannen*, the Board should reject the ALJ's conclusion that the DAG failed to demonstrate revocation of Haggerty's certificate was warranted and find that Haggerty's failure to offer any credible explanation for how the bogus Ohio certificate came into existence is sufficient to impute his culpability warranting revocation of his certificates. *Id.* at 19.

In his Reply Exceptions, Haggerty argued that the Initial Decision should be adopted because the ALJ did not make any judicial errors with the Decision and the Board failed to produce competent and credible evidence sufficient to meet its burdens of proof on the OTSC. (Reply Exceptions, p. 5). Haggerty contends that the DAG, in his exceptions, rehashes and reasserts all of the same arguments presented to and rejected by the ALJ and improperly makes new arguments and cites new legal authority that should be disregarded and not considered. *Id.* at 1-2. Furthermore, Haggerty argues that the DAG's exceptions should be rejected as there is no legal or factual basis to allow the Board to substitute its opinion and position for the detailed and well-reasoned opinion and Decision of the ALJ. *Id.* at 2. Haggerty stresses that the evidence detailed in the DAG's exceptions does not establish that he admitted that he altered the issue year and/or effective years. *Id.*

at 3. Haggerty maintains that the DAG's exceptions propose a finding of fact that Haggerty "must have been aware" that his Ohio certificate was no longer valid when he submitted it in support of a job application to Edmentum and that such an exception is not proper. *Id.* at 3-4. Finally, in rejecting the DAG's assertion that the record establishes that Haggerty uploaded an altered certificate, Haggerty argues that the ALJ "was clear in determining that the Board could not prove by a preponderance of competent and credible evidence that [Haggerty] engaged in unbecoming conduct that warrants a suspension or revocation[.]" *Id.* at 4. Consequently, Haggerty contends that the Board should adopt the Initial Decision, granting his motion for summary decision and dismissing the OTSC. *Id.* at 5.

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of October 27, 2023, the Board reviewed the Initial Decision, Exceptions and Reply Exceptions. After full and fair consideration of the Initial Decision and the administrative record, the Board voted to reject the Initial Decision of the ALJ dismissing the OTSC and find unbecoming conduct based on the facts determined by the ALJ, warranting revocation of Haggerty's certificates.

"Teachers ... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. The Board disagrees with the ALJ's legal determination that the issue in this matter is whether Haggerty surrendering his out of state license was conduct unbecoming. (Initial Decision at 9). Rather, the ultimate issue in this matter is whether the act of submitting an altered or inaccurate document for purposes of employment is conduct unbecoming a certificate holder. A finding or admission that the certificate holder altered the document is not necessary in this matter.

As noted above, after assessing the proffered evidence, the ALJ made several findings of fact in this matter. (Initial Decision at 2-6). It is undisputed that Haggerty uploaded an Ohio certificate to Edmentum in furtherance of an employment application. *Id.* at 6. The certificate received by Edmentum showed an issue date of October 16, 2020 and effective dates of July 1, 2020 to June 30, 2025. *Id.* at 3. Edmentum sought to verify with the Ohio Office of Educator Licensure (Ohio Office) the effective dates of Haggerty's teaching credentials. *Ibid.* Haggerty's five-year Multi-Age, Health and Physical Education license was issued in 2013,

marked inactive in 2018, but extended through June 30, 2021 due to Covid-19. *Id.* at 2. The Ohio Office advised Edmentum that Haggerty had not applied in 2020, but had applied for a new certificate in July 2021, which was declined because Haggerty held a license that should be properly renewed. *Id.* at 3. The Ohio Office found discrepancies between the credential report on the database and the license Edmentum provided from Haggerty. *Ibid.* As a result, the Ohio Department of Education opened a case to investigate the allegations that Haggerty may have engaged in conduct unbecoming. *Ibid.* Prior to any determination in that Ohio case, Haggerty voluntarily surrendered his Ohio teaching credentials in lieu of formal disciplinary proceedings. *Id.* at 3-4.

Based upon the ALJ's factual findings, the Board has determined that Haggerty's actions constitute unbecoming conduct. Edmentum received a certificate that had discrepancies and Haggerty admits he submitted the document to Edmentum. Thus, Haggerty committed unbecoming conduct when he submitted a bogus, altered and/or inaccurate document to Edmentum. The Board acknowledges that the allegations before the Ohio Department of Education were never adjudicated. And that Haggerty denies he submitted the document to Edmentum "on purpose" or acted knowingly or fraudulently in submitting the bogus certificate to Edmentum. However, Haggerty's intent here is irrelevant to the determination of whether his conduct was unbecoming. Submitting a bogus, altered or inaccurate document for the purposes of employment is unbecoming conduct. The Board agrees with the DAG that the appropriate response for such conduct is revocation of his certificates.

Accordingly, on October 27, 2023, the Board voted to reject the Initial Decision dismissing the OTSC, adopt the factual findings in the Initial Decision, find unbecoming conduct warranting the revocation of Haggerty's certificates. On this 8th day of December 2023, the Board formally adopts the factual findings in the initial decision, finds unbecoming conduct warranting the penalty of revocation. It is therefore ORDERED that David Haggerty's Teacher of Health and Physical Education Certificate of Eligibility with Advanced Standing, standard Teacher of Health and Physical Education certificate, and Principal Certificate of Eligibility are hereby revoked, effective immediately. It is further ORDERED that Haggerty return his certificates to the

Secretary of the State Board of Examiners, Office of Recruitment, Certification and Preparation, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Rani Singh, Secretary
State Board of Examiners

RS/SMN

Date of Mailing:
via certified and regular mail

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.

192-24

New Jersey Commissioner of Education

Final Decision

Alexander Cardillo,

Petitioner,

v.

Board of Education of the City of Paterson,
Passaic County,

Respondent.

Synopsis

Petitioner, formerly employed as a nontenured library media specialist with the Board, was non-renewed prior to the 2019-2020 school year due to a reduction in force (RIF). Petitioner discovered in 2022 that the Board had hired another person as a librarian and contended that because of the RIF, he should have been subject to recall based on his seniority. Petitioner asserted that the Board should have offered him the librarian position before it hired another individual. The Board filed a motion to dismiss, contending that petitioner failed to state a claim upon which relief can be granted since nontenured employees do not have recall rights under New Jersey law.

The ALJ found, *inter alia*, that: reemployment following a RIF is governed by *N.J.S.A.* 18A:28-12, which by its terms applies only to tenured employees; petitioner's contention that the Paterson Board of Education Policy 3146 includes recall rights for employees terminated as the result a RIF is without merit, as that policy is consistent with state law and affords recall rights and seniority only to tenured staff members; and petitioner does not have a cause of action since neither state law nor board policy provide recall rights to nontenured employees. Accordingly, the ALJ granted the Board's motion to dismiss the petition for failure to state a claim.

The Commissioner concurred with the ALJ's findings and conclusions and adopted the comprehensive Initial Decision of the OAL as the final decision in this matter. Accordingly, the Board's motion to dismiss the petition for failure to state a claim was granted.

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.

192-24
OAL Dkt. No. EDU 10182-22
Agency Dkt. No. 290-10/22

New Jersey Commissioner of Education

Final Decision

Alexander Cardillo,

Petitioner,

v.

Board of Education of the City of Paterson, Passaic County,

Respondent.

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 the Board's reply thereto, have been reviewed and considered.

Petitioner was formerly employed as a nontenured library media specialist with the Board. On May 13, 2019, the Board informed him that his employment would not be renewed due to a reduction in force (RIF). According to petitioner, Board meeting minutes from September 2022 reflect that the Board subsequently hired a librarian. He asserts that because of the RIF in 2019, he should have been subject to recall based upon his seniority and that the Board should have offered him the librarian position before hiring another individual. The Board moved to dismiss the petition on grounds that it failed to state a claim upon which relief can be granted because nontenured employees do not have recall rights under New Jersey law.

Upon review, the Administrative Law Judge (ALJ) granted the Board's motion to dismiss the petition for failure to state a claim. The ALJ reasoned that "[e]ven accepting all of petitioner's alleged facts as true, the petitioner does not have a cause of action" because "neither state law nor board policy provide recall rights to nontenured employees." Initial Decision, at 9. The ALJ concluded that *N.J.S.A.* 18A:28-12, which addresses reemployment based on seniority after a RIF, is not applicable to nontenured employees. The ALJ further concluded that Board Policy 3146 "is consistent with state law, affording recall rights and seniority only to tenured staff members." Initial Decision, at 10. Accordingly, the ALJ granted the Board's motion to dismiss the petition for failure to state a claim.

In his exceptions, petitioner argues that the ALJ did not apply the correct standard of review when he dismissed the petition. Petitioner contends that he alleged sufficient facts to support a cause of action which the ALJ should have accepted as true. Petitioner claims that if the action had been permitted to move forward, he would have presented proofs to establish that the Board has previously recalled nontenured faculty after their separation from the district, thereby applying its RIF policy to both tenured and nontenured faculty.[1]

In reply, the Board argues that the Initial Decision should be adopted by the Commissioner. The Board asserts that the ALJ applied the correct standard of review when dismissing the petition for failure to state a claim. It further contends that the ALJ correctly concluded that nontenured staff members whose employment is not renewed do not have recall rights under either state law or Board Policy 3146.

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[1] Petitioner also contends that the ALJ should have held oral argument on the motion to dismiss the petition because he requested same. However, he was not entitled to oral argument at the OAL. The Uniform Administrative Procedure Rules, at *N.J.A.C.* 1:1-12.2(d), provide that "[a]ll motions in writing shall be decided on the papers unless oral argument is directed by the judge." Thus, "it was within the ALJ's discretion to decide the written motion without oral argument." *R.P. v. Bd. of Educ. of Hunterdon Centr. Reg'l High Sch. Dist., Hunterdon Cnty.*, Commissioner Decision No. 188-20 at 4 (Aug. 27, 2020).

Upon review, the Commissioner adopts the comprehensive Initial Decision as the final decision in this matter. Petitions are subject to dismissal by the Commissioner "on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true." *N.J.A.C.* 6A:3-1.10. This standard also appears in *New Jersey Court Rule* 4:6-2(e), which permits a motion for judgment on the pleadings for failure to state a claim upon which relief can be granted. *See Jonathan Wadley v. N.J. Dep't of Educ., Office of Student Prot.*, OAL Dkt. No. EDU 09223-22, Initial Decision at 4-5 (Mar. 10, 2023), *adopted*, Commissioner Decision No. 110-23 (Apr. 11, 2023) (assessing respondent's motion to dismiss pursuant to *N.J.A.C.* 6A:3-1.10 under the standards used by courts when analyzing *Rule* 4:6-2 motions). Such motions "must be evaluated in light of the legal sufficiency of the facts alleged" in the petition. *Sickles v. Cabot Corp.*, 379 *N.J. Super.* 100, 106 (App. Div. 2005) (quoting *Donato v. Moldow*, 374 *N.J. Super.* 475, 482 (App. Div. 2005)). While petitioner is not expected to prove his case at the pleadings stage, the petition must contain factual "allegations, which, if proven, would constitute a valid cause of action." *Ibid.* (quoting *Leon v. Rite Aid Corp.*, 340 *N.J. Super.* 462, 472 (App. Div. 2001)). Ultimately, a petition must be dismissed for failure to state a claim "if it has failed to articulate a legal basis entitling [petitioner] to relief." *Ibid.*

The Commissioner concurs with the ALJ that *N.J.S.A.* 18A:28-12, "Reemployment in order of seniority," is not applicable to nontenured employees. "The Legislature's intent is the paramount goal when interpreting a statute, and, generally, the best indicator of that intent is the statutory language." *DiProspero v. Penn*, 183 *N.J.* 477, 492 (2005). Statutory language should be read "in context with related provisions so as to give sense to the legislation as a whole." *Ibid.* Accordingly, it is important to recognize that *N.J.S.A.* 18A:28-12 is codified in Title 18A, Chapter 28 ("Tenure"), Article 3, which is titled "Effect of Reduction of Force Upon Persons Under Tenure." Nontenured

employees are not referenced within Chapter 28. Provisions related to employment of nontenured employees are codified within Chapter 27. *See, e.g., N.J.S.A.* 18A:27-10 (mandating requirements for notice of continued employment to nontenured teaching staff members).

Moreover, New Jersey's courts have consistently held that Title 18A, Chapter 28 "does not purport to create employment rights for nontenured employees." *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 N.J. 572, 585 (1993) (quoting *Bednar v. Westwood Bd. of Educ.*, 221 *N.J. Super.* 239, 242 (App. Div. 1987)). "[N]ontenured teachers whose contracts are not renewed by reason of a RIF are not entitled to the reemployment rights conferred by Chapter 28." *Bednar,* 221 *N.J. Super.* at 242. *See Union Cnty. Reg'l High Sch. Bd. of Educ. v. Union Cnty. Reg'l High Sch. Tchrs. Ass'n*, 145 *N.J. Super.* 435, 437 (App. Div. 1976) ("[N]ontenured teachers whose contracts of employment are not renewed by reason of a reduction in force plainly are denied any reemployment rights whatever . . . ."); *Bd. of Educ. of Englewood v. Englewood Tchrs' Ass'n*, 150 *N.J. Super.* 265, 270 (App. Div. 1977) ("The determination not to renew the contract of a nontenured teacher is a discretionary matter for the local board, and where it results from a reduction in force there exists no right of reemployment."). Additionally, "[s]eniority is a by-product of tenure and comes into play only if tenure rights are reduced by way of dismissal or reduction in tangible employment benefits." *Carpenito v. Bd. of Educ. of Borough of Rumson*, 322 *N.J. Super.* 522, 531 (App. Div. 1999). Therefore, employees who have not acquired tenure "have no right to seniority nor to a place on the preferred eligibility list" for purposes of reemployment following a RIF. *Kaprow*, 131 N.J. at 586.

Notably, petitioner's exceptions neither address the significance of the plain language within Title 18A, Chapter 28, nor related controlling case law. Instead, petitioner relies primarily upon Board Policy 3146 in support of his contentions. With respect to Board Policy 3146, which cites Title 18A, Chapter 28, the Commissioner concurs with the ALJ that it affords recall rights and seniority only to

tenured staff members. Boards of education are not empowered to adopt policies or otherwise act in a manner inconsistent with the laws codified in Title 18. *N.J.S.A.* 18A:11-1(c). *See Atl. City Educ. Ass'n v. Bd. of Educ. of Atl. City*, 299 *N.J. Super.* 649, 654 (App. Div. 1997) ("A local Board is a creature of the State and may exercise only those powers granted to it by the Legislature either expressly or by necessity or fair implication."). As a matter of law, Board Policy 3146 cannot extend reemployment rights to nontenured faculty as petitioner alleges. *See Bednar*, 221 *N.J. Super.* at 242 ("[N]ontenured teachers whose contracts are not renewed by reason of a RIF are not entitled to the reemployment rights conferred by Chapter 28."). Neither the Board nor the Commissioner may "erode[] tenure rights which appear plain on the face of the statute, [and] which . . . can be removed only by the Legislature." *Id.* at 243. Even assuming the facts alleged by petitioner are true—i.e., that the Board has extended reemployment rights to nontenured staff in the past based upon Board Policy 3146—that fact cannot provide a legal basis for petitioner's claims. Therefore, petitioner has failed to state a claim upon which relief can be granted.

Accordingly, the Board's motion to dismiss the petition for failure to state a claim is granted.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2024
Date of Mailing: May 16, 2024

[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
MOTION TO DISMISS
OAL DKT. NO. EDU 10182-22
AGENCY DKT. 290-10/22

ALEXANDER CARDILLO,

Petitioner,

v.

CITY OF PATERSON BOARD OF EDUCATION,

PASSAIC COUNTY,

Respondent.

Juan C. Fernandez, Esq., for Petitioner (Fernandez Garcia, LLC, attorneys)

Kyle J. Trent, Esq., for Respondents (Apruzzese, McDermott, Mastro & Murphy, PC, attorneys)

Record Closed: February 5, 2024 Decided: April 10, 2024

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE

Petitioner, a former nontenured staff member at Paterson Public Schools was let go during a reduction in force and alleges that when the respondent later hired another employee to a similar position, he should have been recalled or offered the job. The matter at issue is whether nontenured staff members at Paterson Public Schools have a recall right following a reduction in force.

STATEMENT OF THE FACTS

Alexander Cardillo, the petitioner, was a nontenured library media specialist at Paterson Public Schools. The petitioner was months away from receiving tenure when on May 13, 2019, he was informed that his employment would end on June 30, 2019, due to a reduction in force (RIF). Cardillo asserts that he was the most senior nontenured library media specialist in the District. The petitioner asserts that because of the RIF that occurred in 2019, the District had a callback list based on seniority. He asserts that by January 2023, the District had hired more than 149 teachers from 2022-2023. He asserts that September 2022 Board minutes show the District hired a librarian and did not offer the position to him first. The petitioner asserts that because of the RIF in 2019, he should have been subject to recall and been offered the position before others could have received it. The petitioner asserts that respondent violated law and policy when it did not recall him or offer him the position prior to hiring another individual.

PROCEDURAL HISTORY

On or around October 18, 2022, the petitioner filed a petition with the Department of Education alleging that the Paterson Board of Education violated policy and practice when it did not call him back to work following a reduction in force. On or about November 8, 2022, respondent, the Paterson Board of Education, filed a motion to dismiss the petition in lieu of an answer. On or about November 14, 2022, the Department of Education transmitted the petition as well as the motion to the Office of Administrative Law. A hearing was held on the matter on November 15, 2023, where the filing of an

amended petition was discussed. The petitioner filed an amended petition on December 29, 2023. On January 18, 2024, the respondent filed a motion to dismiss the amended petition in lieu of answer. On February 1, 2024, the petitioner filed an opposition to the motion to dismiss the amended petition. And on February 5, the respondent filed a reply.

On or about March 13, 2024, the matter was transferred from the Hon. Elissa Testa to the Honorable Thomas R. Betancourt.

MOTION TO DISMISS

I. Respondent's Arguments for Dismissal

Respondent argues in its motion to dismiss the amended petition that the petitioner has failed to state a claim where relief may be granted. Respondent states that "as a non-tenured former employee whose employment ended contemporaneous to a RIF, Cardillo was and is not entitled to any seniority, recall, or reemployment rights under the law or District Policy." Resp't Mot. to Dismiss 6. Respondent points to N.J.S.A. 18A:28-12 and N.J.A.C. 6A:32-5.1 and says that under the law seniority and reemployment rights only apply to those with tenure. Respondent cites to Lichtman v. Board of Education, 93 N.J. 362, 368 n. 4 (1983) where the New Jersey Supreme Court stated, "Seniority, on the other hand, provides a mechanism for ranking all tenured teaching staff members so that reductions in force and reemployment can be effected in an equitable fashion and in accord with sound educational policies" (signaling to N.J.S.A. 18A:28-10 to -12). Respondent points out that the reduction in force laws under New Jersey Statute are titled, "Article 3. Effect of Reduction of Force Upon Persons Under Tenure (§§ 18A:28-9 — 18A:28-14)." Respondent quotes from the Superior Court, Appellate Division, stating, "The determination not to renew the contract of a nontenured teacher is a discretionary matter for the local board, and where it results from a reduction in force there exists no right of reemployment." Board of Education v. Englewood Teachers' Ass'n, 150 N.J. Super. 265, 270 (App. Div. 1977) (signaling to Union County Regional High School Board of Education v. Union County Regional High School Teachers Ass'n, 145 N.J. Super. 435 (App. Div. 1976), certif. den. 74 N.J. 248 (1977)).

The respondent disputes that Paterson Board of Education policy provides the petitioner with any callback rights, explaining that Board Policy 3146 which addresses reduction in force "expressly implements the law and does not extend additional rights . . . " Resp't Mot. to Dismiss 8. Furthermore, respondent states that the policy itself never mentions providing nontenured employees with any type of seniority or recall rights. And furthermore, respondent states that petitioner's deposition testimony exhibits (which come from a superior court case between the same parties) omit the testimony which contradicts the petitioner's assertions, and that the full deposition testimony of respondent's officials shows that nontenured employees do not have seniority or callback rights.

II. Petitioner's Arguments Against Dismissal

Petitioner argues that the undersigned should deny the respondent's motion to dismiss because the Commissioner did not grant the dismissal prior to transmittal. Petitioner cites to N.J.A.C. 6A:3-1.10 to support this argument.[1] Petitioner responds to respondent's arguments for dismissal by stating:

> Despite BOE policy and testimony that non-tenured teachers have rights to be recalled as a result of a Reduction of Force ("RIF"), the BOE argues that such rights do not exist for non-tenured teachers. In support of this assertion, the BOE utilizes extraneous and disputed testimony to attack the veracity of the allegations made by Mr. Cardillo. This is simply impermissible and contrary to the standard of review articulated in Rule 6A:3-1.10 and case law.
>
> [Pet'r Opp'n Mot. 2-3]

[1] N.J.A.C. 6A:3-1.10 states:

> Dismissal or transfer of petition
>
> At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.

Petitioner says "that the BOE is compelled by law to determine and create guidelines for the hiring of all staff (the Amended Petition, ¶ 3), and that law and BOE Policy determine staff hiring and recall rights. (See Amended Petition, ¶¶ 4 and 6)." Pet'r Opp'n Mot. 3. Petitioner says that "testimony from the very top School Administrators – including the school district's own Superintendent – confirm that Policy 3146, the conduct of the RIF, and recall of faculty apply to both tenured and non-tenured staff. (See Shafer T80:1-10, T80:11-18; T81:7-14; Rojas T42:1-19; Moody-Stephens T49:3-15)." Pet'r Opp'n Mot. 6-7. Petitioner claims "that there are sufficient facts at issue regarding non-tenured staff rights and their recall rights when they are subject to a RIF" and that therefore this case should not be dismissed. Pet'r Opp'n Mot. 4-5. The petitioner says that there needs to be a hearing to determine the factual issue of whether nontenured teachers have recall rights. Furthermore, petitioner requests oral argument if the respondent's motion is entertained.

III. Respondent's Reply to Petitioner's Opposition

In response, Respondent points to N.J.A.C. 6A:3-1.5(g) which states in part regarding motions to dismiss in lieu of answer, "Briefing on such motions shall be in the manner and within the time fixed by the Commissioner, or by the ALJ if the motion is to be briefed following transmittal to the OAL." Respondent says that that this shows the ALJ can rule on a motion to dismiss. Furthermore, respondent points out that the motion to dismiss was filed after transmittal given the filing of the amended petition. Respondent also states that it was within its rights to provide the remaining parts of the deposition testimony petitioner had originally provided, since the remaining parts show petitioner's arguments to be incorrect. To that end, respondent relies on R. 4:16-1(d) which states, "If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which ought in fairness be considered with the part introduced, and any party may offer any other parts." Furthermore, respondent states that any claim from when the reduction in force occurred in 2019 would be time barred pursuant to N.J.A.C. 6A:3-1.3(i).

Legal Discussion

I. Standards for a Motion to Dismiss

Upon the filing of a petition before the Commissioner of Education, a respondent can file a motion to dismiss in lieu of an answer. N.J.A.C. 6A:3-1.5(g). The Commissioner can grant a motion to dismiss in lieu of answer "on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason." N.J.A.C. 6A:3-1.10. "[T]he test for determining the adequacy of a pleading: whether a cause of action is 'suggested' by the facts." Printing-Mart Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (citing to Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). And the "inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Ibid. (citing Rieder v. Department of Transportation, 221 N.J.Super. 547, 552 (App.Div.1987)). Furthermore, "On a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, all facts alleged in the complaint and the legitimate inferences drawn therefrom are deemed admitted." Smith v. Newark, 136 N.J. Super. 107, 112 (1975). (citing Heavner v. Uniroyal, Inc., 63 N.J. 130, 133 (1973); J.H. Becker, Inc. v. Marlboro Tp., 82 N.J. Super. 519, 524 (App. Div. 1964)). When "reviewing a motion under Rule 4:6-2(e), a court may consider documents referred to in the complaint, matters of public record, or documents explicitly relied on in the complaint, without converting the motion to dismiss into one for summary judgment." New Jersey Department of Environmental Protection v. Occidental Chemical Corp., 2012 N.J. Super. Unpub. LEXIS 899, *41 (App. Div. 2012) (signaling N.J. Citizen Action, Inc. v. County of Bergen, 391 N.J. Super. 596, 605 (App. Div.), certif. denied, 192 N.J. 597, (2007); New Jersey Sports Productions, Inc. v. Bobby Bostick Promotions, L.L.C., 405 N.J. Super. 173, 178, (Ch. Div. 2007); Acevedo v. Monsignor Donovan High School, 420 F. Supp. 2d 337, 340 (D.N.J. 2006)).

II. Relevant Law

Reemployment following a RIF is governed by N.J.S.A. 18A:28-12, which by its terms applies only to tenured employees: "Effect of Reduction of Force Upon Persons Under Tenure (§§ 18A:28-9 — 18A:28-14)." N.J.S.A. § 18A:28-12 states in part:

> Reemployment in order of seniority
>
> If any teaching staff member shall be dismissed as a result of such reduction, such person shall be and remain upon a preferred eligible list in the order of seniority for reemployment whenever a vacancy occurs in a position for which such person shall be qualified and he shall be reemployed by the body causing dismissal, if and when such vacancy occurs and in determining seniority, and in computing length of service for reemployment, full recognition shall be given to previous years of service, and the time of service by any such person in or with the military or naval forces of the United States or of this State . . .
>
> [N.J.S.A. § 18A:28-12]

N.J.A.C. 6A:32-5.1 provides the "[s]tandards for determining seniority." And under the New Jersey Administrative Code, "Each district board of education or private agency that provides educational services by means of public funds shall determine guidelines for the hiring of all staff." N.J.A.C. § 6A:32-4.1.

Paterson Board of Education Policy 3146 states:

> CONDUCT OF REDUCTION IN FORCE
>
> When teaching staff member positions have been abolished, in accordance with Board Policy No. 3112, the Board of Education will transfer and/or dismiss affected teaching staff members as required by law.
>
> No tenured teaching staff member will be transferred or dismissed in a reduction in force affecting a category of employment in which a nontenured teaching staff member is employed. When two or more nontenured teaching staff members are employed within the category affected by a reduction in force, the nontenured teaching staff member(s) shall be retained in that category who has demonstrated greater competence.

> Tenure and seniority entitlements will govern the transfer and dismissal of tenured teaching staff members affected by a reduction in force, except that, when two or more tenured teaching staff members within the same employment category affected by a reduction in force possess an identical seniority entitlement to that category, the teaching staff member(s) shall be retained in that category who possesses the greater scope of certification.
>
> The Superintendent shall collect and maintain the information requisite to the calculation of each tenured teaching staff member's seniority status. The Superintendent shall develop and maintain district seniority lists and shall recommend dismissals and transfers in a reduction in force in accordance with those lists. No seniority list shall be a public document or published in the absence of a reduction in force or reemployment from a preferred eligible list.
>
> Teaching staff members affected by a reduction in force will be informed of their seniority status and of the effect of the reduction in force on their employment, as promptly as possible after the Board's action to abolish positions. Wherever possible, the Board will give sixty days notice of a pending dismissal. If notice cannot be given a full sixty days before the end of the employee's service, salary in lieu of notice will be given for the remaining notice period beyond the end of service.
>
> N.J.S.A. 18A:28-1; 18A:28-9 et seq.
>
> N.J.A.C. 6A:32-5.1
>
> Cross reference: Policy Guide Nos. 0166, 3122
>
> Adopted: 31 October 2002
>
> Revised: 19 March 2008
>
> [Paterson Board of Education Policy 3146]

Additionally, Paterson Board of Education Policy Regulation 3146 implements Policy 3146 (see Appendix).

III. Analysis

A. Petitioner's sole claim that he should have been recalled is dismissed

I am not persuaded by respondent's argument that petitioner's claims are time barred. The argument might be meritorious if petitioner was seeking a remedy for the events that

occurred in 2019 with the reduction in force. But here, petitioner is asserting that he should have been recalled in 2022 and is not bringing any claim specific to what occurred in 2019. Furthermore, it has not been shown to the undersigned that petitioner filed beyond the permitted 90-day time period of when he knew or should have known regarding another individual being hired instead of him being recalled. Rather, based on the facts as alleged by the petitioner, Board minutes from September 2022 show the hiring of a librarian and the petitioner then filed the following the month. Therefore, the undersigned must examine the relevant law related to recall rights following reduction in force.

Even accepting all of petitioner's alleged facts as true, the petitioner does not have a cause of action. To have a cause of action in regard to not being recalled, law and/or policy would need to provide recall rights for that specific individual. Upon review of the relevant law and policy, it is evident that petitioner did not have any type of recall right following the reduction in force in 2019. Petitioner was a nontenured library media specialist and neither state law nor board policy provide recall rights to nontenured employees.

1. State Law

N.J.S.A. 18A:28-12, which describes reemployment based on seniority after a reduction in force, is not applicable to nontenured employees. It is specifically found in chapter 28 which addresses tenure and within Article 3 which is named, "Effect of Reduction of Force Upon Persons Under Tenure (§§ 18A:28-9 — 18A:28-14)." Nor does N.J.A.C. § 6A:32-5.1, which provides the "[s]tandards for determining seniority," afford recall rights to nontenured staff members. Furthermore, respondent correctly cites to Lichtman v. Board of Education, 93 N.J. 362, 368 n. 4 (1983) where the New Jersey Supreme Court states, "Seniority, on the other hand, provides a mechanism for ranking all tenured teaching staff members so that reductions in force and reemployment can be effected in an equitable fashion and in accord with sound educational policies" (signaling to N.J.S.A. 18A:28-10 to -12). Seniority only applies to tenured staff members. As the Superior Court, Appellate Division, states, "The determination not to renew the contract of a nontenured teacher is a discretionary matter for the local board, and where it results

from a reduction in force there exists no right of reemployment." Board of Education v. Englewood Teachers' Ass'n, 150 N.J. Super. 265, 270 (App. Div. 1977) (signaling to Union County Regional High School Board of Education v. Union County Regional High School Teachers Ass'n, 145 N.J. Super. 435 (App. Div. 1976), certif. den. 74 N.J. 248 (1977)).

2. Board Policy

A review of the language of Paterson Board of Education Policy 3146 shows that it is consistent with state law, affording recall rights and seniority only to tenured staff members. The first sentence of the policy states, "When teaching staff member positions have been abolished... the Board of Education will transfer and/or dismiss affected teaching staff members as required by law." Thus, at the outset, the reduction in force policy establishes state law as its guiding post. And furthermore, at the bottom of the policy, it references 18A:28-9 et seq. (Effect of Reduction of Force Upon Persons Under Tenure). Also, the policy only references nontenured staff members twice. In the first instance, the policy addresses the situation in which a decision needs to be made between two nontenured staff members. Instead of using seniority - which is connected to recall rights - the policy dictates that "the nontenured teaching staff member(s) shall be retained in that category who has demonstrated greater competence." The only other time the policy references nontenured staff is to show that a tenured employee has priority over a nontenured employee. Regulation 3146 also does not show seniority or recall rights for nontenured employees (see appendix).

Nothing in the deposition testimony of respondent's senior staff members undermines respondent's position that recall rights only apply to tenured staff members. For example, when asked "Do you have an understanding that once an individual is RIF'd from Paterson, there is a policy callback that individual if the position becomes available?" Assistant Superintendent Luis M. Rojas who works in human resources responded, "If they're tenured, yes. If they are nontenured, no." (Trent Cert., Ex. 1, Rojas Dep Transcript 33-14 to -19). When questioned about the language of Policy 3146, he also notes that the policy references the relevant statutes and code. He also stated, "I can only tell you, in practice, what I have done since 2006 has been what I've already testified to." (Trent

Cert., Ex. 1, Rojas Dep Transcript 37-22 to -24). And former Superintendent Eileen Shafer said, "Non-tenured don't have seniority." (Trent Cert., Ex. 2 79-17 to -20.). Other questions posed during deposition about specific language in the policy, seem to parse the language out of context and, in any event, do not support a finding that Board policy affords recall rights to nontenured staff.

The undersigned finds that neither state law nor board policy provide for the recall/callback rights of nontenured staff members in Paterson Public Schools.

IV. Conclusion

For the reasons set forth above, the petitioner as a former nontenured staff member does not have recall/callback rights, and therefore does not have a cause of action. The respondent's motion is **GRANTED** and the case is **DISMISSED**.

ORDER

The respondent's motion to dismiss the petition is hereby **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. 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.

April 10, 2024
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

bs/db

193-24
SEC Dkt. No. C04-20
OAL Dkt. No. EEC 10952-20
Agency Dkt. No. 9-8/23A

New Jersey Commissioner of Education

Final Decision

In the Matter of Shawn Giordano,
Lacey Township Board of Education,
Ocean County

This matter involves an appeal of the School Ethics Commission's (SEC) July 25, 2023, determination that appellant – President of the Lacey Township Board of Education (Board) – violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1 (f) of the School Ethics Act (Act) by directing the Board attorney to conduct research on a fellow Board member, Regina C. Discenza. Appellant and Discenza filed ethics complaints against each other, resulting in motion practice. Ultimately, the counts against appellant were reduced to those cited above, as well as *N.J.S.A.* 18A:12-24.1 (c), which appellant was found to have not violated. The SEC recommended that appellant be censured for the violation. Having carefully reviewed the SEC's decision and the record in its entirety, the Commissioner finds that the SEC's decision that appellant violated the Act is supported by sufficient, credible evidence, and that appellant failed to establish that the decision is arbitrary, capricious, or contrary to law. *N.J.A.C.* 6A:4-4.1(a). The Commissioner further finds that the SEC appropriately assessed the penalty of a censure.

The events in question involve the Board election in November 2019. Appellant and

Discenza had a historically acrimonious relationship, and Discenza campaigned against appellant. Appellant lost the election. One day later, he instructed the Board attorney to investigate Discenza about potential violations concerning her conduct during the election, including her alleged video endorsement of candidates while wearing her Board of Education badge. The Board attorney completed a memo regarding Discenza's conduct, which was reflected on a legal bill. The Board reviewed and approved the November 2019 legal bill on December 6, 2019, which is when Discenza and one other board member first became aware of the matter. The legal bill had fifteen entries marked "Member Conduct," for which the Board attorney billed 33.9 hours of research, totaling $5,085.

On appeal, appellant argues that he was authorized to contact the Board attorney pursuant to Board Policy 0174, as he was one of three designated contacts who may "request services or advice from contracted legal counsel" as Board President. The other two authorized positions able to seek assistance of legal counsel, according to the Policy, were the Superintendent and the Business Administrator. Appellant submitted certifications from five other Board members, indicating that they each individually contacted him to both discuss the matter and to authorize the research by the Board attorney; however, no quorum was ever reached due to their individual discussions. Appellant argues that any inferences regarding the timing or the topic of the research that may stem from the parties' acrimonious relationship are explained by the certifications of the other five Board members. Appellant also points to the fact that, in a separate proceeding, Ms. Discenza was found to have violated a portion of the School Ethics Act, supporting his argument that his actions were justified.

In opposition, the SEC argues that appellant's long tenure on the Board, years of ethics

trainings, and his position as Board President should have made him aware of the potential ethical violations of his actions. The SEC contends that appellant's use of Board resources by contacting the Board attorney immediately after losing the election to request information about Discenza – whom he actively disliked and who had openly campaigned against him – demonstrated bad faith. According to the SEC, the combination of appellant's personal dislike for Discenza, the timing of the request following the election, and appellant's unilateral decision to instruct the Board attorney to investigate without consulting with the full Board, Superintendent, or Business administrator demonstrate that he violated the Act. The SEC argues that this erosion of public trust warrants a censure instead of a reprimand.

N.J.S.A. 18A:12-24(b) states that "[n]o school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others." In determining a violation, the question is not whether a school board member intended to secure an unwarranted benefit for themselves or others, but whether a reasonable person could infer that such was the reason for their conduct. *See Friends Retirement Concepts v. Borough of Somerville, Bd. Of Educ.*, 356 *N.J. Super.* 203, 214 (Law Div. 2002). Similarly, pursuant to *N.J.S.A.* 18A:12-24.1(f), Board members swear to, "...refuse to surrender [their] independent judgment to special interest or partisan political groups or to use the schools for personal gain or the gain of friends."

Pursuant to *N.J.S.A.* 18A:12-24.1(e), Board members agree that they will "recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board." In support of this statute, "*N.J.A.C.* 6A:28-6.4(a)(5) provide[s] that evidence that a '[board member] made personal promises or took action

beyond the scope of his or her duties' shall support a finding that a violation of *N.J.S.A.* 18A:12-24.1(e) occurred." *Persi v. Woska*, 2017 N.J. Super. Unpub. LEXIS 625, *20 (App. Div. Mar. 10, 2017).

The record demonstrates that Discenza actively campaigned against appellant, and they had a history of mutual dislike. Additionally, the timing of the request on the day after appellant lost the election, and the brief time span the appellant had to act until he would no longer be a Board member, support the SEC's conclusions. In light of these facts, the Commissioner finds that it was not arbitrary, capricious, or unreasonable for the SEC to conclude that the public could infer that the appellant requested the research against Discenza to secure an advantage for himself and for his own personal gain. Nor was it arbitrary, capricious, or unreasonable for the SEC to conclude that appellant took action that could compromise the Board.

Pursuant to Policy 0174, appellant was authorized to contact the Board attorney regarding legal issues. However, there were other options available to appellant. For example, appellant could have asked the Board to vote on the research request before contacting the Board attorney. Alternatively, appellant could have requested an advisory opinion from the SEC, pursuant to *N.J.S.A.* 12-31. This free option could have potentially saved the district $5,085, but it may not have achieved results prior to the end of appellant's term. Another option would have been for appellant to file an ethics complaint directly against Discenza, as she did to him, without the use of the Board attorney research and the unnecessary expense to the Board. Instead of availing himself of one of these options, appellant took action that created the appearance to the public that he was using his position for personal gain.

Furthermore, in light of the seriousness of appellant's actions, the Commissioner finds that the penalty of censure is appropriate.

Accordingly, appellant is hereby censured as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2024
Date of Mailing: May 16, 2024

[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.

Before the School Ethics Commission
OAL Docket No.: EEC-10952-20
SEC Docket No.: C04-20
Final Decision

I/M/O Shawn Giordano,
Lacey Township Board of Education, Ocean County
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on January 13, 2020, by Regina C. Discenza (Complainant), alleging that Shawn Giordano (Respondent), a member of the Lacey Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, when he directed Board counsel to conduct research on another Board member who had campaigned against him in a recent election. More specifically, Complaint asserted that Respondent violated *N.J.S.A.* 18A:12-24(b) (Count 1), as well as *N.J.S.A.* 18A:12-24.1(b) (Count 5 and Count 8), *N.J.S.A.* 18A:12-24.1(c) (Count 2), *N.J.S.A.* 18A:12-24.1(e) (Count 3 and Count 6), and *N.J.S.A.* 18A:12-24.1(f) (Count 4, Count 7, and Count 9) of the Code of Ethics for School Board Members (Code).[1]

On February 24, 2020, Respondent filed a Motion to Dismiss in Lieu of an Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On March 20, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

At its meeting on May 19, 2020, the Commission voted to deny the Motion to Dismiss as to the allegations in Counts 1-4, and to grant the Motion to Dismiss as to the allegations in Counts 5-10. The Commission also voted to find the Complaint not frivolous and to deny the request for sanctions. Based on its decision, the Commission voted to direct Respondent to file an Answer to Complaint (Answer) to the allegations in Counts 1-4. On June 1, 2020, Respondent filed an Answer as directed.

At its meeting on July 21, 2020, the Commission voted to find probable cause for the remaining allegations in this matter. Based on its finding of probable cause, the Commission voted to transmit the within matter to the Office of Administrative Law (OAL) for a hearing, and, pursuant to *N.J.A.C.* 6A:28-10.7(b),[2] the attorney for the Commission (Petitioner) was

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[1] The Complaint also alleged that Linda A. Downing violated *N.J.S.A.* 18A:12-24.1(b) (Count 8) and *N.J.S.A.* 18A:12-24.1(f) (Count 9 and Count 10), and Harold "Skip" Peters violated *N.J.S.A.* 18A:12-24.1(b) (Count 8) and *N.J.S.A.* 18A:12-24.1(f) (Count 9). The alleged violations against Respondent Downing and Peters were dismissed, and as such they are no longer parties in this matter.

[2] This citation refers to the regulation that was in effect at the time of the probable cause determination.

charged with prosecuting the allegations in the Complaint which the Commission found probable cause to credit.

At the OAL, this matter was initially consolidated with a complaint against Discenza (C75-19). Following cross-motions on summary decision, the Administrative Law Judge (ALJ) issued an Order on Partial Summary Decision on February 27, 2023, that resolved the entire case as to Respondent Giordano. As such, the consolidated matters were severed, and the ALJ issued an Initial Decision on April 27, 2023, incorporating the findings of fact, conclusions of law, and recommendations of penalty pertaining to Respondent as stated in his February 27, 2023, Order on Partial Summary Judgment. Respondent filed Exceptions to the Initial Decision, in accordance with *N.J.A.C.* 1:1-18.4. Petitioner did not file a Reply.

At its meeting on June 27, 2023, the Commission considered the full record in this matter. Thereafter, at its meeting on July 25, 2023, the Commission voted to adopt the Initial Decision's findings of fact, legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), but did not violate *N.J.S.A.* 18A:12-24.1(c), and voted to modify the recommended penalty of reprimand in favor of censure.

II. Initial Decision and Order on Partial Summary Decision

The events giving rise to the within matter began on November 6, 2019, the day after the Board election in which Respondent lost his bid for reelection, when Respondent (Board President) "contacted the Board's attorney and requested that he conduct research regarding the conduct of Board member Discenza." *Order* at 5. The Board reviewed the November 2019 legal bill on December 6, 2019, which is when Complainant first became aware of the request. *Ibid.* The entire Board voted to ratify it, with the exception of Complainant, who abstained. *Id.* at 6. The bill had fifteen entries marked "Member Conduct," and the Board attorney billed for 33.90 hours of research, totaling $5,085. *Ibid.* According to Board policy, the Superintendent, the Business Administrator/Board Secretary, and the Board President have the authority to request services from the Board's counsel. *Ibid.*

In deciding the cross-motions for summary decision, the ALJ found both parties to the matter agreed there is "substantial negative prior history and continuing mutual disdain" between Respondent and Complainant, and as such, Respondent "violated the public trust" in making his request given the relationship between Respondent and Complainant; the timing and topic of Respondent's request (the day after he lost the election); and that other than seeking ratification of the legal bill, Respondent did not apprise the Board of the request or the results of the research. *Id.* at 16.

In concluding that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), the ALJ found Respondent "used his official position as Board President, as one of the three individuals authorized to contact the Board's attorney to request legal services and did so to secure an unwarranted advantage for himself against a political rival with whom he had a negative history." *Id.* at 17. The ALJ further found Respondent "failed to recognize the Board's authority" when he used school resources for personal reasons and failed to seek the Board's approval for his request beyond seeking ratification for the charges, and such "private action, by its very nature, compromises the integrity and accountability of the Board and

its proper use of school resources." *Ibid.* Further, the ALJ explained that Respondent would not have had access to such resources but for his position on the Board. *Ibid.* However, the ALJ failed to find a violation of *N.J.S.A.* 18A:12-24.1(c). *Ibid.*

With respect to the appropriate penalty for the violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), the ALJ recommended a penalty of reprimand. *Id.* at 19. The ALJ found that since Respondent no longer serves on the Board, he cannot remove or suspend Respondent. *Ibid.* The ALJ notes that the violations are not *de minimis*, but given the totality of the circumstances, a reprimand is appropriate. *Ibid.*

III. Exceptions

In his exceptions, Respondent argues that summary decision was "premature and prejudicial" to Respondent as it prevented him from calling witnesses to testify on his behalf. Respondent contends the "OAL questionably determined that 'there is some dispute as to whether a board president can request legal services from the board's attorney without the prior formal consent or authorization of the board or the other two individuals authorized by the district to request such services.'" Respondent asserts there is no dispute because Board policy designates the Board President as one of the individuals authorized to request services, but alternatively, a dispute would establish a genuine issue of material fact, resulting in the need for a hearing. Additionally, Respondent argues the Initial Decision "incorporates hearsay" from the Complaint as fact, such as that the Board attorney's research or conclusions were not shared with other members of the Board or that the Superintendent or Board Secretary were not aware of the attorney's research, and Petitioner failed to provide any evidence to support those allegations. Respondent maintains that Petitioner failed to provide evidence of violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f) because Respondent was authorized to contact the Board attorney for legal services, and he did so after discussing Complainant's conduct with other Board members. Respondent notes his "concerns were clearly warranted because the research . . . led to an ethics violation against Ms. Discenza and have now been sustained in the [pending] matter."

Respondent further argues that the ALJ's determination that he used his official position "to secure an unwarranted advantage for himself against a political rival" is irreconcilable with the OAL's determination that there was a reasonable basis to request legal research if the basis of that research resulted in ethics charges against Complainant. Respondent reiterates that Board policy did not require an affirmative vote or resolution to request legal services, and he was authorized to contact the Board attorney and was "clearly within his right to request legal research from the Board Attorney on potential unethical conduct of another board member."

Respondent attached certifications to demonstrate that a majority of the Board had discussed the matter and agreed that Respondent should request legal research. As such, Respondent urges the Commission to reverse the Initial Decision, and at the very least, reopen the matter for a hearing on the merits.

Petitioner did not file exceptions to the Initial Decision and/or a reply to Respondent's exceptions.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission agrees with the ALJ that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f). The Commission is also in accord with the ALJ's determination that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c). However, the Commission modifies the recommended penalty of reprimand in favor of censure.

N.J.S.A. 18A:12-24(b) prohibits a board member from using or attempting to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. The ALJ properly concluded Respondent used his official position as Board President to secure an unwarranted advantage for himself. The parties agreed that Respondent and Complainant had a substantial negative history and mutual disdain for each other. Respondent used his position as an individual authorized to contact the Board's attorney to direct the Board attorney to conduct legal research regarding Complainant's conduct. This was done to gain a personal advantage against Complainant, with whom he had a significant negative history. As a result of Respondent's request, the Board's attorney performed almost 34 hours of research and cost the District's taxpayers over $5,000.00.

The Commission also agrees that Respondent violated *N.J.S.A.* 18A:12-24.1(e). Under N.J.S.A. 18A:12-24.1(e), a board member must recognize that authority rests with the board and a board member shall not make any personal promises or take any action that may compromise the board. Requesting legal research for personal reasons constitutes private action, or action beyond the scope of Respondent's duties as a Board member. The ALJ appropriately concluded "[t]his private action, by its very nature, compromises the integrity and accountability of the Board and its proper use of school resources."

Additionally, the Commission agrees with the ALJ that Respondent's actions also constitute a violation of *N.J.S.A.* 18A:12-24.1(f). Under N.J.S.A. 18A:12-24.1(f) a board member must refuse to surrender independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends. Respondent used the school's resources for his own personal gain. Respondent utilized the Board's legal counsel to get information regarding someone he personally disliked, and he would not have had access to those resources absent his position as Board President.

Finally, the Commission finds Respondent's actions did not violate *N.J.S.A.* 18A:12-24.1(c) as he did not take official action to effectuate policies and plans without consulting those affected, nor did he take action that was unrelated to his duty to: develop the general rules that guide the management of the District; formulate the programs and methods to effectuate the District's goals; or ascertain the value or liability of a policy.

The Commission is not persuaded by Respondent's exceptions. Respondent filed a cross-motion for summary decision, but only because he was not successful, does he now argue that the matter should proceed to a hearing. It is irrelevant that Complainant also faced ethics charges; whether another Board member committed an ethics violation does not justify Respondent's actions. While Respondent argues that he was authorized by Board regulation to

seek services from the Board attorney, the Commission notes that his request was beyond the scope of his duties as a Board member as it was motivated by his own personal animus for a political rival. Finally, the certifications Respondent attached to his exceptions are not part of the record; regardless, whether Respondent spoke to other Board members to validate his desire to obtain research about Complainant, it does not change that he made the request for personal reasons which goes beyond the scope of his duties.

While the ALJ recommended a penalty of reprimand for Respondent's violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), the Commission **modifies** the recommended penalty of reprimand to **censure**. The Commission agrees with the ALJ that the Respondent's blatant use of Board resources for his own motivations was not *de minimis*, but finds that considering the facts in the record and the totality of the circumstances, a penalty of censure is justified.

In this regard, the Commission notes that Respondent was elected to the Board in 2013 and remained a Board member until he lost his bid for re-election in 2019. Respondent was on the Board for at least six years and rose to the position of Board President. Given his Board experience and years of ethics trainings, he should have been acutely aware of his ethical obligations under the Act. The Commission also finds the timing of Respondent's violation to be noteworthy. Respondent lost the election, and the very next day used his position as Board President, which he would only hold until January 2020, when his term would end, to seek information about a fellow Board member who campaigned against him. The fact that Respondent contacted the Board attorney immediately after failing to be reelected further demonstrates the bad faith behind Respondent's request. Given the nature of, and relation to, his personal dislike for Complainant, the timing of his request immediately following the election, and that he did it without waiting to discuss it with the Superintendent, Board Secretary and/or the whole Board, the Commission finds such a violation is severe and warrants a censure instead of a reprimand.

IV. Decision

For all of the aforementioned reasons, the Commission adopts the Initial Decision's findings of fact and legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), but did not violate *N.J.S.A.* 18A:12-24.1(c). However, the Commission modifies the recommended penalty of reprimand in favor of **censure** for the violations.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding

the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* **within thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: July 25, 2023

Resolution Adopting Decision in Connection with C04-20

Whereas, at its meeting on July 21, 2020, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, on February 27, 2023, the Administrative Law Judge (ALJ), issued an Order on Partial Summary Decision, which was incorporated into an Initial Decision dated April 3, 2023; and

Whereas, the ALJ found that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), but did not violate *N.J.S.A.* 18A:12-24.1(c), and recommended that Respondent be reprimanded; and

Whereas, Respondent filed exceptions to the Initial Decision but Petitioner did not file exceptions and/or a reply to Respondent's exceptions; and

Whereas, at its meeting on June 27, 2023, the Commission reviewed the record in this matter, discussed adopting the ALJ's conclusion that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), and discussed modifying the recommended penalty of reprimand in favor of censure; and

Whereas, at its meeting on July 25, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on June 27, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on July 25, 2023.

Brigid C. Martens

Brigid C. Martens, Acting Director
School Ethics Commission

194-24
OAL Dkt. No. EDU 2724-23
Agency Dkt. No. 59-3/23

New Jersey Commissioner of Education

Final Decision

K.S., on behalf of minor child, L.W.

Petitioner,

v.

Board of Education of the Borough of Mount Ephraim, Camden County,

Respondent.

On August 7, 2023, a final agency decision was rendered in this matter, wherein the Commissioner found K.S. liable for tuition in the amount of $17,227.00 for a period of ineligible attendance by her minor child, L.W., in the Board's school district during the period from October 1, 2022, through June 15, 2023.

The Board subsequently requested that the Commissioner seek entry of the assessment on the judgment docket of the Superior Court pursuant to *N.J.S.A.* 2A:58-10. K.S. offered no reasons why the judgment against her should not be so docketed, although given an opportunity by this agency to do so. Accordingly, pursuant to *N.J.S.A.* 2A:58-10, Kristina Scallatino is now subject to entry of a judgment by the court in the amount of $17,227.00, which represents the payment ordered at the conclusion of the case before the Commissioner, with interest to accrue as provided by law.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2024
Date of Mailing: May 16, 2024

195-24

New Jersey Commissioner of Education

Final Decision

Robert Finlay,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

Synopsis

Pro-se petitioner appealed the determination of the respondent New Jersey State Board of Examiners (SBE) denying his request for a third extension of time to satisfy the requirements of New Jersey's Alternate Route teacher certification program. Specifically, in 2023, petitioner sought an additional two-year extension of his provisional certificate as a Teacher of Business: Finance/Economics, after having been granted extensions in 2019 and 2021. The SBE filed a motion to dismiss the petition.

The ALJ found, *inter alia*, that: petitioner was issued his first provisional certificate in September 2017; the certificate was renewed in 2019; in 2021, petitioner's application for renewal of his provisional certificate was denied; petitioner appealed and was granted a renewal of his provisional certificate based on his specific circumstances; further, petitioner admitted that he has still not completed all of the academic coursework associated with the Alternate Route program, which he entered into more than six years ago. The ALJ concluded that petitioner has already been granted two renewals of his provisional certificate, which is the maximum permitted by law. Accordingly, the ALJ granted the SBE's motion to dismiss the petition.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ and adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

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.

195-24

OAL Dkt. No. 09353-23
Agency Dkt. No. 229-8/23

New Jersey Commissioner of Education

Final Decision

Robert Finlay,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

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 has already been granted two renewals of his provisional certificate, the maximum permitted by law.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The State Board of Examiners' motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2024
Date of Mailing: May 16, 2024

[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
GRANTING MOTION TO DISMISS
OAL DKT. NO. EDU 09353-23
AGENCY DKT. NO. 229-8/23

ROBERT FINLAY,
Petitioner
v.
NEW JERSEY DEPARTMENT OF EDUCATION,
STATE BOARD OF EXAMINERS,
Respondent.

Robert Finlay, pro se

David Kalisky, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: April 5, 2024 Decided: April 9, 2024

BEFORE: **MATTHEW G. MILLER, ALJ**

STATEMENT OF THE CASE

Appellant, Robert Finlay appeals the June 29, 2023 denial of his third renewal request of his provisional teaching certificate that had first been issued in 2017, then renewed for two years in July, 2019 and then for an additional year on October 28, 2021.

PROCEDURAL HISTORY

In 2017, petitioner, Robert Finlay, was issued a provisional teacher's certificate. That certificate was renewed in July, 2019. During its meeting of October 28, 2021, the New Jersey Board of Examiners renewed his provisional certificate for one year. This decision was ratified on December 16, 2021. In 2023, Mr. Finlay requested another renewal of his provisional certificate. That request was denied, and his appeal of that decision was denied during the meeting of June 29, 2023. That decision was ratified on August 4, 2023.

On August 24, 2023, Mr. Finlay emailed a Petition for Appeal to the State Department of Education's Office of Controversies & Disputes ("OCD"). After supplying proof of service on respondent the following day, on August 29, 2023, that appeal was transmitted to the Office of Administrative Law ("OAL") where it was received on September 18, 2023 for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Prior to the matter being forwarded to the OAL, on September 14, 2023, in reply to the filing, the State Board of Examiners filed a Motion to Dismiss in Lieu of Answer.

An initial conference was held on October 3, 2023 at which time, after a detailed discussion of the case, a briefing schedule was set with Mr. Finlay being given until November 8, 2023 to either find an attorney, file opposition to the Motion to Dismiss or withdraw his appeal. Since that telephone conference, Mr. Finlay has not communicated with the Court, nor did he reply to a December 14, 2023 email from respondent requesting that its Motion be considered unopposed.

Having given Mr. Finlay more than sufficient time in which to communicate with the Court and having not heard from him, the record was formally closed on April 5, 2024.

INITIAL FINDINGS OF UNDISPUTED FACT

The following **FACTS** of the case are not in dispute:

1. In September, 2017, appellant, Robert Finlay was issued a provisional Teacher of Business: Finance/Economics/Law Certificate by the State Board of Examiners in furtherance of his attempt to obtain full certification pursuant to the "Alternate Route" program. See N.J.A.C. 6A:9A-5.1 et seq.

2. Per N.J.A.C. 6A:9B-8.5(a), in July, 2019, Mr. Finlay's provisional certificate was renewed since he had "not yet completed the requirements for the standard certificate."

3. In 2021, Mr. Finlay applied for another two-year renewal of his certificate. That application was initially denied.

4. Mr. Finlay appealed that denial and at its October 28, 2021 meeting, that appeal was granted by the State Board of Examiners. That decision was formalized in an Order dated December 16, 2021. (Exhibit R-2.)

5. In 2023, appellant applied for a third two-year renewal of his provisional certificate. This application was considered during the Board's June 29, 2023 meeting and was denied by Order dated August 4, 2023. (Exhibit R-1.)

6. That decision was appealed by Mr. Finlay on August 25, 2023. (Exhibit R-3.)

7. To date, Mr. Finlay has yet to complete the requirements for a standard certificate.

APPEAL

In his appeal to the Board, Mr. Finlay wrote:

> The New Jesey (sic) Dept. of Education State Board of Examiners has denied my application for a provisional certificate "he has not demonstrated enough effort or progress towards completion of the required alternate route program in

the nearly six years since receiving his initial provisional certificate."

While I have not completed the required course work it isn't from lack of effort. When I originally began pursuing my Teacher of Business: Finance/Economics/Law certificate. I was enrolled through the Rutgers Alternate Route program. After completing Stage II I was informed by the administrators at Brookdale Community College that the Rutgers Alternate Route program was not the recognized alternate route program for this certification. At no point during this process did I have a mentor or anyone to officially guide me through the process. Everything was done by trial and error. And I admit there were many missteps by me during this process but at no point did I stop attempting to complete the process.

I did all I could to become the best teacher I could be. Whenever possible I took additional classes for professional development in order to improve my teaching abilities and expand my knowledge of the materials used for teaching my classes. I immersed myself in the daily life of Bloomfield High. Volunteering to supervise after school activities and coaching multiple sports. I developed a positive rapport with my students. During this time, I continued to receive above average observations from my Principal and Supervisor. I was recommended to be rehired without any hesitation and I was granted tenure on schedule, (which I foolishly assumed couldn't happen if I hadn't completed my alternate route requirements). My Principal and supervisor want me in the building as I complete this process.

Ultimately, I believe teaching is what I am good at and it is what I am supposed to be doing with my life. Teaching young people not just about Personal and Business Finance but teaching them about life. Sharing stories about my mistakes and missteps. Letting them know that if you fall down you get back up and succeed. Perseverence (sic) does payoff! Give me the opportunity to educate. Give me the opportunity to be a positive role model.

I have been in contact with Brookdale Community College and I'm prepared to continue the alternate route process without hesitation or delay.

(Exhibit R-3.)

MOTION

Respondent filed a Motion to Dismiss arguing that there is no legal basis to permit another renewal of appellant's provisional certificate and that same is explicitly barred by N.J.A.C. 6A:9B-8.5 et seq., which provides the Commissioner of Education no discretion in considering the application.

It is argued that the Motion to Dismiss is appropriate here since, per N.J.A.C. 6A:3-1.10, even if appellant's factual allegations are all found to be true, there is no legal basis for his appeal.

Mr. Finlay has not responded to the Motion. However, he did present argument in his initial appeal which will be reviewed below.

TIMELINE

A more visceral view of Mr. Finlay's provisional certificate history is best demonstrated by the following timeline:

September, 2017 – Issuance of two-year provisional certificate

July, 2019 – Grant of application for a first renewal of provisional certificate

Summer/Fall, 2021 – denial of application for a second renewal of provisional certificate

October 28, 2021 – Grant of application for second renewal of provisional certificate on appeal Spring, 2023 – Denial of application for a third renewal of provisional certificate

June 29, 2023 – Denial of appeal of the denial of the application for a third renewal of provisional certificate

August 25, 2023 – Appeal filed with Board of Examiners

LAW AND ANALYSIS

A Motion to Dismiss filed per N.J.A.C. 6A:3-1.5(g) is the functional equivalent of a Motion to Dismiss for Failure to State a Claim filed in civil court per R. 4:6-2(e). Graves v. State Operated Sch. Dist. of Newark & Cami Anderson, 2017 N.J. Super. Unpub. LEXIS 2417 (App Div., September 26, 2017). The Court stated the standard for the granting of same:

> When reviewing a Rule 4:6-2(e) motion, a court must determine the adequacy of the pleading and decide whether a cause of action is "suggested" by the facts. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). The court must "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)).
>
> Id. at *7.

The rules covering the renewal of provisional teaching certificates is N.J.A.C. 6A:9B-8.5, which reads as follows:

> (a) The school district may recommend a provisional teacher for renewal of the teacher's two-year provisional certificate if the candidate has not yet completed the requirements for the standard certificate within the first two years of employment, pursuant to N.J.A.C. 6A:9A-8.7.
>
> 1. A provisional teacher who meets the criteria at (a) above but is not renewed for employment within the same school district following the two-year provisional certificate may seek and accept, under the same endorsement, a position with another school district, pursuant to N.J.A.C. 6A:9B-8.4(d).

(b) Except as indicated at N.J.A.C. 6A:9B-8.8, 10, and 11[1], a candidate shall meet the following requirements to be eligible for one renewal of a provisional certificate:

1. Hold a CE or CEAS in the endorsement area required for the teaching assignment;

2. Be employed or accept an offer of employment in a position that requires an instructional certificate;

3. Complete a district mentoring program;

4. Be enrolled in or have completed a CE educator preparation program, if the candidate has a CE; and

5. Be recommended for renewal by the candidate's principal pursuant to N.J.A.C. 6A:9B-8.6.

(c) The two-year provisional certificate may be renewed twice for a maximum provisional period of six years if the candidate fulfills the renewal requirements at (b) above and one of the following criteria:

1. Holds a CE with a teacher of students with disabilities endorsement, or a CE with a bilingual/bicultural endorsement, and a CE with an endorsement appropriate to the subject or grade level to be taught; or holds a CE with an English as a second language endorsement. The duration of the CE educator preparation program and required coursework for the endorsement(s) also extends beyond the four-year provisional period; or

2. Does not receive from the school district, by July 31 of the fourth year, the annual summative rating as required for a standard certificate, pursuant to N.J.A.C. 6A:9B-8.4.

(d) A candidate issued a temporary instructional certificate, pursuant to N.J.A.C. 6A:9B-8.10, shall not be eligible for a renewal of a temporary provisional certificate in the specific endorsement area issued pursuant to N.J.A.C. 6A:9B-8.4(f)

[1] None of which apply in this instance.

It should also be noted that per N.J.A.C. 6A:9B-8.4(c):

> A provisional certificate shall last a maximum of two school years and shall expire on July 31 of the second year regardless of issuance date.

PRIOR ORDERS

December 26, 2021

After the initial denial of Mr. Finlay's second renewal application, he appealed to the State Board of Examiners. This was considered during its meeting of October 28, 2021 and the appeal was granted by Order dated December 16, 2021. The substance of the Order reads as follows;

> Finlay requests that the Board grant him the renewal so that he can finish the alternate route coursework required for standard certification. In his narrative statement to the Board, Finlay stated that when he started the alternate route program, he was required to repeat the pre-professional service course as the course he previously completed was not approved. He further stated that he did not restart the program due to personal and financial issues as well as hesitancy to restart during the COVID-19 pandemic. Finlay further stated that he is now working to complete the program at Brookdale Community College and hopes to be finished by the start of the 2022 school year.
>
> Finlay was present at the Board meeting on October 28, 2021. The Board asked Finlay when he anticipated completing the alternate route coursework and he stated he would be finished by the end of this school year in June 2022.
>
> After full consideration of Finlay's submission, the Board finds that his demonstrated progress towards completing the alternate route program despite the challenges he faced warrants the renewal of his provisional certificate for one year. As Finlay anticipates completing the program in June 2022, this will give him ample time to do so.

> *The Board's finding is limited to this particular set of facts and circumstances and is intended as a one-time only, limited issuance of the additional provisional. The Board reserves all rights and maintains all discretion regarding future requests for issuance of an additional provisional certificate beyond the express limitations in regulation(s).*
>
> [Exhibit R-2.] (Emphasis in original)

August 4, 2023

At or about the time of the expiration of the one-year extension, Mr. Finlay applied for another renewal of his provisional certificate. This application was considered by the Board during its meeting of June 29, 2023 and was formally denied by Order dated August 4, 2023. The substance of the Order reads as follows;

> Finlay was present at the meeting on June 29, 2023, but the Board had no questions of him.
>
> In December, 2021, the Board granted Finlay an additional provisional renewal beyond the limits in N.J.A.C. 6A:9B-8.5(c) because he needed time to complete the alternate route program and he anticipated completing the program in 2022. In his current request, Finlay requests an additional provisional renewal as he still has not completed the alternate route program. He admits that he procrastinated in restarting the program and offers no explanation why he was unable to complete the program within the anticipated time frame he gave to the Board when he was granted his last provisional renewal.
>
> The Board notes that Finlay was initially granted a provisional certificate in September, 2017. The Board finds that Finlay has exceeded the limits on issuance of a provisional certificate and he has not demonstrated enough effort or progress towards completion of the required alternate route program in the nearly six years since receiving his initial provisional certificate. As such, another renewal of his provisional certificate is unjustified.
>
> [Exhibit R-1.]

As detailed above, Mr. Finlay has already been granted two renewals of his provisional certificate, which, per N.J.A.C. 6A:9B-8.5, is the maximum permitted by law. Further, his provisional certificate has covered six school years (2017-18, 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23), also the maximum permitted by the Code. In its December 16, 2021 Order, the Board granted him a one-year extension of his provisional certificate. Interpreting the Order in light of N.J.A.C. 6A:9B-8.4(c), Mr. Finlay's renewed certificate was now valid through July 31, 2023, which would "give him ample time" to complete his required alternate route educational program. (Exhibit R-2.)

However, he did not complete that program and in June, 2023, he returned to the Board having had his application for a third renewal of his provisional certificate denied. This time, the Board found that he had "exceeded the limits on issuance of a provisional certificate and he has not demonstrated enough effort or progress towards completion of the required alternate route program in the nearly six years since receiving his initial provisional certificate." (Exhibit R-1.)

There is next to no case law concerning this issue. However, it was addressed in Cash v. New Jersey Dept. of Educ.; OAL Dkt. No. EDU 01325-23 (Initial Decision, July 18, 2023). In Cash, the appellant alleged that he was misinformed by his district employer regarding the necessity for completing various requirements to obtain full certification under the same alternate route program under which Mr. Finlay is seeking certification. His initial provisional certification was issued in August, 2018. After being granted an initial extension through August, 2022, his application for a second extension was denied by the Board the following month.

The Court found that despite Mr. Cash's accomplishments and the fact that he had completed many of the requirements to obtain a full certificate, he simply did not meet the requirements for a second extension. It was noted that neither the judge nor the Board "have the discretion to consider the totality of the circumstances to extend/renew his status." Id. at 5. This decision was affirmed by the Board in Cash v. New Jersey Dept. of Educ., 2023 N.J. Agen. LEXIS 422 (August 22, 2023).

Here, the factual scenario facing Mr. Finlay is even less favorable than that facing appellant in Cash, Whether he was qualified for the second extension or not, Mr. Cash at least had a viable administrative pathway to obtain it. Here, Mr. Finlay has already exhausted both of the options afforded by the Code. I agree with respondent's counsel that given the limitations on the number and duration of the extensions, even if Mr. Finlay had demonstrated good cause for an extension (and, frankly, he has not), as noted in Cash, there is "(no) discretion to consider the totality of the circumstances to extend/review his status."

Given the above, I **FIND** that Mr. Finlay is ineligible for a third extension of his provisional certificate. Ultimately, I **CONCLUDE** that given the respondent's decision to deny appellant's request for the third extension was appropriate and that no facts have been presented to demonstrate that it was unreasonable, arbitrary or capricious.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's Motion to Dismiss be and is hereby **GRANTED** and;

It is further **ORDERED** that Mr. Finlay's appeal be and is hereby **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 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.

April 9, 2024
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency: April 9, 2024

Date Mailed to Parties: April 9, 2024
sej

196-24

New Jersey Commissioner of Education

Final Decision

Patricia Wilson,

Petitioner,

v.

Board of Education of the City of Paterson,
Passaic County,
Respondent.

Synopsis

Petitioner, a non-tenured special education teacher, challenged the respondent Board's termination of her employment following notice of her dismissal on November 20, 2023. Petitioner disputed the basis for her discharge and maintained that the District defamed her character by terminating her absent notice of improper conduct or intention to end her employment in advance of her termination. Petitioner transmitted her petition of appeal on Saturday, March 2, 2024, and the petition was filed with the New Jersey Department of Education's Office of Controversies and Disputes on Monday, March 4, 2024. The Board filed a motion to dismiss in lieu of an answer on grounds that petitioner's appeal was filed out of time.

The ALJ found, *inter alia*, that: under *N.J.A.C.* 6A:3-1.3(d), a petitioner must file an appeal 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 contested case; in this matter, petitioner acknowledged she received notice of the Board's termination decision on November 20, 2023, when she was escorted from the building; that action left no doubt about the Board's employment determination; the ninety-day limitation period for the filing of an appeal flows from that notice and expired on February 21, 2024; petitioner's appeal was filed on March 4, 2024 and was indisputably late; and the circumstances of this case do not warrant relaxation of the 90-day rule. Accordingly, the ALJ granted the Board's motion to dismiss the petition.

Upon review, the Commissioner, *inter alia,* concurred with the ALJ's findings and conclusions and adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner noted that, to the extent that petitioner may have filed a grievance, it does not toll the 90-day limitations period. Accordingly, the Board's motion to dismiss was granted and petition was dismissed.

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.

196-24
OAL Dkt. No. 04145-24
Agency Dkt. No. 51-3/24

New Jersey Commissioner of Education

Final Decision

Patricia Wilson,

Petitioner,

v.

Board of Education of the City of Paterson,
Passaic County,

Respondent.

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

Petitioner was employed by the Paterson Board of Education (Board) as a special education teacher pursuant to a contract covering the time period from September 18, 2023, through June 30, 2024. Petitioner's last day of work was November 20, 2024, when she was informed by her principal that she was being terminated and was escorted from the building by school personnel. Petitioner appealed via a petition of appeal emailed on March 2, 2024, which was a Saturday; it was filed by the Office of Controversies and Disputes on March 4, 2024.

Following the Board's motion to dismiss, the Administrative Law Judge (ALJ) concluded that petitioner's appeal was due by February 21, 2024 – 90 days after her termination on November 20, 2024. The ALJ found that petitioner did not provide any excuse for her untimely

filing or any basis for relaxation of the 90-day rule. Accordingly, the ALJ granted the Board's motion to dismiss.

In her exceptions, petitioner argues that it was unfair for the ALJ to dismiss her appeal after giving her two separate hearing dates. Petitioner contends that she was not given clear direction by the PEA[1] and thought that the PEA would take further action on her behalf. Petitioner also indicates that she believes she "performed with the 90-day time at the grievance level though unknowingly."

In reply, the Board argues that petitioner had a full opportunity to respond to the Board's motion to dismiss and did not identify any procedural impropriety by the ALJ. The Board further contends that petitioner has failed to provide any explanation or excuse for her failure to timely file her petition and urges the Commissioner to adopt the Initial Decision.

Upon review, the Commissioner concurs with the ALJ that the petition of appeal was untimely pursuant to *N.J.A.C.* 6A:3-1.3. Petitioner unquestionably had notice of her termination on November 20, 2023, when she was informed of it in person and escorted from the school building. The 90-day limitations period expired on February 21, 204, and the petition was not filed until March 4, 2024. It is petitioner's obligation to comply with the filing requirements, not her union's. Furthermore, to the extent that petitioner may have filed a grievance, it does not toll the 90-day limitations period. *Giannetta v. Bd. of Educ. of Egg Harbor*, Commissioner Decision 147-05 (April 25, 2005); *Kenny v. Bd. of Educ. of the Borough of Moonachie*, EDU 9284-17, Initial Decision (Aug. 17, 2017), *adopted*, Commissioner Decision No. 286-17 (Sept. 27, 2017). Petitioner has made no demonstration of

[1] This acronym appears to refer to the Paterson teachers' union.

circumstances that would warrant the relaxation of the timely filing requirement. Finally, the Commissioner finds that petitioner was afforded the opportunity to respond to the Board's motion to dismiss, and that her opposition was considered by the ALJ in issuing the Initial Decision, such that petitioner's argument regarding any "unfairness" is unavailing.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2024
Date of Mailing: May 16, 2024

[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
DISMISSAL
OAL DKT. NO. EDU 04145-24
AGENCY DKT. NO. 51-3/24

PATRICIA WILSON,
Petitioner,
v.
CITY OF PATERSON, BOARD OF EDUCATION, PASSAIC COUNTY
Respondent.

Patricia Wilson, appearing pro se

Kyle J. Trent, Esq., for respondent (Apruzze, McDermott, Mastro & Murphy, P.C., attorneys)

Record Closed: April 8, 2024 Decided: April 10, 2024

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

On Saturday, March 2, 2024, petitioner challenged respondent's termination of her employment following notice of her dismissal on November 20, 2023. Is the claim

time-barred? Yes. Under N.J.A.C. 6A:3-1.3(d), a petitioner must file an appeal "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 [case]." Ibid.

PROCEDURAL HISTORY

By email dated March 2, 2024, Patricia Wilson filed a Petition with the Commissioner of the Department of Education (Commissioner) contesting the Paterson Public School District's (District or Board) termination of her position as a special education teacher at school number five within the District. Wilson disputes the basis for her discharge and maintains that the District defamed her character by terminating her absent notice of improper conduct or an intention to terminate her job before it did. Further, Wilson disagrees with the principal's leadership and asserts that he was manipulative and micromanaged her.

In response to the petition, the Board filed a Motion to Dismiss in place of an Answer on March 22, 2024, arguing that Wilson filed her petition out of time. The Commissioner opted not to address respondent's motion to dismiss and transmitted this case to the OAL. On March 26, 2023, the OAL filed the contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On April, 1, 2024, this tribunal requested that petitioner submit her opposition to the motion by April 11, 2024. On April 2, 2024, Wilson supplied her opposition. On April 8, 2024, the Board replied, and I closed the record.

FINDINGS OF FACT

Based on the petition and its supporting documents, I **FIND** the following as **FACT** for purposes of this motion only:

The District employed Patricia Wilson as a special education teacher through an employment contract that Wilson executed on September 14, 2023. The District expected Wilson to commence working on September 18, 2023, and end her teaching service on June 30, 2024. The contract did not guarantee employment; either party could terminate the position.

Wilson supplied several letters of recommendation in connection with her application for employment. She has been an educator for more than forty years and has a master's degree in special education and a doctoral degree in psychology.

On October 16, 2023, the District notified Wilson that she had been on unapproved leave since October 4, 2023, and provided Wilson with a blank leave form.

On October 17, 2023, Wilson sought leave under the New Jersey Family Leave and Medical Leave Act from October 5, 2023, through October 17, 2023. The District approved her request.

On November 14, 2023, the District notified Wilson by mail that it terminated Wilson, effective November 15, 2023, for "documented instructional shortcomings witnessed by [Wilson's] principal."

Wilson supplied a note dated November 14, 2023, from a physician's office stating that Wilson could not work until November 20, 2023.

On November 20, 2023, Wilson went to work and spoke with her principal, Dr. Ventura. Dr. Ventura advised Wilson that the District was terminating her employment

because "things were not working out" and "her classroom function[ed] better when she was not there." Dr. Ventura also told Wilson that during an official observation of her classroom, "she placed a child in danger." Wilson disputes this assertion and seeks to reverse her termination through this petition.

Wilson's last day of work at the District was November 20, 2023, and school personnel escorted her from the building that day.

From notification of her termination on November 20, 2023, ninety days is February 18, 2024. However, February 18, 2024, is a Saturday, making the next business day February 21, 2024, given the Presidents' Day holiday on February 20, 2024. Yet, Wilson's filing date was March 2, 2024. Notably, March 2, 2024, is a Saturday, and the next business day is March 4, 2024. Still, I **FIND** that Wilson filed her petition more than ninety days after receiving notification of her job termination.

Although this tribunal allowed Wilson to respond to the motion concerning the untimeliness of her petition, she does not explain or provide any excuse for her untimely filing or circumstances that precluded the prompt filing of her petition. Instead, she only reiterates that her termination requires reversal.

DISCUSSION AND CONCLUSIONS OF LAW

A motion to dismiss under the administrative rule governing education cases, N.J.A.C. 6A:3-1.5(g), is the functional equivalent of a motion to dismiss for failure to state a claim in the New Jersey Superior Court under R. 4:6-2(e). Graves v. State Operated Sch. Dist. of Newark & Cami Anderson, 2017 N.J. Super. Unpub. LEXIS 2417. In ruling on a motion to dismiss,

> The judge considers whether all the evidence together with all legitimate inferences therefrom could sustain a judgment in favor of the party opposing the motion. The judge is not concerned with weight, worth, nature, or extent of the evidence. The judge must accept all the evidence supporting

> the party defending against the motion and accord that party the benefit of all inferences that can reasonably and legitimately be deduced therefrom. If reasonable minds could differ, the motion must be denied.
>
> [37 New Jersey Practice, Administrative Law and Practice § 5.19, at 259-60 (Steven Lefelt, Anthony Miragliotta & Patricia Prunty) (2d ed. 2000)];

See also Graves, 2017 N.J. Super. Unpub. LEXIS 2417, at 7 (concluding that a court must determine the adequacy of the pleading and decide whether a cause of action is "suggested" by the facts when reviewing a Rule 4:6-2(e) motion) (internal citations omitted).

Timeliness

Under N.J.A.C. 6A:3-1.3(d), a party must file an appeal with the Commissioner of Education "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 "provides a measure of repose, an essential element in the proper and efficient administration of the school laws," giving school districts the "security of knowing" that an aggrieved party cannot challenge its actions after ninety days. Kaprow v. Board of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993).

Courts strictly construe and consistently apply the ninety-day limitation period. Kaprow, 131 N.J. at 588-89; Nissman v. Bd. of Educ., 272 N.J. Super 373, 380-81, (App. Div. 1994); Riely v. Bd. of Educ., 173 N.J. Super. 109, 112-14, (App. Div. 1980). This period begins to run when the petitioner "learn[s] from the Local Board the existence of that state of facts that would enable him to file a timely claim." Kaprow, 131 N.J. at 588-89. Indeed, the "notice of a final order, ruling or other action" is "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. Notably, a petitioner need

not receive official and formal notification that they may have a valid claim to begin the ninety-day period. Id. at 588.

Even accepting Wilson's position that the District improperly terminated her employment, she needed to file a petition challenging that determination timely. Undeniably, Wilson acknowledges she received notice of that decision on November 20, 2023. She was escorted from the building, leaving no doubt about the District's conclusion. The ninety-day limitation flows from that notice and expires on February 21, 2024. Indeed, I found that her petition was indisputably late.

Still, the Commissioner may exercise her authority under N.J.A.C. 6A:3-1.1.6 to relax the application of the 90-day rule "where strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice." Ibid. Yet, exceptions to the ninety-day rule are only appropriate where compelling circumstances exist to justify the enlargement or relaxation of the time limit. See Kaprow, 131 N.J. at 590; DeMaio v. New Providence Bd. of Educ., 96 N.J.A.R.2d (EDU) 449, 453.

Wilson offers no circumstances, let alone compelling ones, to justify her lack of diligence here.

Further, this extraordinary relief is reserved only for situations where the party presents a substantial constitutional issue or a matter of significant public interest beyond concern only to the parties. Portee v. Bd. of Educ. of Newark, 94 N.J.A.R.2d (EDU) 381, 384; Wise v. Trenton Bd. of Educ., EDU 160-00, Initial Decision (July 25, 2000), adopted, Comm'r Decision (September 11, 2000), aff'd, St. Bd. (January 3, 2001), http://njlaw.rutgers.edu/collections/oal/.

Notably, petitioner's claim has only personal significance, making relaxation of the rule even less appropriate. If the Commissioner relaxed the filing timeframe for every harsh result, that action would nullify the rule's salutary public policy of encouraging prompt resolution of disputes. Pacio v. Bd. of Educ. of Lakeland Reg. High

Sch. Dist., 1989 S.L.D. 2060 (Comm'r July 29, 1989). Thus, I **CONCLUDE** that petitioner does not present exceptional circumstances or a compelling reason that warrant relaxation of the ninety-day rule and that she filed her petition beyond the required time frame.

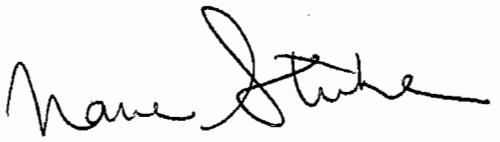
ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Board's motion to dismiss be **GRANTED.** I further **ORDER** that the Petition of Appeal be and is hereby **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 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.



April 10, 2024

DATE

NANCI G. STOKES, ALJ

Date Received at Agency: April 10, 2024

Date Mailed to Parties: April 10, 2024

ljb

200-24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Jesenia Chester, Board of Education of the Township of South Brunswick, Middlesex County

Synopsis

In this matter on remand, the petitioning Board alleged that respondent – a non-tenured teacher – resigned her position on inadequate notice and sought to suspend her teaching certificate for unprofessional conduct pursuant to *N.J.S.A.* 18A:26-10. Respondent taught kindergarten in a South Brunswick school during the 2021-2022 school year and the Board asserted that her contract was renewed at a Board meeting on May 12, 2022. However, on August 4, 2022, respondent sent the District an email resigning her position effective September 1, 2022 and did not return to her position for the start of the new school year; she asserted that she had never received or signed a contract of employment for the 2022-2023 school year. After a hearing in the Office of Administrative Law, the ALJ concluded that respondent had engaged in unprofessional conduct by failing to give the Board 60 days' notice of her resignation. Following review by the Commissioner of Education, the matter was remanded to the OAL for further fact finding as the record was devoid of information needed to reach a final determination in the case.

On remand, the ALJ found, *inter alia*, that: the mandated notice requirement set forth in *N.J.S.A.* 18A:28-8 is applicable to tenured staff members, but does not apply here given respondent's non-tenured status; the notice requirement for non-tenured individuals is governed by *N.J.S.A.* 18A:26-10, which authorizes the suspension of a teaching certificate "for wrongful cessation of performance of duties"; in this situation, respondent resigned after completion of her teaching duties for the 2021-2022 school year and never received or signed a written contract to continue her employment for the 2022-2023 school year; while respondent did sign a written contract for the 2021-2022 school year that included a 60 day notice provision, no such contract existed regarding her employment during the 2022-2023 school year as she never accepted an offer of continued employment in writing; consequently, respondent was not under contract when she submitted her resignation on August 4, 2022, as her 2021-2022 employment contract had expired at the end of June. The evidence on remand failed to demonstrate that respondent is guilty of unprofessional conduct within the meaning of *N.J.S.A.* 18A:26-10 so as to justify the Commissioner's suspension of respondent's certificate. The ALJ concluded that no express contract existed between the parties regarding respondent's employment for the 2022-2023 school year; accordingly, the Board's request to suspend respondent's teaching certificate was denied.

Upon review, the Commissioner adopted the April 2024 Initial Decision as the final decision in this matter. Accordingly, the Order to Show Cause to suspend Jesenia Chester's teaching certificates was dismissed.

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.

200-24

OAL Dkt. No. EDU 09886-23 (EDU 10542-22 on remand)
Agency Dkt. No. 284-10/22

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Jesenia Chester, Board of Education of the Township of South Brunswick, Middlesex County.

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.

Respondent Jesenia Chester was previously employed by petitioner, Board of Education of the Township of South Brunswick (Board), as a nontenured teacher. The Board filed an Order to Show Cause to suspend respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10, which provides that "[a]ny teaching staff member employed by a board of education . . . who shall, without the consent of the board . . . cease to perform his duties before the expiration of the term of his employment, shall be deemed guilty of unprofessional conduct, and the commissioner may, upon receiving notice thereof, suspend his certificates for a period not exceeding one year." The Order to Show Cause alleged that respondent had committed unprofessional conduct by resigning from her teaching position without providing the Board with sixty days' notice.

In August 2023, upon review of the parties' written submissions, the Administrative Law Judge (ALJ) issued an Initial Decision granting the Order to Show Cause. In September 2023, the

Commissioner remanded the matter to the OAL for further fact-finding regarding respondent's acceptance of the Board's offer of employment and, if such acceptance was given, the terms of the employment contract.

In April 2024, the ALJ issued an Initial Decision after remand recommending that the Order to Show Cause be dismissed because: (1) no written contract existed regarding respondent's employment as a teacher for the 2022-2023 school year; (2) respondent never accepted the Board's offer of employment for the 2022-2023 school year in writing; (3) respondent was not under contract when she submitted her resignation on August 4, 2022, as her 2021-2022 employment contract had expired; and (4) the evidence failed to demonstrate that respondent is guilty of unprofessional conduct within the meaning of *N.J.S.A.* 18A:26-10.

Upon review, the Commissioner adopts the April 2024 Initial Decision as the final decision in this matter. As a nontenured teacher, respondent's notice obligations are established by the terms of her employment contract. *In re Suspension of Teaching Certificates of Melissa Van Pelt, Gray Charter Sch., Newark, Essex Cnty.*, Commissioner Decision No. 170-09 at 3 (May 29, 2009), *aff'd*, 414 *N.J. Super.* 440 (App. Div. 2010). *N.J.S.A.* 18A:27-10 requires boards of education to provide nontenured teaching staff members with a written offer of a contract for employment, or a written notice that employment will not be offered, on or before May 15 of each year. *N.J.S.A.* 18A:27-12 requires teaching staff members to accept employment offers in writing on or before June 1. If they do not accept the offers in writing, then their employment is not renewed.

Here, the Board did not provide respondent with a written employment contract for the 2022-2023 school year. Moreover, respondent did not accept the Board's offer of employment for the 2022-2023 school year in writing. Because she was not under contract at the time of her

resignation, respondent had no notice obligations to the Board. Therefore, respondent did not violate *N.J.S.A.* 18A:26-10 as she did not cease to perform her duties before the expiration of her employment term.

Accordingly, the Order to Show Cause to suspend Jesenia Chester's teaching certificates is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2024
Date of Mailing: May 28, 2024

[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 09886-23
AGENCY DKT. NO. 284-10/22
(EDU 10542-22 On Remand)

IN RE SUSPENSION OF THE TEACHING CERTIFICATE OF JESENIA CHESTER.

Marie-Lawrence Fabian, Esq., for petitioner Board of Education of the Township of South Brunswick (Porzio, Bromberg & Newman, attorneys)

Jesenia Chester, respondent, pro se

Record Closed: February 28, 2024 Decided: April 15, 2024

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Board of Education of the Township of South Brunswick (the Board) seeks an order suspending the teaching certificate of respondent, Jesenia Chester (respondent, Ms. Chester), for a period of one year based upon the allegation that she resigned from her teaching position with inadequate notice. At the request of petitioner, the Commissioner of Education issued an Order to Show Cause on October 7, 2022, ordering respondent to show cause why her teaching certificate should not be suspended for unprofessional conduct pursuant to N.J.S.A. 18A:26-10. Respondent filed an Answer

on November 14, 2022, and the matter was transmitted to the Office of Administrative Law on November 28, 2022, for determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The parties requested that the matter be decided in a "summary fashion" without a hearing based on the papers that were submitted.

An Initial Decision was issued by the undersigned on August 2, 2023. (C-1.) On September 14, 2023, the Commissioner issued a decision remanding the case to the OAL for additional fact finding. (C-2.) On December 7, 2023, a status conference was held with the parties, and a scheduling order was made for the submission of briefs. Upon receipt of the briefs, the record closed on February 28, 2024.

ISSUES PRESENTED ON REMAND

The remand decision presents the following issues for adjudication:

1. Does the contract under which the respondent was employed for the 2021–2022 school year contain a sixty-day-notice provision?

2. Is there a written acceptance of the Board's offer of continued employment following the May 12, 2022, Board meeting?

FINDINGS OF FACT

The factual findings of the Initial Decision in EDU 10542-22 are incorporated herein by reference. The petitioner's brief and affidavit of Kimberly Maloy-White, along with the respondent's letter brief submitted, reveal the following additional uncontroverted facts, and I **FIND**:

On August 26, 2021, the Board entered into an employment contract (contract) with the respondent. (P-A.) The respondent signed the contract on September 25, 2021. (Ibid.) There is a notice paragraph in the contract that states: "It is hereby agreed by the parties hereto that this contract may at any time be terminated by either party to the other 60 days' notice in writing of intension to terminate the same . . . ." (Ibid.)

On or about April 23, 2022, the respondent acknowledged receipt of the Summative Performance Report of Practice Standards (Report). (P-B.) At the end of this Report, it states, "Ms. Chester will develop the Independent Goal in her Professional Development Plan (PDP) for next year in collaboration with her supervisor . . . ." (Ibid.)

On May 13, 2022, the Board notified the respondent in a memorandum that she had been reappointed to the position of teacher at Constable Elementary School. The effective date was September 1, 2022, continuing until June 30, 2023. (See P-C.)

On June 20, 2022, the respondent acknowledged the Teacher/Education Specialist Composite Score Report. (P-D.) In this report, under the paragraph titled Recommendation, it states, "Recommended for continued employment." (Ibid.)

Arguments of the Parties

The petitioner argues that the respondent signed the summative evaluation, which informed her that an offer of employment would be forthcoming. (Pet'r's Br. at 2.) In addition, in the memo dated May 13, 2022, the respondent was informed that she was recommended for continued employment during the 2022–2023 school year. (Ibid.)

The petitioner further alleges that "[t]he memo ends with the following: If you have any questions, please do not hesitate to contact me." (Ibid.) The respondent did not contact the petitioner and did not inform the Board that "she might not return, thereby creating the expectation that she would return to teach the next year." (Pet'r's Br. at 3.) The petitioner further argues that respondent "accepted the renewal contract, but then decided to resign on short notice. To find that Ms. Chester did not accept such employment is to elevate form over substance." (Ibid.)

Respondent argues that petitioner's exhibit D states, "under the heading of reappointment of non-tenured professional personnel," that the contract runs from September 1, 2022, through June 30, 2023. (Resp't's Br. at 2.) Thus, "without signing of a contract, no salary, benefits, classroom designation discussion, I am under the

impression that I am not under any contract at the time of placing my resignation on August 4, 2022 and therefore within my rights to resign at any time." (Id. at 2–3.)

ANALYSIS AND CONCLUSIONS OF LAW

Pursuant to N.J.S.A. 18A:28-8, a "teaching staff member, under tenure of service, desiring to relinquish his position shall give the employing board of education at least 60 days written notice of his intention, unless the board shall approve of a release on shorter notice and if he fails to give such notice he shall be deemed guilty of unprofessional conduct, and the commissioner may suspend his certificate for not more than one year." (Emphasis added.) By its express terms, this mandated sixty-day-notice requirement only applies to tenured teaching staff members. Carrelle v. Bloomfield Twp. Bd. of Educ., 2004 N.J. AGEN LEXIS 1283 (Feb. 9, 2004). It is undisputed that respondent had been employed by the Board for only one year at the time that she provided notice of her intent not to return to the South Brunswick School District. Accordingly, the mandated notice requirement set forth in N.J.S.A. 18A:28-8 is not applicable to the present situation given respondent's non-tenured status.

The notice requirement for non-tenured individuals, such as respondent, is governed by N.J.S.A. 18A:26-10, which authorizes the suspension of a teaching certificate "for wrongful cessation of performance of duties." The statute directs, in pertinent part:

> Any teaching staff member employed by a board of education . . . who shall, without the consent of the board . . . cease to perform his duties before the expiration of the term of his employment, shall be deemed guilty of unprofessional conduct, and the commissioner may . . . suspend his certificate for a period not exceeding one year.
>
> [N.J.S.A. 18A:26-10 (emphasis added).]

See also N.J.A.C. 6A:9-17.9. The underlying purpose of N.J.S.A. 18A:26-10 is "to provide notice to the school so that a suitable replacement can be hired without adversely

impacting students." Penns Grove-Carneys Point Bd. of Educ. v. Leinen, 94 N.J.A.R.2d (EDU) 405, 407.

The Commissioner has recognized that the language of N.J.S.A. 18A:26-10 "is clear and explicit as to the requisite conditions for a cause of action to arise under its terms, namely, 1) a teaching staff member ceases to perform his [or her] duties before the expiration of the term of his [or her] employment, and 2) the board does not consent to the teaching staff member's action." In re Suspension of the Teaching Certificate of Fesolowich, 2006 N.J. AGEN LEXIS 915 (Sept. 14, 2006). The Commissioner has further explained that "[i]t is well-grounded in education law that determination of the sufficiency of a term of notice pursuant to this statute is dictated by the terms of the parties' employment contract and any resignation or termination must be in accordance with the terms of such agreement." In re Suspension of the Teaching Certificate of Van Pelt, 2009 N.J. AGEN LEXIS 1232 (May 29, 2009), aff'd, 414 N.J. Super. 440 (App. Div. 2010); Carrelle, 2004 N.J. AGEN LEXIS 1283 (Feb. 9, 2004). In other words, N.J.S.A. 18A:26-10 requires non-tenured teachers to abide by whatever notice provision is contained in their employment contracts.

A non-tenured teacher who violates the notice/termination requirements outlined in his or her contract of employment will generally be found to be guilty of "unprofessional conduct" within the intendment of N.J.S.A. 18A:26-10, warranting the suspension of the teacher's certificate. See In re Suspension of the Teaching Certificate of Creekmur, 2011 N.J. AGEN LEXIS 624 (Nov. 21, 2011), adopted, 2012 N.J. AGEN LEXIS 600 (Jan. 4, 2012); In re Suspension of the Teaching Certificate of Ponti, 2010 N.J. AGEN LEXIS 103 (Feb. 18, 2010), adopted, 2011 N.J. AGEN LEXIS 264 (May 12, 2010), aff'd, 2011 N.J. Super. Unpub. LEXIS 1105 (App. Div. May 3, 2011); In re Suspension of the Teaching Certificate of Orban, 2009 N.J. AGEN LEXIS 296 (May 13, 2009), adopted, 2009 N.J. AGEN LEXIS 729 (June 11, 2009); In re Suspension of the Teaching Certificate of Stokes, 2009 N.J. AGEN LEXIS 316 (June 2, 2009), adopted, 2009 N.J. AGEN LEXIS 655 (July 15, 2009), aff'd, 2010 N.J. Super. Unpub. LEXIS 1776 (App. Div. July 27, 2010); In re Suspension of the Teaching Certificate of Van Pelt, 2009 N.J. AGEN LEXIS 237 (April 14, 2009), adopted, 2009 N.J. AGEN LEXIS 1232 (May 29, 2009), aff'd, 414 N.J. Super.

440 (App. Div. 2010); Borough of Alpine Bd. of Educ. v. Yuz, 2008 N.J. AGEN LEXIS 633 (July 17, 2008), adopted, 2008 N.J. AGEN LEXIS 1178 (Sept. 23, 2008).

The above cases, however, are markedly distinguishable from the present matter. In each of those cases, the teacher had executed a contract of employment agreeing to teach for a specified term, resigned before the expiration of his or her contract, and failed to comply with the termination provisions of his or her employment contract. Given these facts, each teacher "cease[d] to perform his [or her] duties before the expiration of the term of his [or her] employment," amounting to "unprofessional conduct," and resulting in the suspension of the teacher's certificate. N.J.S.A. 18A:26-10; see In re Suspension of the Teaching Certificates of Walker, 2011 N.J. AGEN LEXIS 526 (Oct. 5, 2011), adopted, 2011 N.J. AGEN LEXIS 874 (Nov. 10, 2011) (holding that the respondent's employment contract created two separate terms of employment, and respondent did not cease to perform her duties before the expiration of the term of her employment in violation of N.J.S.A. 18A:26-10 by resigning with two weeks' notice during her probationary period).

Also, in In the Matter of the Suspension of the Teaching Certificate of Carreno, 2012 N.J. AGEN LEXIS 226 (May 3, 2012), adopted, Comm'r (June 14, 2012), https://www.nj.gov/education/legal/commissioner/2012/jun/239-12.pdf, the respondent worked for the Bergen County Technical School (BCTS) from September 1, 2009, to June 30, 2010, and she received a salary, pension contributions, and other benefits in the contract of employment she had entered into for the 2009–2010 school year. The respondent had received a contract of employment in early 2010. The term of that contract was for the 2010–2011 school year. The respondent did not sign the contract, and on August 31, 2010, the respondent sent an email thanking the school for the opportunity, but stating that due to personal financial circumstances, she had accepted another position elsewhere. In accepting the respondent's position, the Commissioner stated:

> N.J.S.A. 18A:27-11 explains:
>
> > Should any board of education fail to give to any nontenured teaching staff member either an offer of contract for employment for the next succeeding year or

> a notice that such employment will not be offered, all within the time and in the manner provided by this act [i.e., May 15], then said board of education shall be deemed to have **offered** to that teaching staff member continued employment for the next succeeding school year upon the same terms and conditions but with such increases in salary as may be required by law or policies of the board of education.
>
> [Emphasis added.]

The Commissioner went on to state:

> In other words, a nontenured employee may regard the absence of either a contract renewal letter or a nonrenewal letter as tantamount to an "offer" of employment. However, there is nothing in N.J.S.A. 18A:27-11 that requires the nontenured teacher to accept the offer. In the present case, respondent did not accept the implied offer, and petitioner waited until August to address the issue, i.e., by sending respondent a contract to sign.
>
> The only express statutory deadline for the acceptance—by nontenured teachers—of employment offers can be found in N.J.S.A. 18A:27-12. That statute requires that those nontenured employees who wish to accept employment offered to them on or before May 15, must accept in writing by June 1. It appears undisputed that respondent did not do so. Thus, even acknowledging that the absence of a nonrenewal letter constituted an offer of employment to respondent, the fact remains that she did not timely accept said offer. Petitioner's expectation that she would return to teach in the next school year was consequently unwarranted. Further, in the absence of a contract, respondent was not obligated to give sixty days' notice of her decision not to return.
>
> [Ibid.]

Here the facts are similar to those in Carreno, 2012 N.J. AGEN LEXIS 226 (May 3, 2012), adopted, Comm'r (June 14, 2012), https://www.nj.gov/education/legal/commissioner/2012/jun/239-12.pdf, except no contract was sent to the respondent at the time she had submitted her resignation. In

fact, in the case at bar, the respondent notified the Board on August 4, 2022, of her resignation. In Carreno, the respondent had received a contract but never signed it and notified the BCTS of her resignation on August 31, 2010, one day before the 2010–2011 school year was set to begin. In the current matter, respondent argues that she was under no contract at the time she submitted her letter of resignation because she did not receive or sign a contract. There is no dispute that she was offered employment. However, the determination of whether respondent provided sufficient notice to the Board pursuant to N.J.S.A. 18A:26-10 "is dictated by the terms of the parties' employment contract, and any resignation or termination must be in accordance with the terms of such agreement." Van Pelt, 2009 N.J. AGEN LEXIS 1232 at *4 (May 29, 2009). A non-tenured teacher will be deemed guilty of "unprofessional conduct" within the meaning of N.J.S.A. 18A:26-10 if the teacher fails to comply with the termination/notice requirements in his or her contract of employment. However, pursuant to N.J.S.A. 18A:27-12:

> If the teaching staff member desires to accept such employment he shall notify the board of education of such acceptance, in writing, on or before June 1, in which event such employment shall continue as provided for herein. In the absence of such notice of acceptance the provisions of this article shall no longer be applicable.

I **CONCLUDE** that no express contract existed between the parties regarding respondent's employment as a teacher for the 2022–2023 school year. Petitioner did not send a contract to the respondent. The petitioner admitted this would not be done until after their Board meeting on August 25, 2022. The petitioner further acknowledged that because the respondent had submitted a resignation on August 4, 2022, it would be approved at the same Board meeting on August 25, 2022. While there were various notices of employment for the 2022–2023 school year (i.e., Summative Performance Report of Practice Standards, a memorandum dated May 13, 2022, Education Composite Score Report), the record is bereft of evidence that the Board had provided respondent with a written offer or a contract for employment for the 2022–2023 school year that the respondent accepted. See N.J.S.A. 18A:27-10; N.J.S.A. 18A:27-12. Respondent, in her certification in the initial decision, did admit that she may have said, "thank you for the opportunity"; however, there was nothing in writing that indicated that this was said or that

this was a written acceptance of the contract. See In re Chester, 2023 N.J. AGEN LEXIS 579 (Aug. 2, 2023). (C-1.) Furthermore, as the Commissioner pointed out in Carreno, https://www.nj.gov/education/legal/commissioner/2012/jun/239-12.pdf, and is applicable in this matter:

> Thus, even acknowledging that the absence of a nonrenewal letter constituted an offer of employment to respondent, the fact remains that she did not timely accept said offer. Petitioner's expectation that she would return to teach in the next school year was consequently unwarranted. Further, in the absence of a contract, respondent was not obligated to give sixty days' notice of her decision not to return.

I **CONCLUDE** that the respondent did not cease to perform her duties before the expiration of the term of her employment because she tendered her resignation after her 2021–2022 employment contract had expired and before an employment contract existed between the parties for the next school year. I **CONCLUDE** that the evidence fails to demonstrate that respondent is guilty of unprofessional conduct within the meaning of N.J.S.A. 18A:26-10 so as to justify the Commissioner's suspension of her teaching certificate. Although I recognize that the respondent's departure may have placed the Board at a disadvantage of not having a teacher, the statute makes clear that a non-tenured employee's professional obligations are those established by the "term of employment" agreed upon by the parties and not by any intrinsic notion of professionalism. Walker, 2011 N.J. AGEN LEXIS 526 at *13 (Oct. 5, 2001). If the Board wanted to impose a commitment upon the respondent to teach during the 2022–2023 school year, it should have done so by requiring her to take action in writing to either accept or decline a written offer or a contract of employment before August 2022.

ORDER

Based on the foregoing, it is **ORDERED** that the Board's request that the Commissioner suspends the teaching certificate of Jesenia Chester pursuant to N.J.S.A. 18A:28-8 and/or N.J.S.A. 18A:26-10 is **DENIED**, and that this matter is hereby **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 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, P.O. 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.

April 15, 2024
DATE

JOAN M. BURKE, ALJ

Date Received at Agency: April 15, 2024

Date Mailed to Parties: April 15, 2024

APPENDIX

WITNESSES

For Petitioner

None

For Respondent

None

EXHIBITS

For Petitioner

Petitioner's Brief with the Affidavit of Kimberly Maloy-White, along with Exhibits P-A through P-G

For Respondent

Respondent's Brief

Judge's Exhibits

C-1 Initial Decision, EDU 10542-22

C-2 Commissioner's Decision, EDU 10542-22

201-24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the
Teaching Certificate of Helene Nguessan,
TEAM Academy Charter School, Essex County.

Synopsis

In this matter on remand, petitioner TEAM Academy Charter School (TEAM) sought to suspend respondent's teaching certificate pursuant to *N.J.S.A.* 18A:26-10, alleging that she resigned from her teaching position without providing sixty days' notice as was required under her employment contract. Following a hearing in the Office of Administrative Law (OAL), the ALJ issued an Initial Decision in August 2023 concluding that the respondent's certificate should not be suspended based on findings of fact that indicated TEAM had terminated respondent's employment via email dated September 2, 2022, prior to the end of the sixty-day notice period. Following review by the Commissioner of Education, the matter was remanded to the OAL to resolve an evidentiary issue regarding the September 2, 2022, email and to resolve the related factual dispute concerning whether petitioner did in fact terminate respondent's employment on September 2, 2022.

On remand, the ALJ, *inter alia*, incorporated findings from her August 2023 Initial Decision: respondent was in her third year as a kindergarten teacher with TEAM when she was told she would serve in the position of Kindergarten Grade Level Chair for the following school year; the annual contract she received and signed for the 2022-2023 school year was for the position of kindergarten teacher but did not mention the Grade Level Chair title; the employment contract included a 60 day notice clause; respondent submitted a letter of resignation on August 3, 2022, but – following a conversation with Human Resources – agreed to work through the end of the 60 day notice period in the position of enrichment teacher; however, respondent became frustrated with how she was treated after this change and began having stress-related health issues; on September 2, 2022, respondent went to a doctor who wrote a letter stating that she was experiencing work-related stress and would need additional time off; on the same day, respondent claims she received an email terminating her employment with TEAM; she later received an order to show cause why her teaching certificate should not be suspended for unbecoming conduct for not continuing to teach until the end of the 60 day notice period. On remand, the ALJ clarified that her determination that TEAM had terminated respondent was based on testimony from TEAM's employee relations manager, who confirmed that respondent had been terminated by TEAM on September 2, 2022. Accordingly, the ALJ concluded that respondent did not cease to perform her duties before the expiration of the sixty-day notice period and denied TEAM's request to suspend her teaching certificate.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ that, given the unique circumstances in this case, respondent did not violate *N.J.S.A.* 18A:26-10 by failing to report to work through October 3, 2022, as TEAM had terminated her employment on September 2, 2022. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, with modification to disallow the email evidence that was never entered into the record.

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.

201-24

OAL Dkt. No. EDU 4392-24 (EDU 10384-22 on remand)
Agency Dkt. No. 286-10/22

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificate of Helene Nguessan, TEAM Academy Charter School, Essex County

The record of this matter, the June 1, 2023, hearing transcript, the Initial Decisions of the Office of Administrative Law (OAL), the exceptions filed by petitioner, TEAM Academy Charter School, Inc., pursuant to *N.J.A.C.* 1:1-18.4, and the reply filed by respondent, Helene Nguessan, have been reviewed and considered.

By way of background, petitioner initiated this matter to suspend respondent's teaching certificate pursuant to *N.J.S.A.* 18A:26-10, alleging that she resigned from her teaching position without providing sixty days' notice as was required under her employment contract. *N.J.S.A.* 18A:26-10 provides that "[a]ny teaching staff member employed by a board of education . . . who shall, without the consent of the board . . . cease to perform his duties before the expiration of the term of his employment, shall be deemed guilty of unprofessional conduct, and the commissioner may, upon receiving notice thereof, suspend his certificate for a period not exceeding one year."

Following a contested hearing, the Administrative Law Judge (ALJ) issued an Initial Decision on August 25, 2023, wherein she rendered factual findings and concluded that

respondent's certificate should not be suspended. The ALJ reasoned that respondent did not cease to perform her duties prior to the expiration of the sixty-day notice period on October 3, 2022, in violation of *N.J.S.A.* 18A:26-10 because: (1) on September 2, 2022, respondent's doctor determined that she could not return to work due to a stress-related issue; and (2) on that same day, after receiving a note from respondent's doctor, petitioner terminated her employment.

In November 2023, the Commissioner remanded the matter to the OAL to resolve an evidentiary issue regarding a September 2, 2022, email referenced in the ALJ's Initial Decision, and to resolve a related factual dispute concerning whether petitioner terminated respondent's employment on September 2, 2022. The Commissioner directed the ALJ to clarify whether emails dated September 2, 2022, and/or September 20, 2022, were moved into evidence, and whether there was an alternative evidentiary basis for the finding that petitioner terminated respondent on September 2, 2022 (e.g., witness testimony), independent of any emails from petitioner to respondent. At that time, the Commissioner had not yet been provided with a copy of the June 1, 2023, hearing transcript.[1]

In an Initial Decision filed April 10, 2024, in response to the remand, the ALJ clarified that she relied upon hearing testimony from Dana Kerrihard, Employee Relations Manager, to support her conclusion that petitioner terminated respondent's employment on September 2, 2022. However, the ALJ did not provide any clarification regarding the emails. Because those emails were not part of the hearing record, the Commissioner rejects any findings made by the ALJ in her August 25, 2023, Initial Decision with respect to same.

[1] Petitioner provided the Commissioner with a copy of the June 1, 2023, hearing transcript in April 2024.

In their exceptions, petitioner argues that the Commissioner should reject the ALJ's Initial Decisions and takes exception to the following findings of fact made by the ALJ: (1) TEAM Academy "owns KIPP Upper Roseville School (KIRA)"; (2) respondent "did not receive communications" from TEAM administration during her notice period; (3) respondent's "schedule was not set"; (4) respondent had "physical problems" during her notice period; and (5) respondent "received an email from [TEAM] dated September 2, 2022." Petitioner's Exceptions, at 6-16.

Petitioner also takes exception to the ALJ's legal conclusions and asserts they are incorrect because respondent abandoned her teaching position on September 2, 2022, prior to the conclusion of the sixty-day notice period, thereby violating her employment contract and *N.J.S.A.* 18A:26-10. Petitioner denies that it terminated respondent and claims that the ALJ mischaracterized Kerrihard's testimony in that regard. Petitioner emphasizes that as of August 30, 2022, respondent had already notified Kerrihard via email that she only intended to work through the end of that week—i.e., until September 2, 2022.

In reply, respondent contends that the ALJ's decisions should be adopted. Citing Kerrihard's testimony, respondent maintains that her employment was terminated by petitioner on September 2, 2022, before the sixty-day notice period expired. Respondent asserts that the doctor's note stating that she could not return to work was admitted into evidence at the OAL hearing without objection from petitioner. Additionally, respondent contends that the Commissioner lacks jurisdiction to act against her credentials because "[t]here is no evidence that TEAM is a legally authorized board of education under the statute

nor an approved private school for the disabled," and that her May 17, 2022, employment contract is not legally enforceable. Respondent's Reply to Exceptions, pp. 8-10.

As previously stated, the Commissioner agrees with petitioner that any factual findings made by the ALJ in her August 25, 2023, Initial Decision regarding an email dated September 2, 2022, are rejected, as that email is not part of the record. As for the other factual findings disputed by petitioner, the Commissioner finds that they are adequately supported by the record. Kerrihard's hearing testimony reflects that TEAM Academy Charter School is a charter school network which operates schools at multiple locations, one of which is the KIPP Upper Roseville School location where respondent worked (see hearing transcript, pp. 11-12). Respondent testified that due to a change in technology platform, she did not receive certain communications from petitioner (see hearing transcript, pp. 62-63). Respondent further testified that once she took over the enrichment teacher position, "the schedule was not set" (see hearing transcript, p. 63). Respondent also testified that she began having "physical problems" at work and, consequently, visited her primary care doctor (see hearing transcript, p. 69) and respondent's Intake Assessment at Care Plus NJ, marked R-8 in evidence, states: "Client notes symptoms to include back pain, chest pain, racing thoughts, and butterflies in her stomach."

Moreover, upon careful review, the Commissioner concurs with the ALJ that respondent did not violate *N.J.S.A.* 18A:26-10 by failing to report to work until October 3, 2022, because petitioner terminated her employment on September 2, 2022. Page 43 of the hearing transcript—specifically, Kerrihard's testimony—fully supports the ALJ's finding in this regard, and the ALJ in no way mischaracterized that testimony which reads:

Q. Okay. Now didn't you, in fact, terminate Ms. Nguessan from her position before the sixty days expired?

A. Correct, we did terminate her employment.

Q. And was effective September 2, 2022; isn't that right?

A. Correct.

Consequently, respondent's employment term ended on September 2, 2022. Therefore, it was not possible for respondent to report to work until October 3, 2022, when the sixty-day notice period at issue would have expired.

Additionally, the Commissioner disagrees with petitioner that "[t]he Remand Decision, if left standing, will send a clear message . . . that the statutory mandate for certified personnel to work through their contractual notice period is unenforceable, since the resigning employee can simply produce a doctor's note from a non-counseling medical professional excusing them from work, even if, as the evidence here demonstrates, the employee exhibited 'minimal' symptoms of anxiety, merely from the stress from violating her contractual notice period." Petitioner's Exceptions, at 2. In this case, petitioner terminated respondent's employment, thereby ending the contractual relationship between the parties prior to the conclusion of the sixty-day notice period. Once the termination occurred, the existence of the doctor's note and its contents became irrelevant. Since petitioner opted to terminate respondent's employment on September 2, 2022, any arguments it now attempts to make regarding the evidentiary competency of the doctor's note and respondent's failure to continue working until the sixty-day notice period ended on October 3, 2022, are moot.

Given the unique facts and circumstances established in this case, the Commissioner cannot find that respondent violated *N.J.S.A.* 18A:26-10 by ceasing to perform her duties in

accordance with her employment contract prior to the expiration of her employment term. Accordingly, the Initial Decisions of the OAL are adopted, with modification as explained herein, and the Order to Show Cause to suspend Helene Nguessan's teaching certificate is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 23, 204
Date of Mailing: May 28, 2024

[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
OAL DKT. NO. EDU 04392-24
AGENCY DKT. NO. 286-10/22

(on remand EDU 10384-23)

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATE OF HELENE NGUESSAN TEAM ACADEMY CHARTER SCHOOL, ESSEX COUNTY,

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Thomas O. Johnston, Esq. for Petitioner (The Johnson Law Group, LLC)

Steven V. Schusler, Esq., for Respondent

Record Closed: March 28, 2024 Decided: April 10, 2024

BEFORE **KIMBERLY A. MOSS**, ALJ:

Respondent Helene Nguessan opposes the suspension of her teaching certificates for allegedly resigning from the Team Academy Charter School, (TACS or petitioner) without giving sixty days' notice.

This matter was forwarded to the Office of Administrative Law from The Department of Education on November 17, 2022, as a contested matter. The hearing

was held on June 1, 2023. Closing briefs were received on July 7, 2023. A reply brief from respondent was received on August 17, 2023, at which time I closed the record. I issued a decision on August 25, 2023. By Order dated November 6, 2023, the matter was remanded to OAL. This matter was received at OAL on March 28, 2024. The New Jersey Commission of Education requested clarification on whether an email dated September 2, 2022 was moved into evidence; was that email intended to describe the September 20, 2022 email; was the September 20, 2022 email moved into evidence and was there an alternative evidentiary basis for my finding that petitioner was terminated on September 2, 2022.

I am incorporating by reference my decision of August 25, 2023, in this matter. Dana Kerrihard was asked:

> Q. Okay, Ms Kerrihard did you have an understanding about why Ms. Nguessan did not complete her sixty days of teaching at your institution?
>
> A. Yes, she submitted this doctor's note. (Tr. Pg. 42 lines 14-17). Ms Kerrihard understood the doctor's note to state Ms. Nguessan was under stress and not cleared to report to work. (Tr. Pg. 42) Ms. Kerrihard did not dispute the doctor's note. Ms. Kerrihard testified that Nguessan was terminated from her position effective September 2, 2022. (Tr. Pg. 43)

Nguessan testified that she gave the September 2, 2022, doctor's letter to HR and Ms. Geffard. (Tr. Pg. 71) She testified that she did not receive any communication from the school until she received an email sent in late September, which stated that she was terminated as of September 2, 2022. (Tr. Pg. 72)

Based on this testimony I concluded that Nguessan was terminated from employment of September 2, 2022, when she had provided a doctor's note stating that she was not cleared to work.

I **CONCLUDE** Nguessan did not cease to perform her duties before the expiration of the sixty-day notice period because her doctor provided a letter stating that

on September 2, 2002, that she could not return to work, and Nguessan was terminated on September 2, 2022.

ORDER

Based on the foregoing, it is **ORDERED** that TACS request that Nguessan's teaching certificates be suspended is **DENIED**.

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.

April 10, 2024

DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency: April 10, 2024

Date Mailed to Parties: April 10, 2024

ljb

WITNESSES

For Petitioner

Dana Kerrihard

For Respondent

EXHIBITS

For Petitioner

P-1 Nguessan Employment Agreement for 2022-2023

R-2 Email dated August 21, 2022 from Nguessan

R-3 Email Response to Nguessan dated August 23, 2022

For Respondent

R-1 Resignation letter related documents.

R-2 Not in Evidence

R-3 Emails

R-4 Doctor's Note Dated September 2, 2022

R-5 Resignation Letter of Nguessan

R—6 Paterson ASCs Teacher Contract

R-7 Nguessan Resume

R-8 Nguessan Medical Records

R-9 Nguessan Contract for 2022-2023 with TACS

R-10 Not in Evidence

R-11 Not in evidence

202-24

New Jersey Commissioner of Education

Final Decision

Arlene Garcia,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

Synopsis

Petitioner – a school bus driver – appealed the Department's determination to suspend her school bus endorsement for six months pursuant to *N.J.S.A.* 18A:39-28 *et seq.* after an incident on December 22, 2022 in which a Franklin Township School District student was left on petitioner's school bus at the end of one of her assigned bus routes. Petitioner did not dispute that a child remained on the bus but contended that the student was never left alone, as she noticed the child as she was proceeding to the bus parking lot. The Department filed a motion to dismiss in lieu of an answer, requesting that the motion be converted to a summary decision motion upon transmittal of the matter to the Office of Administrative Law (OAL).

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioner admitted that while completing her bus route on December 22, 2022, she noticed that a child remained on the bus after her final stop; pursuant to *N.J.S.A.* 18A:39-28, petitioner had an affirmative duty to visually inspect the school bus at the end of the transportation route to determine that no pupil had been left on the bus; "end of the transportation route" under *N.J.S.A.* 18A:39-28 means when the children are dropped off at the assigned destination, or the last bus stop; in accordance with *N.J.S.A.* 18A:39-29, if a school bus driver is found to have left a child on the bus at the end of a route, the driver's school bus endorsement shall be suspended for six months for the first offense. Accordingly, the ALJ granted summary decision to the respondent and affirmed the petitioner's six-month suspension for leaving a child on the school bus at the end of a route.

Upon full review, the Commissioner concurred with the ALJ that the respondent is entitled to summary decision. Accordingly, the petition was dismissed; respondent was directed to notify the Motor Vehicle Commission of its obligation to suspend petitioner's school bus endorsement pursuant to *N.J.S.A.* 18A:39, and to notify petitioner's employer that she is ineligible for the period of suspension for continued employment as a school bus driver.

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.

202-24
OAL Dkt. No. EDU 05358-23
Agency Dkt. No. 111-4/23

New Jersey Commissioner of Education

Final Decision

Arlene Garcia,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

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 that petitioner violated *N.J.S.A.* 18A:39-28 when she failed to conduct a visual inspection of her school bus at the end of her route and, as a result, a child was left on the bus.

Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is dismissed. Petitioner's "S" endorsement is hereby suspended for six months from the date of this decision. Respondent is directed to notify the Motor Vehicle Commission of its obligation to suspend petitioner's school bus endorsement pursuant to

N.J.S.A. 18A:39-26 *et seq.*, and to notify petitioner's employer that she is ineligible during the period of suspension for continued employment as a school bus driver.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2024
Date of Mailing: May 28, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 05358-23
AGENCY DKT. NO. 111-4/23

ARLENE GARCIA,
Petitioner,
v.
NEW JERSEY DEPARTMENT OF EDUCATION, OFFICE OF STUDENT PROTECTION,
Respondent.

Arlene Garcia, petitioner pro se

David Kalisky, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: February 28, 2024 Decided: April 11, 2024

BEFORE **EDWARD J. DELANOY, JR.**, Deputy Director and ALAJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Arlene Garcia (Garcia), challenges the suspension of her bus driver "S" endorsement. The six-month suspension is due to petitioner's alleged violation of

N.J.S.A. 18A:39-28, et seq., in leaving a child on a school bus assigned to her on November 16, 2020. The Office of Student Protection (OSP) determined that this was petitioner's first offense of this kind, and accordingly imposed a penalty of a six-month suspension of her "S" endorsement to operate a school bus.

Petitioner filed her Petition of Appeal with the Department on March 2, 2023. On June 14, 2023, the Department filed a motion to dismiss in lieu of an answer, pursuant to N.J.A.C. 6A:3-1.10.[1] The matter was transferred to the Office of Administrative Law (OAL), where it was filed on June 15, 2023, as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Petitioner relied on her statement in the Petition of Appeal. On February 28, 2024, the Department filed its supplemental brief, and on that date the record closed.

FINDINGS OF FACT

On Thursday, December 22, 2022, around 3:30 p.m., Garcia was completing her normal route for Mary School Bus Transportation in the Franklin Township School District. After completing her last stop off Route 27, she proceeded to the bus yard to finish off her day. As she approached the traffic light on Route 27, she made a left-hand turn and went two blocks up when a child stood up, yawning and stretching their arms. She realized that a child was still on the bus. As she approached the bus yard, she parked the bus and immediately called her dispatcher. The dispatcher advised Garcia to remain with the child on the bus while he dispatched another bus driver to transport the child home. Garcia was instructed to write down the address for the other bus driver. Fifteen minutes after Garcia made the phone call, the other bus driver arrived at the bus yard. When the bus driver arrived, he came to the bus Garcia was assigned to and took the student home.

[1] The Department had initially filed a Motion to Dismiss in Lieu of an Answer with the Commissioner of Education under N.J.A.C. 6A:3-1.10. The Department requested in its motion that once the matter was transferred to the Office of Administrative Law, the Department's motion be converted to a summary-decision motion under N.J.A.C. 1:1-12.5, as no material facts are in dispute.

LEGAL ANALYSIS

The School Bus Safety Act, N.J.S.A. 18A:39-26 to -33, requires that the school-bus driver "shall visually inspect the school bus to which he is assigned at the end of the transportation route to determine that no pupil has been left on the bus." N.J.S.A. 18A:39-28. A violation of N.J.S.A. 18A:39-28 results in a mandatory penalty. N.J.S.A. 18A:39-29. The statute dictates that "[i]n the event that, after notice and opportunity to be heard, a school bus driver is found to have left a pupil on the school bus at the end of his route, his school bus endorsement shall be: (a) suspended for six months, for a first offense . . . ." N.J.S.A. 18A:39-29(a).

The issue in this case is whether the Department established by a preponderance of the credible evidence that Garcia failed to comply with the statutory requirement that the driver "shall visually inspect the school bus to which he is assigned at the end of the transportation route to determine that no pupil has been left on the bus." N.J.S.A. 18A:39-28. Garcia has admitted that she did not visually inspect the bus when she dropped off the children at the last stop before proceeding to the bus lot. However, Garcia did discover the child was on her bus before she reached the bus depot. Therefore, the heart of the instant controversy lies in the interpretation of the "end of transportation route" phrase, which is not defined in the statute.

In Klein v. Department of Education, Criminal History Review Unit, EDU 00852-11, the Commissioner of Education (Commissioner) concluded that the "end of the route" as used in N.J.S.A. 18A:39-26 "terminates at the point where all of the children in that group leave the bus . . . and the bus is empty of riders, and before the driver moves on to her next route. At that point, the driver shall inspect the bus for any remaining students." Klein, Comm'r decision (February 21, 2012), <http://njlaw.rutgers.edu/collections/oal/>, at 2. The Commissioner explained that

> [t]he record show[ed] that the driver by walking to the back of the bus on that day, turning off the "Child Minder" button, taking the keys out of the ignition, letting the children out, and locking the doors, fulfilled all indicia of "end of the route" activities save one: She did not inspect the bus. Accepting

> [the driver's] argument that the inspection did not have to take place until the bus returned to the depot at the end of the day defies reason and eviscerates the fundamental purpose of the statute – to protect our children and ensure their safety.
>
> [Id. at 2-3.]

In 2015, in Herman v. Department of Education Criminal History Review Unit, EDU 10473-14, Initial Decision (June 23, 2015), <http://njlaw.rutgers.edu/collections/oal/>, rev'd, Comm'r (July 30, 2015), <https://www.nj.gov/education/legal/decisions/>, the Commissioner again rejected the argument that the "end of transportation route" means at the end of the workday, once the bus is dropped off at the bus depot lot. The Administrative Law Judge (ALJ) concluded that N.J.S.A. 18A:39-28's requirement of a visual inspection at the end of the route did not apply. The ALJ determined that the route had not ended as long as the bus driver had not left the vicinity of the bus; and that the visual inspection would be performed when she did depart the vicinity of the bus at the bus depot. Herman, Initial Decision, <https://www.nj.gov/education/legal/decisions/>. Upon review, the Commissioner rejected the ALJ's initial decision. Citing Klein, the Commissioner reiterated that the bus driver violated the School Bus Safety Act when she failed to visually inspect the school bus at the end of her route – that is, following the departure of the students from the bus, and before returning to the depot. Herman, Comm'r Decision, <https://www.nj.gov/education/legal/decisions/>, at 5. Concurring with what he described as the "well-reasoned definition" of "end of the transportation route" provided by the Commissioner in Klein, the Commissioner declared the ALJ's rejection of the Commissioner's holding in Klein "undermines the purpose and intent of the School Bus Safety Act." Id. at 7. He explained

> [a]s the Commissioner stated in Klein, "Accepting petitioner's argument that the inspection did not have to take place until the bus returned to the depot at the end of the day defies reason and eviscerates the fundamental purpose of the statute – to protect our children and ensure their safety." *Klein*, *supra*, at 2. To hold otherwise would excuse – if not promote – inefficiency (by endorsing needless rides to the bus depot for our students) and place children at unnecessary risk of harm. It is nonsensical to delay visual inspection of the school bus until arrival at the bus depot when, in fact, any heightened safety risk to the children can be avoided

> altogether if they are discovered on the bus while still present on school grounds or prior to leaving the route. While it may be true that [the student] was never left unattended, and it is not known from the present record whether he suffered any harm or distress, the visual inspection required by N.J.S.A. 18A:39-28 should have occurred prior to departing the [school] at the end of the transportation route – when all of the other children had exited the bus.
>
> [Id. at 7-8.]

In his decision, the Commissioner also cited Vickery v. Department of Education Criminal History Review Unit, EDU 00083-15, Initial Decision (June 2, 2015), <http://njlaw.rutgers.edu/collections/oal/>, adopted, Comm'r (July 9, 2015), <https://www.nj.gov/education/legal/decisions/>, which he stated "reinforces the Act's requirement that the visual inspection of the school bus should have occurred before departing the [school] at the end of the transportation route – when all of the other children had exited the bus." Herman, Comm'r Decision, <https://www.nj.gov/education/legal/decisions/> at 6.

In Vickery, a school bus driver similarly failed to complete the required visual inspection of the school bus following his departure at the last bus stop on route and consequently found a sixteen-year-old student, who had fallen asleep and failed to exit the bus, at the bus yard. The driver averred he had not violated the Act because he did not leave the child alone on the bus and conducted a visual inspection upon his return to the bus yard, which was the end of his route. The ALJ determined that pursuant to Klein the Act requires that an inspection be conducted when the last child is dropped off during the route, and not after the vehicle has finished its drop-offs and has returned to its garage or depot. Vickery, Initial Decision, <https://www.nj.gov/education/legal/decisions/>. On review, the Commissioner adopted the findings and determinations of the ALJ. Vickery, Comm'r Decision, <https://www.nj.gov/education/legal/decisions/>.

Following Klein, Herman and Vickery, the Commissioner has consistently held that the "end of the transportation route" means at the end of a student drop-off point. See Arcos v. Dep't of Educ., Crim. Hist. Rev. Unit, EDU 01752-18, Initial Decision, (November 7, 2018), adopted, Comm'r (September 20, 2018),

<http://njlaw.rutgers.edu/collections/oal/> ("the end of the transportation route" triggering the school bus driver's affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28 occurs when the driver drops off the children at the assigned destination and not when the bus driver competes all of her assigned routes for the day.); Mitchell v. Dept. of Educ., Office of Student Protection, EDU 04117-21, Initial Decision, (October 18, 2021), adopted, Comm'r (November 29, 2021), <http://njlaw.rutgers.edu/collections/oal/> ("the end of the transportation route" triggering the school bus driver's affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28 occurred when the driver left her bus unattended when she dropped off documents at the transportation center building and not when the bus driver competes all of her assigned routes for the day.); Pedi v. Dept. of Educ., Office of Student Protection, EDU 04317-21, Initial Decision (October 13, 2021), adopted, Comm'r (November 18, 2021), (bus driver violated N.J.S.A. 18A:39-28 when she merely conducted a "turnaround view" and not a full visual inspection of the bus after her first student drop off, continued onto her second route, and subsequently found a child from her first route.); and Severe v. Dept. of Educ., Office of Student Protection, EDU 01502-21, Initial Decision (September 19, 2022), 2022 N.J. AGEN LEXIS 794, adopted, Comm'r (October 31, 2022), <http://njlaw.rutgers.edu/collections/oal/> (the "end of the transportation route" under N.J.S.A. 18A:39-28 is when the children are dropped off at the assigned destination, that triggers the school-bus driver's affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28, not when the bus driver competes all of her assigned routes for the day.)

Here, Garcia does not mention in her Petition of Appeal that she did visually inspect the bus. As a result, she found a child on the bus as she was proceeding to the bus parking lot. Garcia needed to visually inspect the bus for children when she dropped the children off at their designated location. And as noted in Klein, it does not matter that she remained with the child until the other bus driver arrived to take the child home.

The statute is unambiguous in its requirement that the driver visually inspect the bus, and Garcia did not do so, in violation of N.J.S.A. 18A:39-28. Since Garcia failed to do so, she violated N.J.S.A. 18A: 39-28. Because of the safety implication of such a violation, a mandatory penalty exists in the event that the OSP determines that a child was indeed left behind. Garner v. N.J. Dep't of Educ., Crim. Hist. Rev. Unit, 2009 N.J.

AGEN LEXIS 173 (April 3, 2009), adopted, Comm'r (May 1, 2009), https://www.nj.gov/education/legal/. Thus, "[i]n the event that . . . a school bus driver is found to have left a pupil on the school bus . . . , his school bus endorsement shall be: (a) suspended for six months, for a first offense . . . ." N.J.S.A. 18A:39-29(a). Here, since Garcia was in clear violation of the statute, the penalty imposed is mandatory, and there is no discretion to impose anything less than a six-month suspension of her "S" endorsement. Where the violation has been established, no circumstances of the event or of the driver may be considered in determining the penalty. Garner, 2009 N.J. AGEN LEXIS 173 at *5–6.

I **CONCLUDE** that as the "end of the transportation route" under N.J.S.A. 18A:39-28 is when the children are dropped off at the assigned destination, or the last bus stop, that triggers the school-bus driver's affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28, not when the bus driver completes all of her assigned routes for the day. The "end of the transportation route" does not mean at the end of the workday, which would imply the time the bus is dropped off at the bus parking lot.

The Department seeks relief pursuant to N.J.A.C. 1:1-12.5(b), which 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." This provision mirrors the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules. The motion judge must "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." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). 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." Ibid. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. at 242, 249 (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. Ibid. (quoting Liberty Lobby, 477 U.S at 252).

I **CONCLUDE** that the evidence presented by the parties does not establish any material facts in dispute. Given the limited facts that must be established to support a violation of the duty imposed by the Legislature on a school-bus driver to properly inspect the bus at the end of a route to assure that no child is left on the bus, the arguments offered by the Department amply support summary decision in its favor. And given the mandatory nature of the penalty for a first-time violator of the mandate, the six-month suspension is the only outcome where the violation is proven. N.J.S.A. 18A:39-29(a). The Department's motion for summary decision must be **GRANTED**.

ORDER

It is hereby **ORDERED** that the Department's motion for summary decision is hereby **GRANTED**, and it is further **ORDERED** that the petitioner's "S" endorsement shall be suspended for six months.

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.

April 11, 2024
DATE

Edward J. Delanoy Jr.
EDWARD J. DELANOY, JR. ALAJ

Date Received at Agency: _____

Date Mailed to Parties: _____

EJD/cb

203-24R

New Jersey Commissioner of Education

Final Decision

D.D., on behalf of minor children, A.D., J.D., K.D., J.D., and K.D.,

Petitioner,

v.

Board of Education of the Borough of Magnolia, Camden County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that his five minor children were not domiciled within the Borough of Magnolia from November 11, 2023 forward and are therefore not entitled to a free public education in the Magnolia School District for the 2023-2024 school year. In his appeal, petitioner admitted that the family is now living in Gloucester City due to unforeseen problems with their residence in Magnolia but requested that his children be granted an exception to the residency requirement to allow them to complete the school year in Magnolia. The Board filed a motion for summary decision and requested tuition reimbursement for the period of the children's ineligible attendance.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioner's family, including minor children A.D., J.D., K.D., J.D., and K.D., were domiciled within the Borough of Magnolia and attended school within the District at the beginning of the 2023-2024 school year; however, prior to November 11, 2023, the District became aware that petitioner's family had moved from their Magnolia residence; and petitioner admitted that his family now resides in Gloucester City. Accordingly, the ALJ concluded that respondent is entitled to summary decision, and ordered that the matter be remanded to the Board for a determination of the total amount of tuition due for the time period when A.D., J.D., K.D., J.D., and K.D. resided outside of the Magnolia school district during the 2023-2024 school.

Upon review, the Commissioner concurred with the ALJ's finding that petitioner and his children have not resided in Magnolia since at least November 11, 2023, and found that petitioner has not met his burden of proving that he is domiciled within the Magnolia school district; pursuant to *N.J.A.C.* 6A:22-6.2(a) and *N.J.S.A.* 18A:38-1(b), the Commissioner may assess tuition for the period of ineligible attendance; in this case, however, the record did not provide sufficient information to accurately determine the amount of tuition owed by petitioner. Accordingly, the Board's motion for summary decision was granted; petitioner's residency appeal was dismissed; and the matter was remanded to the Office of Administrative Law for further proceedings to develop the factual record so that the tuition amount owed to the Board may be properly calculated, as required by *N.J.S.A.* 18A:38-1b.

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.

203-24R

OAL Dkt. No. EDU 01560-24
Agency Dkt. No. 18-1/24

New Jersey Commissioner of Education

Final Decision

D.D., on behalf of minor children, A.D., J.D., K.D., J.D., and K.D.,

Petitioner,

v.

Board of Education of the Borough of Magnolia, Camden County,

Respondent.

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.

This matter concerns respondent Board of Education's December 20, 2023, determination that D.D. and his children no longer reside in the Borough of Magnolia and its demand for payment of tuition for the period of the children's ineligible attendance at school in the district. Petitioner appealed the Board's residency determination to the Commissioner. The Board filed an answer and counterclaim seeking payment of tuition, and the matter was transmitted to the OAL for further proceedings. Thereafter, the Board moved for summary decision.

The Administrative Law Judge (ALJ) found that petitioner and his children have not been

domiciled within the district since at least November 11, 2023. Accordingly, the ALJ granted the Board's motion for summary decision and concluded that the Board was entitled to tuition reimbursement from petitioner. Because the record lacked information regarding the number of days of the children's ineligible attendance, the ALJ recommended that the matter be remanded to the Board for a determination of the total amount of tuition due.

"*N.J.S.A.* 18A:38-1(a) mandates that public schools are free to any person, [over age five and] under twenty years of age, 'who is domiciled within the school district.'" *K.K-M., on behalf of A.W. v. Bd. of Educ. of City of Gloucester City*, 463 *N.J. Super.* 24, 31 (App. Div. 2020). A child's parents "'shall have the burden of proof by a preponderance of the evidence' to prove domicile in the school district." *D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist.*, 366 *N.J. Super.* 269, 273 (App. Div. 2004) (quoting *N.J.S.A.* 18A:38-1(b)(2)). Upon review, the Commissioner finds that petitioner has not satisfied his burden of proving that he is domiciled in the district. The record supports the ALJ's finding that petitioner and his children have not resided in Magnolia since at least November 11, 2023.

Pursuant to *N.J.A.C.* 6A:22-6.2(a), if "petitioner does not sustain the burden of demonstrating the student's right to attend the school district, . . . the Commissioner may assess tuition for the period during which the hearing and decision on appeal were pending, and for up to one year of a student's ineligible attendance in a school district prior to the appeal's filing and including the 21-day period to file an appeal." *N.J.S.A.* 18A:38-1(b) provides that the Commissioner may order tuition "computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance." Because the record lacks information regarding each child's period of ineligible attendance, the Commissioner

is unable to assess tuition against petitioner at this time.

Accordingly, the Board's motion for summary decision is granted, and petitioner's residency appeal is hereby dismissed. The matter is remanded to the OAL for further proceedings to develop the factual record regarding the number of days of each child's period of ineligible attendance so that the tuition amount owed to the Board may be calculated.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2024
Date of Mailing: May 28, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 01560-2024
AGENCY DKT. NO. 18-1/24

D.D. ON BEHALF OF MINOR CHILDREN,
A.D., J.D., K.D., J.D. AND K.D.,
Petitioner,
v.
BOARD OF EDUCATION OF THE BOROUGH OF MAGNOLIA, CAMDEN COUNTY,
Respondent.

D.D., on behalf of minor children, A.D., J.D., K.D., J.D., and K.D., petitioner, pro se

William C. Morlock, Esq., for respondent (Gorman, D'Anella & Morlock, attorneys)

Record Closed: April 15, 2024 Decided: April 18, 2024

BEFORE **REBECCA C. LAFFERTY**, ALJ:

STATEMENT OF THE CASE

Petitioner, D.D. (petitioner or D.D.), the father of minor children, A.D., J.D., K.D., J.D., and K.D., appeals the December 19, 2023 determination by the respondent, Board of Education of the Borough of Magnolia, Camden County (respondent or Board), that A.D., J.D., K.D., J.D., and K.D. were not domiciled within the Borough of Magnolia School

District (District) and that tuition reimbursement is required. The respondent alleges that the minor children A.D., J.D., K.D., J.D., and K.D., were not residing at the address provided by the petitioner within the District and seeks repayment of tuition. At issue is whether A.D., J.D., K.D., J.D., and K.D. were entitled to be enrolled in the District for purposes of receiving a thorough and efficient public education free of charge for the 2023-2024 school year, pursuant to N.J.S.A. 18A:38-1.

PROCEDURAL HISTORY

By letter, dated December 20, 2023, the respondent notified petitioner that A.D., J.D., K.D., J.D., and K.D. were ineligible to continue to attend school within the District as they were no longer domiciled in the District. The petitioner filed a Pro Se Residency Appeal on or about January 24, 2024. The respondent filed an Answer and Cross Petition for tuition on February 1, 2024. The Department of Education Office of Controversies and Disputes transmitted this matter to the Office of Administrative Law (OAL) where it was filed on February 1, 2024, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

Several telephone conferences were conducted and on March 6, 2024, an email was sent to the parties confirming the briefing schedule for a motion for summary decision. The respondent filed a motion for summary decision on March 13, 2024. Petitioner's opposition to the summary decision motion was due on April 1, 2024, but no opposition was received by the OAL on that date. A follow-up email was sent to the parties on April 2, 2024, and a status conference was held on April 8, 2024, at which time petitioner advised that he wished to submit a response to the respondent's summary decision motion. On April 15, 2024, petitioner submitted an email in opposition to the summary decision motion, and on that same date, counsel for the respondent notified this Tribunal that the respondent would not be filing a reply brief.

FACTUAL DISCUSSIONS AND FINDINGS

The facts are not in dispute, and I **FIND**:

Petitioner's family including A.D., J.D., K.D., J.D., and K.D. were residents of and domiciled within the Borough of Magnolia (Borough) and were attending school within the District at the beginning of the 2023-2024 school year. Prior to November 11, 2023, it came to the attention of the District's administration, that petitioner's family moved from their residence in the Borough. (See Certification of Paul Sorrentino, Principal.) On November 16, 2023, the District sent correspondence to the family addressing the residency issue and requesting that the family confirm their residency status as soon as possible. (See Exhibit B to the Certification of Paul Sorrentino, Principal.) After receiving the request for residency confirmation, Mrs. D. advised the District that the family was living with L.R. within the District. (See Certification of Paul Sorrentino, Principal.) Thereafter, the school principal, Paul Sorrentino, conducted surveillance on three separate occasions and did not observe any of D.D.'s family members at L.R.'s residence at any point in time. (See Certification of Paul Sorrentino, Principal.)

On December 6, 2023, the District sent the family correspondence stating that the school administration was aware that the family was no longer domiciled within the Borough, and the Board would be discussing the issue and voting on removing the children from the school and seeking tuition reimbursement of $95,000 at the December 19, 2023 Board meeting. (See Exhibit C to the Certification of Paul Sorrentino, Principal.)

During the executive session of the December 19, 2023 Board meeting, D.D. admitted that the family was living in Gloucester City where the family had a lease for a residence, which he later disclosed was located at xxx Powell Street, Gloucester City, New Jersey. (See Pro Se Residency Appeal, petitioner's email of April 15, 2024, and the Certification of Paul Sorrentino, Principal.) On December 19, 2023, based on the information presented, including the information provided by D.D. at the Board meeting, the Board unanimously voted to disenroll A.D., J.D., K.D., J.D., and K.D. from the District

because the family was no longer domiciled within the District. (See Exhibit D to the Certification of Paul Sorrentino, Principal.) On December 20, 2023, the Board notified D.D. that A.D., J.D., K.D., J.D., and K.D. were ineligible to continue to attend school within the District as they were no longer domiciled in the District. (See Exhibit E to the Certification of Paul Sorrentino, Principal.)

Additionally, I **FIND** as fact that A.D., J.D., K.D., J.D., and K.D. have not been domiciled within the District since at least November 11, 2023.

I further **FIND** as fact that the daily per pupil tuition rate for the District for the 2023-2024 school year is $104.39, which equates to a combined daily rate of $521.95 for all five children. (See attached Certification of Paul Sorrentino, Principal.)

LEGAL ANALYSIS AND CONCLUSIONS

A motion for summary decision shall 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).

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 alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). 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." Id. (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249 (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 252. I **CONCLUDE** that this matter is ripe for summary decision.

The issue in this appeal is whether A.D., J.D., K.D., J.D., and K.D. had been domiciled in the District during the 2023–2024 school year.

Public schools are required to provide a free education to individuals between the ages of five and twenty years in certain circumstances, including individuals who are domiciled within the school district. N.J.S.A. 18A:38-1(a). Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). N.J.A.C. 6A:22-3.1(a)(1) provides: "A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district." See also P.B.K. ex rel. minor child E.Y. v. Bd. of Educ. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001). Thus, a child would routinely attend school in the district where his or her parents live. The petitioner has the burden of proof in a determination of residency eligibility. N.J.S.A. 18A:38-1(b)(2). When a child is found to be ineligible to attend a school in its district, a school board is entitled to recover tuition from the parent or guardian of the child found ineligible to attend within the district. N.J.S.A. 18A:38-1(b)(2).

A review of the record and undisputed facts reveals that A.D., J.D., K.D., J.D., and K.D. have not been domiciled within the District while attending school there since at least November 11, 2023. Petitioner advised the Board at the December Board meeting that his family had been residing in Gloucester City due to unforeseen circumstances causing them to leave their residence in the Borough. Petitioner argues in his opposition to this motion that he understands that his children are not permitted to attend District schools if they no longer reside in the District, but he seeks an exception to allow them to finish the school year in the District. Thus, it is clear that petitioner's family is now domiciled outside of the District in Gloucester City, this fact having been confirmed by the petitioner. Accordingly, I **CONCLUDE** that the respondent is entitled to summary decision that A.D., J.D., K.D., J.D., and K.D. were not entitled to attend school in the District and receive a

free public education there pursuant to N.J.S.A. 18A:38-1(a) since at least November 11, 2023.

I further **CONCLUDE** that because A.D., J.D., K.D., J.D., and K.D. were not entitled to receive a free public education in the District since at least November 11, 2023, the respondent is entitled to tuition reimbursement from petitioner. The daily per pupil tuition rate for the District for the 2023-2024 school year is $104.39, which equates to a combined daily rate of $521.95 for all five children. Therefore, I **CONCLUDE** that respondent is entitled to summary decision on its Cross Petition for tuition reimbursement from petitioner for the cost of providing an education to A.D., J.D., K.D., J.D., and K.D. at the daily per pupil tuition rate for the 2023-2024 school year of $104.39, which equates to a combined daily rate of $521.95, beginning from the date that it is determined that the family began residing outside of the District until the date that A.D., J.D., K.D., J.D., and K.D. are disenrolled in the District.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED** and petitioner's appeal is hereby **DISMISSED**.

It is further **ORDERED** that the matter be remanded to respondent for a determination of the total amount of tuition due for the time period in question when A.D., J.D., K.D., J.D., and K.D. resided outside of the Magnolia Township school district during the 2023-2024 school.

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

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.

Rebecca C. Lafferty

April 18, 2024
DATE

REBECCA C. LAFFERTY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

RCL/tat

APPENDIX

EXHIBITS

For petitioner

Email opposing respondent's motion for summary decision, dated April 15, 2024

For respondent

Notice of Motion for Summary Decision; Respondent's Statement of Material Facts in Support of Motion for Summary Decision; Respondent's Brief in Support of Motion for Summary Decision; and Certification of Paul Sorrentino on Behalf of Respondent/Cross-Petitioner with attached Exhibits A – E

Correspondence from respondent's counsel, dated April 15, 2024

204-24
OAL Dkt. No. 03535-24
Agency Dkt. No. 20-1/24

New Jersey Commissioner of Education

Final Decision

Frederick Thorworth,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered.

Petitioner appeals the January 4, 2024 decision of the New Jersey Department of Education's (NJDOE) Office of Student Protection (OSP), disqualifying him from employment in schools under the supervision of the NJDOE. Petitioner's criminal history records showed three convictions: 1) possession of marijuana in Ohio in 1971;[1] 2) sixth-degree possession of a dangerous drug in New York in 1972;[2] and 3) seventh-degree possession of a controlled substance in New York in 1973.[3]

[1] The criminal history search results do not list a specific Ohio statute for this offense. The information provided by petitioner demonstrates that this offense involved a nominal amount of marijuana.

[2] The criminal history search results list the offense under New York Penal Law §220.05. New York no longer has a sixth-degree possession offense. Pursuant to New York Penal Law §220.06, fifth-degree possession is based on

Following the OSP's motion to dismiss, the Administrative Law Judge (ALJ) concluded that *N.J.S.A.* 18A:6-7.1 requires disqualification for offenses involving the possession of controlled dangerous substances, which includes marijuana. Accordingly, the ALJ granted the OSP's motion to dismiss.

Upon review, the Commissioner rejects the Initial Decision. *N.J.S.A.* 18A:6-7.1 requires a disqualification for a conviction in another state when it is for a crime or offense "substantially equivalent" to a disqualifying crime or offense under New Jersey law. The Commissioner has previously concluded that criminal history background checks "must be reviewed and effectuated based on the standards of the law then in effect." *Joseph V. Cidoni v. Bd. of Educ. of the City of Camden, Camden Co., and N.J. Dep't of Educ.*, Commissioner Decision No. 82-06 (Feb. 27, 2006); *see also Eduardo Nunez v. N.J. Dep't of Educ.*, Commissioner Decision No. 192-05 (May 26, 2005). Therefore, the Commissioner must determine whether there is currently a New Jersey crime or offense substantially equivalent to the Ohio and New York offenses of which petitioner was convicted. The Commissioner concludes that there is not. Following the enactment of L. 2021, c. 19 in 2021, individuals in possession of small amounts of marijuana, such as those at issue in petitioner's convictions, are no longer charged with crimes in New Jersey.

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possession of one-half ounce or more. Accordingly, the Commissioner concludes that the amount of marijuana involved in petitioner's 1972 conviction was less than one-half ounce.

[3] The criminal history search results list the offense under New York Penal Law §220.03. This provision lists no weight requirement; however, as it is a lesser offense than fifth-degree possession of one-half ounce or more, the Commissioner concludes that the amount of marijuana involved in petitioner's 1973 conviction was less than one-half ounce.

Accordingly, the relief requested in the petition of appeal is granted. The decision of the OSP disqualifying the petitioner from employment in schools under the supervision of the NJDOE is hereby vacated.

IT IS SO ORDERED.[4]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2024
Date of Mailing: May 28, 2024

[4] 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
DISMISSAL
OAL DKT. NO. EDU 03535-24
AGENCY DKT.NO. 20-1/24

FREDERICK THROWORTH,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,
OFFICE OF STUDENT PROTECTION,

Respondent.

F.T., petitioner, pro se

David Kalisky, Esq. for respondent (Matthew J. Platkin, Attorney General, attorneys)

Record Closed: April 10, 2024 Decided: April 17, 2024

BEFORE **KIMBERLY A. MOSS**, ALJ:

This motion to dismiss in lieu of answer was brought by New Jersey Department of Education, Office of Student Protection (NJDOE) in the above-mentioned matter on

or about March 8, 2024. Petitioner, Frederick Throworth (Throworth) filed a reply on March 28, 2024. NJDOE supplemented its motion on April 10, 2024

FACTUAL DISCUSSION

Throworth applied for the position of teacher's aide in the Sussex-Wantage Regional School District. On or about January 24, 2024, NJDOE notified Throworth that based on his background check showing three convictions for marijuana related offenses in 1971, 1972 and 1973, he was permanently disqualified from serving in any position, paid or unpaid with any education institution under the supervision of the Department of Education. On September 9, 1971, Throworth was convicted in Columbus, Ohio of possession of marijuana. He received a thirty-day suspended sentence. On December 11, 1972, Throworth was convicted of criminal possession of controlled substances seventh degree, marijuana, in Fallsburg, New York. He received a conditional discharge. Throworth was convicted of criminal possession of a controlled dangerous substance, marijuana, seventh degree in Southampton, New York on December 11, 1973. He was sentenced to ninety days incarceration.

Throworth does not deny that he was convicted of these offenses. However, as to the Columbus Ohio 1971 conviction, he stated that he pled guilty due to his attorneys advise. Regarding the 1972 Fallsburg conviction Throworth states that he was in jail for six days and evidently pled guilty. As to the South Hampton Conviction Throworth states that marijuana was found near him after he was at a party and the police arrived.

All of these convictions are from fifty years ago. Since that time Throworth has not been arrested, he has been married for forty-eight years and has two adult daughters. He worked as an optician for thirty years. The Christine Leaders Institute granted Thorworth the title of officiant ordination for ministry issued on March 16, 2017. He has a Certificate of Authority from the State of New Jersey for the Guitar Shop, which was issued on June 8, 1999.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 6A:3-1.5(g) provides:

> Nothing in this section precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on such motions shall be in the manner and within the time fixed by the Commissioner, or by the ALJ if the motion is to be briefed following transmittal to the OAL.

N.J.A.C. 6a:3-1.10 provides:

> At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.
>
> On a motion made pursuant to R. 4:6-2(e) "the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." P. & J. Auto Body v. Miller, 72 N.J. Super. 207, 211 (App.Div.1962). The court may not consider anything other than whether the complaint states a cognizable cause of action. Ibid. For this purpose, "all facts alleged in the complaint and legitimate inferences drawn therefrom are deemed admitted." Smith v. City of Newark, 136 N.J. Super. 107, 112 (App.Div.1975). See also Heavner v. Uniroyal, Inc., 63 N.J. 130, 133 (1973); Polk v. Schwartz, 166 N.J. Super. 292, 299 (App.Div.1979). A complaint should not be dismissed under this rule where a cause of action is suggested by the facts and a theory of actionability may be articulated by way of amendment. Muniz v. United Hsps. Med. Ctr. Pres. Hsp., 153 N.J. Super. 79, 82-83 (App.Div.1977). However, a dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted. Reider v. State Department of Transportation 221 N.J. Super. 547,522 (App.Div. 1987)

A party must have standing to have the "ability or entitlement to maintain an action before the court." In re Baby T., 160 N.J. 332, 340 (N.J.,1999). Standing is "a threshold justiciability determination whether the litigant is entitled to initiate and maintain an action before a court or other tribunal." In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super 61, 85 (App. Div. 2004).

N.J.S.A. 18A:6-7.1 (b) provides:

> A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ for pay or contract for the paid services of any teaching staff member or substitute teacher, teacher aide, child study team member, school physician, school nurse, custodian, school maintenance worker, cafeteria worker, school law enforcement officer, school secretary or clerical worker or any other person serving in a position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or the State Bureau of Identification which would disqualify that individual from being employed or utilized in such capacity or position. An individual employed by a board of education or a school bus contractor holding a contract with a board of education, in the capacity of a school bus driver, shall be required to meet the criminal history record requirements pursuant to section 6 of P.L.1989, c.104 (C.18A:39-19.1). A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for or is involved in the education of children under the age of 18 may require criminal history record checks for individuals who, on an unpaid voluntary basis, provide services that involve regular contact with pupils. In the case of school districts involved in a sending-receiving relationship, the decision to require criminal history record checks for volunteers shall be made jointly by the boards of education of the sending and receiving districts.
> An individual, except as provided in subsection g. of this section, shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or
>
> b. An offense involving the manufacture, transportation, sale, possession, distribution or habitual use of a "controlled dangerous substance" as defined in the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al. or "drug paraphernalia" as defined pursuant to N.J.S.2C:36-1 et seq.; or

N.J.S.A. 2C: 35-2 defines controlled dangerous substance as:

> "Controlled dangerous substance" means a drug, substance, or immediate precursor in Schedules I through V, marijuana and hashish as defined in this section, any substance the distribution of which is specifically prohibited in N.J.S.2C:35-3, in section 3 of P.L.1997, c.194 (C.2C:35-5.2), in section 5 of P.L.1997, c.194 (C.2C:35-5.3), in section 2 of P.L.2011, c.120 (C.2C:35-5.3a), or in section 2 of P.L.2013, c.35 (C.2C:35-5.3b),

> and any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance in the human body. When any statute refers to controlled dangerous substances, or to a specific controlled dangerous substance, it shall also be deemed to refer to any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance or the specific controlled dangerous substance, and to any substance that is an immediate precursor of a controlled dangerous substance or the specific controlled dangerous substance. The term shall not include distilled spirits, wine, malt beverages, as those terms are defined or used in R.S.33:1-1 et seq., tobacco and tobacco products, or cannabis and cannabis as defined in section 3 of P.L.2021, c.16 (C.24:6I-33). The term, wherever it appears in any law or administrative regulation of this State, shall include controlled substance analogs.

Marijuana is defined as:

> Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant. "Marijuana" shall not mean: hemp and hemp products cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L.2019, c.238 (C.4:28-6 et al.); or cannabis as defined in section 3 of P.L.2021, c.16 (C.24:6I-33) which is cultivated and produced for use in a cannabis item, as defined in that section, in accordance with the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," P.L.2021, c.16 (C.24:6I-31 et al.).

Prior to the 1998 amendment to N.J.S.A. 18A:6-7.1 there was a provision had a provision stating that:

> Notwithstanding the provisions of this section, an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act if the individual has affirmatively demonstrated to the Commissioner of Education clear and convincing evidence of his or her rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:
>
> (1) The nature and responsibility of the position which the convicted individual would hold;
>
> (2) The nature and seriousness of the offense;
>
> (3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the individual when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have had the individual under their supervision WITHOUT AN OPPORTUNITY TO appeal CHALLENGE THE ACCURACY OF THE DISQUALIFYING CRIMINAL HISTORY RECORD

The 1998 amendment deleted this portion of the statute. The statute does not have a rehabilitation component. In the Matter of Otto Krupp Teaching Certificates EDU 5196-03 Final Decision. Although Throworth' s last conviction was in 1973, all of his convictions were for possession of marijuana. N.J.S.A. 2C: 35-2 includes marijuana as a controlled dangerous substance., even though marijuana has been de criminalized.

N.J.S.A. 18A:6-7.1(d) provides:

For the purposes of this section, a conviction exists if the individual has at any time been convicted under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense.

Throworth's convictions were in Ohio and New York for possession of marijuana. I **CONCLUDE** N.J.S.A. 18A:6-7.1 (b) applies in this matter because Throworth was convicted of possession of marijuana offenses in 1971, 1972 and 1973.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's request for the petition to be dismissed 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.

April 17, 2024

DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency: April 17, 2024

Date Mailed to Parties: April 17, 2024

ljb

207-24

New Jersey Commissioner of Education

Final Decision

Lisa Yourman,

Petitioner,

v.

Board of Education of the Borough of Fair Lawn, Bergen County, and Robert Barbarulo,

Respondents.

AND

Lisa Yourman,

Petitioner,

v.

Board of Education of the Borough of Fair Lawn, Bergen County, and Elyss Frenkel,

Respondents.

Synopsis

Petitioner initiated this consolidated matter in August 2020 via two petitions of appeal challenging the respondent Board's approval of the purchase of a vehicle for use by the superintendent of the Fair Lawn Public School District (District). Petitioner alleged that respondents Ronald Barbarulo and Elyss Frenkel, then President and Vice President of the Board, violated certain school laws and regulations in connection with providing the superintendent with a new SUV for his personal use, absent approval of the full Board at a public meeting. The Board contended that the petition is moot as the superintendent relinquished the vehicle and is no longer employed by the District. The two petitions were consolidated in 2023 after unsuccessful settlement negotiations between the parties; cross motions for summary decision were then filed by the parties.

The ALJ found, *inter alia*, that: most of petitioner's complaints dealt with the past purchase and assignment of a vehicle to the superintendent, along with alleged past infractions of the recordkeeping required by *N.J.A.C.* 6A:23A-6.11 and -6.12; since the former superintendent and business administrator are no longer employed in the District, the appeal is now moot. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, but reminded the Board that it must comply with all aspects of *N.J.A.C.* 6A:23A-6.12 in the future.

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.

207-24

OAL Dkt. Nos. EDU 00251-21, 00252-21 (consolidated)
Agency Dkt. Nos. 186-8/20, 187-8/20

New Jersey Commissioner of Education

Final Decision

Lisa Yourman,

Petitioner,

v.

Board of Education of the Borough of Fair Lawn, Bergen County, and Ronald Barbarulo,

Respondents.

AND

Lisa Yourman,

Petitioner,

v.

Board of Education of the Borough of Fair Lawn, Bergen County, and Elyss Frenkel,

Respondents.

The record of this consolidated 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 the Board's reply thereto, have been reviewed and considered.

In August 2020, petitioner initiated this consolidated matter via the filing of two

petitions of appeal with the Office of Controversies and Disputes. The petitions alleged that respondents Ronald Barbarulo and Elyss Frenkel, then President and Vice President of the Fair Lawn Board of Education, violated certain school laws and regulations in connection with providing Board Superintendent Nicholas Norcia with a new Ford Explorer SUV valued at $29,979.70 for his personal use absent approval of the full Board at a public meeting.

In particular, petitioner alleged that respondents violated *N.J.A.C.* 6A:23A-6.12(b), (b)(1), and (h) ("District board of education vehicle assignment and use policy"); *N.J.A.C.* 6A:23A-3.1(a) and (e)(14) ("Review of employment contracts for superintendents, assistant superintendents, and school business administrators"); *N.J.S.A.* 18A:7-8(j) (Executive County Superintendent approval of board employment contracts); and *N.J.S.A.* 18A:19-4 (Audit of claims against boards of education). She further alleged that respondents violated the Code of Ethics for School Board Members, specifically *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e).

The Board moved to dismiss the petitions for lack of jurisdiction, asserting that the School Ethics Commission was the proper venue to adjudicate the matters against Barbarulo and Frenkel. In addition, the Board argued that petitioner failed to name the Board of Education—an indispensable party—as a respondent in each action. Before the matter was transmitted to the OAL, petitioner filed a reply to the Board's motion along with a proposed amended petition wherein she removed the allegations pertaining to the Code of Ethics for School Board Members. She also added two new respondents, Board Superintendent Nicholas Norcia, and Business Administrator Brooke Bartley. In the proposed amended petition, petitioner alleged that respondents violated *N.J.A.C.* 6A:23A-6.12(b), (b)(1), (b)(2), (e), and (h) and requested the following relief:

1) Mr. Norcia should reimburse the district for the full amount the Fair Lawn Board of Education paid for the SUV vehicle and take personal ownership.

2) Ms. Bartley should reimburse the District for the cost of insuring the vehicle during the time period the Fair Lawn Board of Education owned the vehicle.

3) In addition, going forward, the District should approve all vehicle purchases and all purchases over $10,000 at open public meetings before they take possession of the purchase.

4) In addition to the regular audits required by Law that is done yearly, there should be a mandated two-year audit (July 1, 2018-June 30, 2020) by the County Superintendent's office and/or by the Office of Fiscal Accountability and Compliance and continue this process for the next 5 school calendar years.

[Amended Petition, p. 7.]

Thereafter, the Board filed correspondence with the Office of Controversies and Disputes objecting to petitioner's attempt to amend the petitions without seeking leave to do so pursuant to *N.J.A.C.* 6A:3-1.7(a). The Board expressed that it did not consent to the amendments and maintained that the petitions should be dismissed. Without adjudicating the Board's motion to dismiss, the Office of Controversies and Disputes transmitted the matters to the OAL and added the Board to the caption.[1]

In August 2023, following an extended period of discovery and settlement negotiations between the parties, the Administrative Law Judge (ALJ) granted the Board's motion to consolidate the two related matters. The parties cross-moved for summary decision.[2] In sum,

[1] The Board did not object to being named as a respondent in either matter. *See* Respondent's Letter Brief in Support of Cross-Motion for Summary Decision/Dismissal dated August 25, 2023, at 10 ("Although the Board has not formally been joined as a party, the Office of Controversies and Disputes appropriately added the Board of Education as a named respondent in transmitting the controversy to the OAL.").

[2] It does not appear that the Board's initial motion to dismiss the petition was ever ruled upon by the ALJ.

petitioner argued that respondents failed to comply with *N.J.A.C.* 6A:23A fiscal regulations and its own Board policy and regulation 7650 in connection with the purchase and permissible use of the SUV assigned to Norcia. Specifically, she claimed that the Board did not approve the purchase or assignment of the vehicle to Norcia at a public meeting until after she filed an ethics complaint, despite the fact that he had already been using the vehicle for months; that Norcia misused the vehicle for personal travel; that Norcia did not maintain accurate mileage logs; and that the regulations only allow for a sedan to be purchased, not an SUV.

In response, the Board argued that the consolidated matter should be dismissed as moot because Norcia ceased using the vehicle effective July 27, 2021, and neither he nor Bartley are working in the district any longer. It further argued that the matter should be dismissed for failure to state a claim upon which relief can be granted. However, the Board acknowledged that: (1) it assigned the SUV to Norcia on March 16, 2020; (2) "A public vote was never taken to provide the Superintendent a car benefit"; (3) "A public vote was not taken in March 2020 to approve the purchase of the vehicle, but was later placed on the public agenda and approved on November 19, 2020"; and (4) it produced mileage logs it possessed for Norcia's use of the vehicle covering the time periods from July 17, 2020 to September 25, 2020 and April 20, 2021 to June 12, 2021. Respondent's Letter Brief in Support of Cross-Motion for Summary Decision/Dismissal dated August 25, 2023, at 3-4.

As explained in an Initial Decision issued April 18, 2024, the ALJ granted the Board's motion for summary decision on mootness grounds, denied petitioner's motion for summary decision, and dismissed the consolidated matter. Referring to the relief petitioner requested in her proposed amended petition, the ALJ reasoned that because Norcia ceased all use of the

vehicle in question effective July 27, 2021, and because Norcia and Bartley were no longer employed by the district, "no relief can be granted" as to Norcia and Bartley individually "and, thus, the matter is no longer actionable." Initial Decision, at 4. As for petitioner's requests for relief against the Board concerning advanced approval of purchases over $10,000 and for additional audits to take place, the ALJ reasoned that "any corrective action sought to be imposed upon or against the Board, itself, is not available relief for the petitioner, as the undersigned does not have the authority to impose any such change in Board procedure or practice under *N.J.A.C.* 6A:23A-6.11 and -6.12, respectively." *Ibid.* The ALJ did not specifically address petitioner's allegations regarding the involvement of Barbarulo or Frenkel.

In her exceptions, petitioner argues that the ALJ failed to adequately address all remedies she requested in her initial filing, including that Barbarulo and Frenkel be publicly censured. She further contends that the ALJ failed to acknowledge the involvement of Barbarulo and Frenkel, and failed to address her claims regarding Norcia's falsification of government records. She also asserts that the Initial Decision "sets a troubling precedent by seemingly allowing business administrators, superintendents, and/or board members to allocate taxpayer funds in contravention of the law without facing any consequences, provided they simply leave their positions," petitioner's exceptions, at 1, and reiterates the arguments she asserted before the ALJ that were considered and rejected.

In reply, the Board argues that the ALJ's Initial Decision granting its motion for summary decision on mootness grounds should be adopted. It asserts that petitioner's arguments regarding the conduct of former Board members are not properly before the Commissioner because jurisdiction over these allegations lies with the School Ethics Commission. As for her

claims regarding the Board's past noncompliance with fiscal accountability regulations at *N.J.A.C.* 6A:23A, the Board emphasizes that it ratified the purchase of the vehicle in November 2020, Norcia surrendered the vehicle in July 2021, and both he and Bartley are no longer employed in the district. Accordingly, the Board maintains that there is no longer any relief that could be granted by the Commissioner, other than a declaratory ruling admonishing the Board to comply with the regulations in the future. The Board also argues that petitioner's remaining exceptions simply restate the arguments expressed in her submissions to the ALJ that were already considered.

Upon review, the Commissioner adopts the ALJ's Initial Decision as the final decision in this matter. At the outset, a procedural issue must be addressed. Although petitioner never formally moved to amend her original petition, she submitted a proposed amended petition in response to the Board's motion to dismiss. Because the ALJ's Initial Decision references the relief sought in the proposed amended petition and the newly named respondents (Norcia and Bartley), it appears that the ALJ allowed petitioner to amend her pleadings pursuant to *N.J.A.C.* 1:1-6.2. In her amended petition, petitioner removed the allegations pertaining to the Code of Ethics for School Board Members in recognition of the fact that those allegations fell within the jurisdiction of the School Ethics Commission. Accordingly, the Commissioner finds that the ALJ did not err by failing to adequately address allegations contained in her initial petitions against Barbarulo and Frenkel. Her request that they be publicly censured is for the School Ethics Commission to determine.

As for petitioner's assertion that the ALJ should have addressed her claims regarding Norcia's falsification of mileage and travel logs for the vehicle, the ALJ correctly determined

that the regulation upon which petitioner relies—*N.J.A.C.* 6A:23A-6.12—does not allow the Commissioner to provide the remedy petitioner is seeking, i.e., for Norcia to reimburse the district for the cost of the vehicle. Thus, even assuming Norcia failed to maintain accurate vehicle use logs in accordance with *N.J.A.C.* 6A:23A-6.12(e), the remedy petitioner seeks against Norcia personally is unavailable. Similarly, even assuming as petitioner alleges that Barbarulo, Frenkel and Bartley were involved with the purchase of the SUV and assignment of same to Norcia, the remedies petitioner seeks against them personally are unavailable under *N.J.A.C.* 6A:23A-6.12. Finally, the Commissioner concurs with the ALJ that the remedies petitioner seeks against the Board—i.e., advanced approval of all purchases over $10,000 at a public meeting and additional audits—are likewise unavailable under the regulatory scheme upon which petitioner relies. That said, the Commissioner reminds the Board that, going forward, it must comply with all aspects of *N.J.A.C.* 6A:23A-6.12, District board of education vehicle assignment and use policy, in a timely manner.

Accordingly, the Board's motion for summary decision is granted, petitioner's motion for summary decision is denied, and the consolidated matter is hereby dismissed.

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2024
Date of Mailing: May 31, 2024

[3] 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

LISA YOURMAN,
Petitioner,
v.
BOROUGH OF FAIR LAWN BOARD OF EDUCATION, BERGEN COUNTY, AND RONALD BARBARULO,
Respondents.

OAL DKT. NO. EDU 00251-21
AGENCY DKT. NO. 186-08/20

(CONSOLIDATED)

LISA YOURMAN,
Petitioner,
v.
BOROUGH OF FAIR LAWN BOARD OF EDUCATION, BERGEN COUNTY, AND ELYSS FRENKEL,
Respondents.

OAL DKT. NO. EDU 00252-21
AGENCY DKT. NO. 187-08/20

Lisa Yourman, petitioner, pro se

Paul H. Green, Esq., for respondents (Schenck, Price, Smith & King, LLP, attorneys)

Record Closed: March 18, 2024 Decided: April 18, 2024

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE

Petitioner Lisa Yourman (Yourman) challenges the Fair Lawn Board of Education's (Board's) approval of a personal vehicle for the superintendent of the Fair Lawn Public School District (District). On motion, the Board argues that the petition is moot, as the superintendent relinquished the vehicle and both the superintendent and the Board's business administrator subsequently sought employment at another district.

ISSUE

Is the petition moot? Yes. The matter should be dismissed.

PROCEDURAL HISTORY

Yourman filed two separate petitions with the Commissioner of the New Jersey Department of Education (Department/Agency) on August 31, 2020. One petition was docketed by the Agency as 186-08/20 and transmitted as a contested case to the Office of Administrative Law (OAL), where it was filed on December 15, 2020, and thereafter docketed as EDU 00251-21. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. This matter was captioned on the OAL transmittal as "Lisa Yourman v. Board of Education of the Borough of Fair Lawn, Bergen County, and Ronald Barbarulo." The other petition was docketed by the Agency as 187-08/20 and transmitted as a contested case to the OAL, where it was filed on December 15, 2020, and thereafter docketed as EDU 00252-21. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. This second matter was captioned on the OAL transmittal as "Lisa Yourman v. Board of Education of the Borough of Fair Lawn, Bergen County, and Elyss Frenkel." Both matters essentially alleged the same facts, and differed only in that each named a different individual Board member in the caption.

The matters were assigned to the undersigned in January 2021. From the outset, Yourman made repeated discovery demands for copies of mileage and maintenance logs for the subject vehicle from the District, to which the District continually maintained that

all such records that were available to the District had been provided to Yourman. Aside from this discovery issue, both parties expressed a willingness to settle both matters from the outset. After approximately one year of negotiations, a draft settlement agreement was circulated, but never consummated. Continued attempts were made to make minor alterations to the language to make the document amenable to the parties, but no amicable resolution could be achieved.

On August 25, 2023, Yourman moved for summary decision. The Board responded with opposition to same, along with a cross-motion for summary decision, on October 16, 2023. On December 7, 2023, the parties notified the undersigned that they wished to file a motion for consolidation to be considered prior to consideration of the motion for summary decision. The Board sent a motion to consolidate the two matters, which was received by the undersigned on March 14, 2024. On Friday, March 15, 2024, Yourman asked the undersigned if she could have until Monday, March 18, 2024, to respond to the motion to consolidate. On March 18, 2024, the undersigned received via e-mail from Yourman copies of the original complaints she filed and the transmittals she received from the Department, along with corresponding e-mails regarding the filings, and minutes from a School Ethics Commission meeting, dated January 26, 2021.

MOTION TO CONSOLIDATE

While each transmittal names a separate individual board member in the caption, each petition also names the Board as a whole. Thus, I **FIND** that the identities of the parties in each of the matters are duplicative to the extent that consolidation is warranted. As the underlying petitions each seem to allege the same facts, and seek essentially the same remedy, I **FIND** that the nature of all the questions of fact and law are the same. Further, to the extent that common questions of fact and law are involved, I **FIND** that it would be proper, in the interest of saving time and expense, and in preventing duplication and inconsistency of outcome, to consolidate the two matters. Based on the foregoing, I **CONCLUDE** that consolidation of EDU 00251-21 and EDU 00252-21 is warranted under N.J.A.C. 1:1-17.3, and the matters are, hereby, **CONSOLIDATED**.

LEGAL DISCUSSION AND CONCLUSIONS

The petitioner alleges that that the Board should not have provided a vehicle, in this case a Ford sport utility vehicle, for the superintendent's use. The complaints filed essentially seek the following relief: 1) that the superintendent (Norcia) reimburse the school district for any period in which he used the vehicle; 2) that the business administrator (Bartley) reimburse the school district for the cost of insuring the vehicle in question; 3) that protocols be put in place so that any purchase over $10,000 in the future only be approved during a public meeting of the Board (not in closed session); and 4) that regular audits of the superintendent's office be done by the Office of Fiscal Accountability. Thus, the prayer for relief purports to be grounded in school ethics law, generally, along with fiscal accountability/recordkeeping regulations, N.J.A.C. 6A:23A-6.11 et seq. Petitioner seeks penalties to be imposed against both the superintendent and the business administrator individually (numbers 1 and 2), as well as corrective action to be imposed against the Board going forward (numbers 3 and 4). It should be noted that there is a separate school ethics complaint, currently pending before the School Ethics Commission, that is not affected by this decision.

Regarding any relief sought against Norcia or Bartley individually, both Norcia and Bartley cease to be employed by the District, and Norcia ceased all use of the subject vehicle effective July 27, 2021. As the bulk of petitioner's complaints deal with the past purchase and assignment of a vehicle to Norcia, along with alleged past infractions of the recordkeeping required by N.J.A.C. 6A:23A-6.11 and -6.12, and since both Norcia and Bartley are no longer employed in the District, I **CONCLUDE** that the appeal is moot, as no relief can be granted, and, thus, the matter is no longer actionable. I **FURTHER CONCLUDE** that any corrective action sought to be imposed upon or against the Board, itself, is not available relief for the petitioner, as the undersigned does not have the authority to impose any such change in Board procedure or practice under N.J.A.C. 6A:23A-6.11 and -6.12, respectively.

An action is considered moot when it no longer presents a justiciable controversy, and the conflict between the parties has become merely hypothetical. In re Conroy, 190 N.J. Super. 453, 458 (App. Div. 1983). The doctrine of mootness has utility in the

administrative setting if no effective relief can be granted in a case. In re Tenure Hearing of Mujica, 2006 N.J. AGEN LEXIS 168 (March 15, 2006), adopted, 2006 N.J. AGEN LEXIS 660 (April 25, 2006) (stating also that the commissioner of the Department of Education will not decide moot cases).

The most common use of the mootness doctrine occurs in cases where changed circumstances render the relief sought impossible to grant. W. Morris Reg'l Bd. of Educ. v. A.M. & K.H., 2005 N.J. AGEN LEXIS 686 (Nov. 30, 2005). As noted above, neither Norcia nor Bartley is currently employed with the District, and, thus, I **CONCLUDE** that the circumstances have changed so as to render the relief sought by petitioner impossible to grant.

It is well-settled law in New Jersey that cases that have become moot prior to adjudication are no longer actionable. See Mujica, 2006 N.J. AGEN LEXIS 168, at *10 (citing Coviello v. Bd. of Educ. of Fair Lawn, 1993 N.J. AGEN LEXIS 1402 (March 22, 1993)). Based on the foregoing, and barring any authority which enables the undersigned to alter the Board's purchasing procedures going forward, I **CONCLUDE** that the matter at bar is no longer actionable.

CONCLUSION

For the reasons stated above, I **CONCLUDE** that petitioner's motion for summary decision should be denied, and the Board's cross-motion for summary decision dismissing the petition should be granted.

ORDER

It is, hereby, **ORDERED** that respondent Board's motion for summary decision is **GRANTED**, and petitioner Lisa Yourman's petition is **DENIED**.

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.

April 18, 2024
DATE

JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency: 4/18/24

Date Mailed to Parties: 4/18/24

id

208-24

New Jersey Commissioner of Education

Final Decision

Stephanie Bradberry,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

Synopsis

Pro-se petitioner appealed the determination of the respondent New Jersey State Board of Examiners (SBE) denying her application for a standard administrative certificate with a supervisor endorsement. The SBE based its decision upon petitioner's failure to satisfy *N.J.A.C.* 6A:9B-12.6(a)2.ii, which requires six graduate-level semester-hour credits in instructional staff supervision and/or curriculum design and development. Petitioner maintained that the Board's decision was arbitrary, capricious, and unreasonable, and was inconsistent with the requirements of *N.J.A.C.* 6A:9B-12.6(a)2.ii, contending that she is "more than qualified" with many years in academia as well as experience since 2004 with "writing or contributing to curriculum [sic], founding and owning two educational businesses, and [a] Doctoral candidacy in Education: Curriculum and Teaching." The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case and the matter is ripe for summary decision; petitioner disagreed with the Board's assessment that her proffered alternative education and experience is not equivalent to her three-credit deficiency in instructional staff supervision and/or curriculum design and development; the Board argued that petitioner "failed to proffer any evidence demonstrating that the Board's decision was not consistent with the applicable statutory and regulatory provisions;" petitioner urged the Board to consider five alternative courses to cure her three-credit deficiency in instructional staff supervision and/or curriculum design and development, but two of those courses had already been applied to satisfy six of the twelve credits required under *N.J.A.C.* 6A:9B-12.6(a)2.ii; the three remaining proffered courses focused on teaching methods, strategies, and lesson planning, rather than curriculum development and/or instructional staff supervision. The ALJ concluded that petitioner failed to prove that the Board's decision was contrary to the applicable statutory and regulatory provisions; further, petitioner's proffered experience from the summer of 2005, involving a "contribution" to the development of a ninth-grade curriculum, was not equivalent to a broad-based curriculum development design course which focuses on the entire philosophical, historical, and pedagogical perspectives of creating curricula from kindergarten through twelfth grade. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ and adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

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.

208-24
OAL Dkt. No. EDU 02459-23
Agency Dkt. No. 253-9/22

New Jersey Commissioner of Education

Final Decision

Stephanie Bradberry,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that the New Jersey State Board of Examiners' (Board) decision denying petitioner's application for a standard administrative certificate with a supervisory endorsement was consistent with *N.J.A.C.* 6A:9B-12.6.

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

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2024
Date of Mailing: May 31, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 02459-23
AGENCY DKT. NO. 253-9/22

STEPHANIE BRADBERRY,
Petitioner,
v.
NEW JERSEY DEPARTMENT OF EDUCATION, STATE BOARD OF EXAMINERS,
Respondent.

Stephanie Bradberry, petitioner, pro se

Colin G. Klika, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: March 4, 2024 Decided: April 18, 2024

BEFORE **SARAH H. SURGENT**, ALJ:

STATEMENT OF THE CASE

Petitioner Stephanie Bradberry (Bradberry) appeals from respondent New Jersey Department of Education (DOE), State Board of Examiners' (Board) denial of her

application for a standard administrative certificate with a supervisor endorsement (Supervisor Certificate), based upon Bradberry's failure to satisfy N.J.A.C. 6A:9B-12.6(a)2.ii, which requires, in relevant part, six graduate-level semester-hour credits in instructional staff supervision and/or curriculum design and development. Bradberry maintains that the Board's decision was arbitrary, capricious, and unreasonable, and that it was inconsistent with the requirements of N.J.A.C. 6A:9B-12.6(a)2.ii, "because she is more than qualified with [twenty] years in academia, experience since 2004 with writing or contributing to curriculum [sic], founding and owning two educational businesses, and [a] Doctoral candidacy in Education: Curriculum and Teaching." (Pb at 1, 4, 8-9).[1]

PROCEDURAL HISTORY

On or about August 9, 2021, Bradberry submitted her application for a Supervisor Certificate to the DOE. (P-1). By notice dated December 8, 2021, the Board denied Bradberry's application on the basis that she lacked "[t]hree graduate elective credits in instructional staff supervision AND/OR curriculum design and development." (P-2). On March 29, 2022, Bradberry requested a credentials review, (P-3), and the Board again denied the Supervisor Certificate on June 30, 2022, concluding that Bradberry failed to "establish a one-to-one correspondence between her work experience and the licensure deficiency." (R-1 at 3). On September 13, 2022, Bradberry filed a pro se petition of appeal, which was transmitted to and filed at the Office of Administrative Law (OAL) on March 20, 2023, to be heard as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

After several telephonic status conferences, the parties indicated that each of them would be moving for summary decision. Bradberry filed her motion for summary decision on October 27, 2023. (Pb). The Board filed its opposition and cross-motion for summary decision on December 8, 2023. (Rb). Oral arguments were held in person on March 1, 2024. On March 4, 2024, Bradberry's electronic submission of her exhibits table of contents was received, and the record closed.

[1] Bradberry also asserted civil rights claims alleging "harassment, racism, and discrimination," and sought damages for alleged lost employment opportunities, as well as damages for alleged physical and emotional distress. (Pb at 1, 5, 10–11). She withdrew those claims on the record at the March 1, 2024 hearing.

FACTUAL DISCUSSION AND FINDINGS

These salient points are not in dispute. I therefore **FIND** the following **FACTS**.

The above procedural history is incorporated herein by reference. In its June 30, 2022 denial of the Supervisor Certificate after Bradberry's credentials review, the Board found, in relevant part, the following:

> Bradberry has satisfied the requirements toward certification except for three graduate level elective credits in general principles of instructional staff supervision and/or curriculum design and development. She was present at the Board's meeting on May 19, 2022. The Board had no questions for her.
>
> Bradberry requested the Board consider certain coursework taken at Northcentral University as demonstrating alternative education and/or experience that satisfies her deficiency. Specifically, Bradberry asked the Board to consider the following courses:
>
> - CT7000 Developing Instructional Strategies and Curriculum
> - CT7002 Identifying and Maximizing Teaching/Learning Styles
> - CT7003 Teaching and Learning Foundations
> - CT7005 Literacy: Focus on Curriculum
> - CT7006 Multiple Intelligences
>
> The Board was advised by the Office of Recruitment, Preparation and Certification that CT7000 and CT7005 were already used to satisfy 6 of the 12 credits required pursuant to N.J.A.C. 6A:9B-12.6(a)(2)(ii). Thus, these two courses cannot also satisfy her deficiency. Upon review of the syllabi and course descriptions for the remaining three courses, the Board finds that for each the focus was on teaching methods and strategies as well as models for lesson planning to address the need for differentiated instruction as opposed to

> concepts of curriculum development or instructional staff supervision.
>
> Bradberry also states that she has developed curricula, programs and courses since 2004. The Board notes that her resume includes experience as a tutor, paraprofessional, and teacher at the elementary and secondary levels as well as an adjunct professor at the collegiate level. However, the only specific experience in curriculum development and/or staff supervision she provided documentation to support was for the summer of 2005, when she contributed to the 9th grade curriculum development at Northern Burlington County Regional High School. The Board finds that her limited work experience in curriculum development does not meet the breadth and level of what is required of a supervisor and is not equivalent to the knowledge she would gain from the course she is lacking. Thus, The Board finds Bradberry did not establish a one-to-one correspondence between her work experience and the license deficiency.
>
> [R-1 (emphasis added).]

The description for CT7000, a three-credit course entitled Developing Instructional Strategies and Curriculum, which the Board already credited, states:

> In this course, students will contrast and analyze instructional strategies based on a framework of architectural principles. Students will integrate and implement curriculum theories and models that include differentiated instruction and the infusion of technology. Curriculum standards, requirements, issues, and trends will be evaluated for the production and promotion of recommendations for effective change.
>
> [R-2 at 9.]

The description for CT7002, a three-credit course entitled Identifying and Maximizing Learning/Teaching Styles, states:

> The skillful use of learning and teaching styles requires familiarity with style models. CT7002 offers the doctoral student opportunities for the analysis and assessment of the interactions at play within learning/teaching styles and brain-based strategies and applications. The doctoral student will become familiar with his or her own style and teaching models that engage diverse learners. From that awareness, planning

> can include how to investigate and evaluate the responsible use of styles and strategies within effective teaching models, plus the synthesis, application, an assessment of models within diverse learning contexts. The doctoral student will integrate insights for maximizing styles, teaching strategies, and assessments within a plan for developing best practices and continuing professional development.
>
> [R-2 at 10.]

The description for CT7003, a three-credit course entitled Teaching and Learning Foundations, states:

> The foundations of teaching and learning can be viewed from several perspectives. Doctoral students will analyze the influence of emotional, social, and cultural contexts and evaluate those influences to make effective decisions that support school structures, which enable student learning. Topics include: learning theories and instructional models, effective teaching practices, multiple intelligences, and metacognition.
>
> [R-2 at 11.]

The description for CT7005, a three-credit course entitled Literacy: Focus on Curriculum, which the Board already credited, states:

> This class offers doctoral students opportunities to investigate and assess the issues and research related to literacy development and literacy curriculum development. Students will analyze principles and strategies that foster literacy development in the early grades and apply learning to classroom curriculum and instruction. Theory, activities, and summative assessments aid the doctoral student in the evaluation of literacy based learning and performance. Literacy achievement and best literacy teaching strategies are planned and implemented.
>
> [R-2 at 12.]

The description for CT7006, a three-credit course entitled Multiple Intelligences, states:

> In this course, students will be introduced to Dr. Howard Gardner's theory of multiple intelligent intelligences (MI), and will evaluate how to differentiate curriculum to maximize its benefits for students. Students will analyze the options for evaluating and revising assessment methods and tools to include MI theory in curriculum development. In addition, specific intelligences will be evaluated for their contributions to personal and professional development.
>
> [R-2 at 13.]

Bradberry's resume indicates, under "Educational Consulting Experience," that she was a "Developer" at Northern Burlington County Regional High School in New Jersey during the summer of 2005, when she "[c]ontributed to 9th grade curriculum development." (R-2 at 19). In that vein, Bradberry tendered for the Board's consideration an August 9, 2010 letter of recommendation "for supervisory and managerial levels in education," authored by the former Director of Curriculum and Instruction for the Humanities at that school, stating that Bradberry "was a fabulous contributor" to the development of an interdisciplinary curriculum that summer. (R-2 at 14–15).

LEGAL ANALYSIS AND CONCLUSIONS

Bradberry maintains that her motion for summary decision should be granted because the Board's decision was arbitrary, capricious, and unreasonable, and is inconsistent with the requirements of N.J.A.C. 6A:9B-12.6(a)2.ii. In short, she disagrees with the Board's assessment that her proffered alternative education and experience is not equivalent to her three-credit deficiency in instructional staff supervision and/or curriculum design and development. The Board argues that Bradberry's motion should be denied and that its cross-motion for summary decision should be granted because Bradberry "failed to proffer any evidence demonstrating that the Board's decision was not consistent with the applicable statutory and regulatory provisions."

I.

A summary decision "may 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." N.J.A.C. 1:1-12.5(b). That rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules. See R. 4:46-2; Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954).

In Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

> [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 fact finder to resolve the alleged disputed issue in favor of the non-moving party. The "judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."
>
> [Id. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)).]

In evaluating the merits of the motion, "[a]ll inferences of doubt are drawn against the movant and in favor of the opponent of the motion." Judson, 17 N.J. at 75. However, "[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." N.J.A.C. 1:1-12.5(b).

Having reviewed the parties' submissions and heard their oral arguments, I **CONCLUDE** that no genuine issues of material fact exist which require a plenary hearing to determine whether Bradberry's application for a Supervisor Certificate was appropriately denied. This matter is therefore ripe for summary decision.

II.

The Board consists of the DOE Commissioner, ex officio, one DOE assistant commissioner, two presidents of State colleges, one county superintendent, one superintendent of a Type I school district, one superintendent of a Type II school district, one high school principal, one elementary school principal, one school business administrator, one librarian employed by the State or a political subdivision thereof, and four teaching staff members other than a superintendent, principal, school business administrator, or librarian. N.J.S.A. 18A:6-34. The Board is entrusted, inter alia, with issuing appropriate certificates to teach or to administer, direct, or supervise the teaching, instruction, or educational guidance of pupils in public schools operated by boards of education, and such other certificates as it is authorized to issue by law based upon certified scholastic records or examinations, or both. N.J.S.A. 18A:6-38.

When an initial application to the Board for a certificate is denied, an applicant may appeal that decision to the Board and provide evidence of alternative education and/or experience which the applicant considers to be equivalent to cure the noted deficiencies. N.J.A.C. 6A:9B-4.12(b). Bradberry carries the burden to prove by a preponderance of the credible evidence that she is entitled to a Supervisor Certificate by presenting the information necessary to establish a "one-to-one correspondence of experience/alternate education to cure her alleged licensing deficiency. McQuilken v. State Bd. of Exam'rs, OAL Dkt. No. EDU 8375-11, Initial Decision (Dec. 13, 2011), http://njlaw.rutgers.edu/collections/oal, adopted, Comm'r (Jan. 27, 2021).

The Commissioner may review the Board's decision to determine whether it is consistent with the applicable statutory and regulatory provisions. Walder v. State Bd. of Exam'rs, Comm'r Decision No. 503-14 (Dec. 29, 2014), 2014 N.J. AGEN LEXIS 1259, *4-*5. When the Board's denial of a request for the issuance of a certificate is challenged, the Commissioner is not required to give deference to the Board, but instead determines whether its decision was legally appropriate. Id. at *4. Contrary to Bradberry's assertion, the arbitrary, capricious, or unreasonable standard of review is inapposite to the Commissioner's review of the Board's determination. Ibid.; Travisano v. Dep't of Educ., State Bd. of Exam'rs, 2022 N.J. AGEN LEXIS 471.

N.J.A.C. 6A:9B-12.6 currently provides:

(a) To be eligible for the standard administrative certificate with a supervisor endorsement, a candidate shall:

1. Hold a master's or higher degree from an accredited college or university; [and]

2. Successfully complete <u>one</u> of the following:

i. A Commissioner-approved college curriculum that specifically prepares the candidate for the endorsement; [or]

ii. <u>Twelve graduate-level semester-hour credits, including the following</u>:

(1) Three credits in general principles of instructional staff supervision in preschool through grade 12;

(2) Three credits in general principles of curriculum design and development for preschool through grade 12; and

(3) <u>Six elective credits in instructional staff supervision and/or curriculum design and development</u>; or

iii. A Commissioner-approved training program that is implemented by a Commissioner-approved provider and specifically prepares the candidate for the endorsement; and

3. Hold a standard New Jersey instructional or educational services certificate, or its out-of-State equivalent, and complete three years of successful, full-time teaching and/or educational services experience. Teaching and/or educational services experience completed in a New Jersey school district shall have been under an appropriate New Jersey certificate.

[N.J.A.C. 6A:9B-12.6 (eff. May 1, 2023) (emphasis added).]

Prior to an amendment effective May 1, 2023, the relevant provision of N.J.A.C. 6A:9B-12.6(a)2.ii separated the above section (a)ii.3 into two separate required components: "(3) Three elective credits in curriculum design and development; and (4) Three elective credits in in instructional staff supervision and/or curriculum design and development." N.J.A.C. 6A:9B-12.6(a)2.ii.(3) and (4) (2022) (emphasis added). Thus, at the time of its June 30, 2022 decision, the Board essentially found that Bradberry had satisfied the required "[t]hree elective credits in curriculum design and development," N.J.A.C. 6A:9B-12.6(a)ii.(3) (2022) (emphasis added), but that she had not satisfied the required additional "[t]hree elective credits in instructional staff supervision and/or curriculum design and development," N.J.A.C. 6A:9B-12.6(a)ii.(4) (2022) (emphasis added).

As noted in my above factual findings, Bradberry urged the Board to consider five alternative courses to cure her three-credit deficiency in instructional staff supervision and/or curriculum design and development. (R-1 at 2). Of those, the Board determined that two of the proffered courses, CT7000 and CT7005, had already been applied to satisfy six of the twelve credits required by 6A:9B-12.6(a)2.ii, and that the three remaining proffered courses, CT7002, CT7003, and CT7006, focused upon teaching methods, strategies, and lesson planning, rather than curriculum development and/or instructional staff supervision. (R-1 at 2). The Board also found that although Bradberry's resume included experience as a tutor, paraprofessional, and teacher at various education levels, the only documented specific experience in curriculum development and/or staff supervision provided by Bradberry demonstrated that Bradberry's limited work experience in curriculum development during the summer of 2005 did not meet the breadth and level of what is required of a supervisor and was not equivalent to the content knowledge she would have gained from the requisite three credit hours she was lacking. Id. at 2-3.

In light of the applicable law and my findings of fact, I agree with the Board's assessment of Bradberry's proffered alternative education and experience, and I **CONCLUDE** that Bradberry failed to prove by a preponderance of the credible evidence that the Board's decision was contrary to the applicable statutory and regulatory provisions. The one-page excerpts of syllabi Bradberry provided to the Board for CT7002,

Identifying and Maximizing Learning/Teaching Styles, CT7003, Teaching and Learning Foundations, and CT 7006, Multiple Intelligences, clearly indicate that the courses were focused on their title descriptions, rather than on any curriculum development or instructional staff supervision. (R-2 at 10–11, 13). Moreover, Bradberry's summer of 2005 "contribution" to a ninth-grade curriculum development is by no means the equivalent of a broad-based design curriculum development course which focuses on the entire philosophical, historical, and pedagogical perspectives of creating curricula from kindergarten through twelfth grade and evaluating different school settings from elementary to high school and urban versus rural settings. See, e.g., Numczyk v. Dep't of Educ., State Bd. Of Exam'rs, Initial Decision, EDU 15422-19, at 6–8, aff'd as modified, Final Decision, 242-9/19 (May 18, 2022). I therefore **CONCLUDE** that Bradberry's motion must be denied, and the Board's motion must be granted.

ORDER

It is therefore **ORDERED** that the Board's motion for summary decision is hereby **GRANTED** and its denial of a Supervisor Certificate is hereby **AFFIRMED**; and it is further

ORDERED that Bradberry's motion for summary decision is hereby **DENIED** and her petition is hereby **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 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.

April 18, 2024
DATE

Sarah H. Surgent
SARAH H. SURGENT, ALJ

Date Received at Agency: April 18, 2024

Date Mailed to Parties: April 18, 2024

SHS/nn

APPENDIX

EXHIBITS

For petitioner

Pb Petitioner's Brief in Support of Motion, received October 27, 2023

P-1 Email to Craig Eskow

P-2 Evaluation of Credentials-Supervisor

P-3 Review for Standard Supervisory Certificate

P-4 Individual Credentials Review Presentations

P-5 Acknowledgement (Petition)

P-6 Board's Switch in Representation and Request for Extension to File Answer

P-7 Respondent Refusal to Answer Petitioner's Request for Explanation and Proof

P-8 Board Acknowledges Two Letters of Recommendation Included by Petitioner for Review

P-9 Three Letters of Recommendation, Resume and Professional Development

P-10 Transmittal to OAL

P-11 Request for Update on Case

P-12 Requesting Update for Docket 253-9/22

P-13 Update Sent to Incorrect Email Address

P-14 Minute Clinic and Better Help Services

P-15A Petitioner's First Set of Answers to Interrogatories and Request for Production of Documents

P-15B Approved School Leadership Programs, Petitioner's Transcript, Courses and Programs Approved by Commissioner, Singh Testimony, NCU Course Syllabus Details, Three Letters of Recommendation, Resume and Professional Development

P-15C Course Descriptions for ED7020, RSH9101E, RSH9102E, RSH9103QLE, RSH9104E, CMP9200E, DIS9321E

P-16 Respondent's Responses to Petitioner's First Set of Interrogatories and Request for Production of Documents

P-17 Requirements for Supervisor Certificate
P-18 Miller v. State Board of Examiners Synopsis
P-19 Credential Review: Supervisor Certificate
P-20 Directions for Submission of Credential Review Packet
P-21 Preparation of Documentation
P-22 Respondent's Affirmative Defenses
P-23 New Jersey State Policy Prohibiting Discrimination in The Workplace
P-24 Average Salary for Curriculum Supervisor, Salaries for Assistant Superintendents in Mercer County
P-25 Significant EEOC Race/Color Cases (Covering Private and Federal Sectors)
P-26 Nimczyk v. New Jersey State Board of Examiners Written Feedback
P-27 New Jersey Department of Education State Board of Examiners Decision
P-28 Offered Positions and Potential Positions
P-29 Proof of Fibromyalgia and Medication Allergies
P-30 Email Sent to Incorrect Address
P-31 Proof of Attachments Originally Sent to Mr. Klika

For respondent

Rb Respondent's Brief in Support of Motion and Opposing Petitioner's Motion, received December 8, 2023
R-1 Board's June 30, 2022 decision
R-2 Bradberry's letter and exhibits to Board, dated April 6, 2022

209-24
OAL Dkt. No. EDU 03614-23
Agency Dkt. No. 78-3/23

New Jersey Commissioner of Education

Final Decision

N.L., on behalf of minor child, A.L.,

Petitioner,

v.

Board of Education of the Hunterdon Central Regional High School District, Hunterdon County,

Respondent.

The record of this matter, the hearing transcript, 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 adopts the Initial Decision as the final decision in this matter. Petitioner has not demonstrated that respondent's decisions to suspend her child from school for five days on January 19, 2023, and for ten days on February 7, 2023, were arbitrary, capricious, or unreasonable.

Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2024
Date of Mailing: May 31, 2024

[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 03614-23
AGENCY DKT. NO. 78-3/23

N.L. ON BEHALF OF MINOR CHILD A.L.,
Petitioner,
v.
HUNTERDON CENTRAL REGIONAL HIGH SCHOOL DISTRICT BOARD OF EDUCATION,
Respondent.

RECORD SEALED

N.L., petitioner, pro se

Alicia D'Anella, Esq., for respondent (Parker McCay, attorneys)

Record Closed: March 13, 2024 Decided: April 26, 2024

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

Petitioner, N.L on behalf of A.L., challenged a five-day out-of-school suspension and a ten-day out-of-school suspension imposed by the respondent, Hunterdon Central Regional High School District Board of Education (Board), and further seeks to remove them from A.L.'s record.

PROCEDURAL HISTORY

On or about February 23, 2023, the petitioner filed a pro se Petition of Appeal with the Department of Education requesting removal of a five-day suspension that occurred on January 19, 2023, and a ten-day suspension that occurred on February 7, 2023. On April 25, 2023, respondent filed an Answer with the Department of Education. The Department of Education transmitted this matter to the Office of Administrative Law on April 27, 2023, for hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. After a series of status conferences, the matter was scheduled for a hearing on December 13, 2023. During the course of the hearing the parties requested that the matter and the record be sealed. I entered a sealing order in this matter on April 26, 2024. The parties agreed to closing summations after the transcripts were received. The closing summations were received on March 13, 2024, and the record was closed.

FACTUAL DISCUSSION

Testimony

Jessica Long (Ms. Long) is currently employed by the Hunterdon Central Regional High School District. She is a vice principal (VP) for the class of 2025. She has held this VP position since June 2020. Prior to taking this position, she had worked for the high school from 2003 to May 31, 2020, as an English teacher. In her role as VP, she oversees discipline and attendance and manages the behavior of the students. Ms. Long helps with emergencies, and often works with counselors to determine why there are attendance and/or recurring discipline issues.

Ms. Long first met A.L. in September of his freshman year in high school. A.L. is in the class of 2025. On January 19, 2023, there was a reentry[1] meeting after A.L. was suspended for substance abuse. As the VP she is responsible for overseeing the reentry meetings. Because this was the second offense committed by A.L., and the school uses

[1] A reentry meeting is a meeting held after a suspension to assess the student's readiness to return to school, as well as to review any outstanding needs still required to be completed by the student. Tr. at 12:1–12.

a system of progressive discipline, Ms. Long invited the principal, Mr. Edward Brandt (Principal Brandt), to the reentry meeting. The principal usually handles disciplinary matters after a third incident. According to Ms. Long, Principal Brandt usually attends the second reentry meeting to let the student know what would happen next in terms of discipline. Others attending the meeting included A.L., the parent, N.L., and Ms. Buckelew, the student assistant counselor (SAC). Ms. Long testified that she usually has a checklist during these meetings. This checklist goes over what was completed, what brought the student there, and what happens next. Principal Brandt would speak as to the consequences and support if there is a third offense.

The meeting was turned over to Principal Brandt, who started to discuss students with substance issues. While Principal Brandt was speaking, A.L. said to Mr. Brandt, "How do you know I have a substance issue? You can't judge a book by its cover, you don't know me." Tr. at 16:2–4. Ms. Long said Principal Brandt responded, "well, I do know two chapters of the book," referring to A.L.'s two violations. A.L. got up and said either "Forget this, I am leaving," or "Fuck this, I am leaving." Tr. at 16:15–17. He then ran out of the room. Ms. Sweet, the guidance counselor, went after him, followed by Ms. Long. According to Ms. Long, Ms. Sweet has a good relationship with A.L. As Ms. Long followed them, she noticed that they had stopped, and that Ms. Sweet was speaking to A.L. Ms. Long stayed back about fifteen feet to allow Ms. Sweet the chance to, and see if Ms. Sweet were able to, deescalate the situation. A.L. became loud and left the building where they were located.

There are two buildings that are linked together, and A.L. could enter his classroom from a door on the outside of one of the buildings. Ms. Long testified that she radioed down to security and other staff members to not let A.L. into his class because they were in a reentry meeting, and he was not cleared to return to class. Ms. Long was also concerned that he would leave the school, as he has eloped in the past. She was also concerned for his safety. However, A.L. went into the parking lot and stood by a car, which Ms. Long later learned was his mom's car. Ms. Long also radioed Principal Brandt to let him know what was happening, as he was still in the room with N.L. and Ms. Buckelew, the SAC.

Ms. Long went and spoke with A.L and said, "I know you are upset, let's just go back there, let's check off these boxes, and let's just get you back to class." Tr. at 21:10–12. Ms. Long said A.L. started to curse at her. He said, "What are you retarded? Do you really think I'm going to go back into that room? I am not doing it. You're such a cunt . . .." Tr. at 21:13–9. She returned to the room where the meeting was and told N.L. that she thought she should go home, and she proceeded to debrief Principal Brandt. A.L. was disciplined for that incident with a five-day out-of-school suspension.

On February 7, 2023, Ms. Long received a text from Ms. Buckelew stating that A.L. was escalating. The incident arose from an issue with his Spanish teacher, Mr. Saks, during his fourth-block class. At the time, Ms. Long was not sure what had happened. A.L. had gone into two counseling offices that day. According to Ms. Long, by the time she found out what was happening A.L. was in the second counseling office.

Ms. Long testified that A.L. is in their Aspire program. This program is for students who struggle with behavioral and emotional issues. It is a small group of children that is involved in this program. It is built specifically for students who do not need out-of-district placement but struggle with the mainstream population. Ms. Long spoke with Mr. Saks, who told her that A.L. got upset because he told him to put away his phone. She then went to the house office to investigate and went into her office, which adjoins Ms. Sweet's office. She overheard A.L. speaking in a loud voice; it was not clear what he was saying, but it was clear that he used the "F word" several times. He was loud, and he escalated. A.L. then burst from the office, and at that time she realized he was telling his mother what had happened while Ms. Buckelew was present. Ms. Long then followed A.L. He was not responding verbally, and she did not want him to leave. It was the last fifteen minutes of the school day. Ms. Long asked him if she could walk him to the bus and he did not object, so she did. After the incident she debriefed Principal Brandt, who requested that the teacher write a note as to what happened. R-2.

Ms. Long testified that the Aspire class has two main classrooms that adjoin each other through a door. Outside of each classroom there is a bathroom. Previously, they had found that if class were not going on in one of the rooms, a student might wander into the empty classroom if he did not feel like doing work. The team had recently discussed

how to handle the students wandering into the empty classroom. On February 7, 2023, A.L. did not want to return to class, and Mr. Saks told him to return to the classroom. A.L. got upset, and requested a walk, as this sometimes deescalates A.L. After A.L. returned, he plugged in his phone. He was told that if he were not going to complete the work, he would not be able to use his phone any longer. A.L. proceeded to use colorful language that included some "F-bombs." A.L. left the room, and Mr. Saks followed him to make sure he did not elope or go to the mid-campus, where counseling is located.

According to Ms. Long, A.L. used "fuck" numerous times when speaking to Mr. Saks. This occasion led to another discipline being issued against him because he refused to comply with his work and cursed at Mr. Saks, as well as Ms. Sweet. He refused to respond to a verbal command and was openly defiant.

Ms. Long identified A.L.'s 504 Plan (R-4). Under "Accommodations" it states:

> Allow A.L. to use his coping strategies providing breaks to see a counselor/SAC as needed. Please call ahead to inform the house/health office staff and make sure someone is available to help the student.
>
> - Extended time on assignments(1.5x) provided student is communicating w/teachers and making progress or is absent.
>
> - Consideration should be given to tardies due to the diagnosis.
>
> [R-4.]

A.L. was suspended. Based on having two suspensions and other issues with A.L. in such a short time, the team decided that they needed to come up with a plan that would keep him from being out of school. Ms. Buckelew, Ms. Sweet, and his parent came up with an intervention plan. See R-5. The intervention plan was formulated to provide support, while at the same time holding him responsible and accountable for his actions. Since this plan went into effect, A.L.'s behavior has improved.

Edward C. Brandt (Principal Brandt) has been the principal of Hunterdon Central High School since September 1, 2021. Prior to that he was the dean of students, and prior to that he was the acting principal. He was mathematics supervisor between 2006 and 2019. As the principal his main job is to oversee the well-being of the students and faculty. He currently oversees the vice principals, the dean of students, and the supervisor of athletics. He does not handle low-tiered discipline, but is aware of infractions leading to discipline, as they are reported to him. Principal Brandt is usually brought into the reentry meetings of a second offense since he takes the lead when it is a third offense. He gets involved, however, when there is a serious enough offense. Tr. at 82:12–13.

Principal Brandt became aware of A.L. sometime in the fall of 2022 when there was a threat made towards the dean of students. Tr. at 83:2–6. The first time he formally met A.L. was on January 19, 2023, at the reentry meeting. He knew of him informally, as A.L. was part of the Aspire program when it started, and at the time Principal Brandt was the supervisor for the Aspire curriculum. Tr. at 84:7–17.

He was in the reentry meeting with Ms. Long on January 19, 2023, along with the counselor, parent, and student. Principal Brandt testified that he was there to talk about due process, and what would happen if there were a third offense. A third offense is considered grounds for "chronic offender" status as per the school's Code of Conduct. Tr. at 86:2–3. During the reentry meeting, there were discussions regarding what had occurred, the consequences, the resources, what was effective and not effective, and whether they needed to come up with a better plan for the student.

As Principal Brandt was talking about due process, A.L. said, "You can't judge a book by its cover." Because this was A.L.'s second offense, Principal Brandt's response was, "I think we know two chapters now," and he hoped to further state, "hoping to have better next chapters ahead." Tr. at 87:16–20. Principal Brandt testified that his response was working off the metaphor that A.L. had used. A.L. then got very upset and emotional and said something like, "Fuck this," "I'm not sitting here for this fucking bullshit," while getting up and leaving. Tr. at 89:1–8. Ms. Sweet followed him. Principal Brandt got up to follow him, but Ms. Buckelew told him, "he is upset with you," and that he should just

stay back. Tr. at 89:10–17. Principal Brandt stayed back with N.L. He testified that he had a small conversation with N.L. and did apologize, saying that he had not known that what he said would upset A.L.

After it was determined that the reentry meeting was not going to continue, he followed up with Ms. Long, and said that they would respond to the abusive language and willful disobedience with a five-day suspension. January 19, 2023, would be the first day of the suspension. Tr. at 92:1–5. Later that day, he reminded Ms. Long that another screening on the reentry was necessary. According to Principal Brandt, part of the reentry for substance violation is another substance screening with the school nurse. Tr. at 92:19–21.

A.L.'s "Conduct History" was reviewed. R-1. The history reflects that on January 19, 2023, there was an entry titled DIS/DEF, which means disobedience and defiance. There was also an entry titled OSS, which means out-of-school suspension. Ibid. Based on the January 19, 2023, incident, A.L. received a five-day out-of-school suspension. Tr. at 95:18–19. Principal Brandt identified the school's regulation that implements the student disciplinary policy. R-3. The regulation is also in the student handbook. This is given to all students and parents and is also on the school's website. The school operates under a system of progressive discipline. There are consequences for various infractions. Typically, the discipline increases from the second to the third infraction and beyond. Tr. at 98:15–17. Three or more offenses earn one "chronic offender" status. A.L.'s conduct resulting in discipline began on October 14, 2022, with offensive language to staff members. The first discipline for abusive language is one to three extended detentions, which is a three-hour Wednesday-afternoon detention, and two referrals to an SAC, which is the support portion of the discipline. Tr. at 100:3–11. Notification of law enforcement occurs sometimes if the abusive language is bias related. R-3. A second offense would extend to one to three days OSS, notification to a police officer, and then three meetings with an SAC. Then there is the chronic-offender status when there is a third offense.

If there is insubordination, the first offense receives a discipline of one to two extended detentions, and then it goes to two or three extended detentions, and if there is a third offense, there is a mandatory meeting with the principal and possibly OSS. Tr. at

101:6–10. Willful disobedience occurs when a staff member or administrator gives a directive and it is not followed. Tr. at 101:16–21. Chronic offenders become subject to Level 4 Discipline. With Level 4, the student is subject to a disciplinary action of five to ten out-of-school suspensions, notification of law enforcement, and possible recommendation for expulsion. Tr. at 103:11–14. On October 14, 2022, A.L. had a one-hour after-school detention for "abusive language." This was his first offense. On October 17, 2022, he was again disciplined for use of abusive language, and the penalty was one after-school detention plus a written apology. Tr. at 107:7–20. Another violation was recorded on November 1, 2022. This was the third violation and was recorded as "insubordination," which falls under Level 2 Discipline, but now A.L. had become a "chronic offender." Tr. at 108:1–5. A.L.'s conduct on January 19, 2023, subjected A.L. to Level 4 Discipline. Tr. at 109:7–8. This incident in January was recorded as "disobedient/defiant." Tr. at 109:20–23.

On February 7, 2023, Principal Brandt became aware of an incident that occurred during block four, which is from 12:35 p.m. to 2:03 p.m. Tr. at 112:4. Under the accommodation portion of A.L.'s 504 Plan, breaks are provided to allow A.L. to use his coping strategies by seeing a counselor/SAC as needed. Tr. at 115:9–11. Principal Brandt was debriefed by Ms. Long about this incident. The discipline imposed for the February 7 incident was based on A.L.'s disruption in the class and abusive language, disruption in the hall, disruption in the office area, and cursing at the teacher. Tr. at 116:13–24. All the events of that day led to a ten-day out-of-school suspension. The ten-day suspension follows the trajectory of progressive discipline. The previous incident in January fell on the lower end of Level 4. The February incident is also categorized under Level 4 Discipline, under chronic-offender status, resulting in a ten-day out-of-school suspension. Tr. at 120:17–22.

A behavioral intervention plan (Plan) was designed for A.L., which was put in place after the February 7, 2023, incident. It was drafted by Ms. Buckelew. As part of the Plan, the "student will be subject to the school and class discipline policies and procedures." Tr. at 123:7–8. The reason for the Plan was also because A.L.'s behavior was escalating. So, the Plan was to try to put something in place that garners a commitment from the family, the student, and the counseling program.

N.L. testified that her son was an emotionally charged and anxious child who was provoked in two circumstances by comments that he was not able to handle. Tr. at 141:19–23. N.L. believed that if A.L. had not been provoked, he would not have responded the way he did. . A.L. has "generalized anxiety." R-4. She testified that other methods should have been used to deescalate the situation. N.L. testified that the way A.L. was spoken to on January 19, 2023, resulted in how he responded. She believed that in regard to the February incident, Mr. Saks left out a few things. For example, Mr. Saks said in front of the class, "Fine, you're not going to do work, just go to counseling like you always do." Tr. at 143:15–16. In addition, when A.L. left the room, Mr. Saks followed him to the counseling office. According to N.L., A.L. laughed because he could not believe what was happening to him. Mr. Saks responded, "I will have the last laugh," to which A.L. responded, "Fuck you." Tr. at 143:22–25.

N.L. believes in progressive discipline, but believes suspending an anxious child makes him more isolated. N.L. said that she was not aware of the issue that stemmed from February 7, 2023, which dealt with A.L. being told to put his phone away. N.L. posits that the February incident would not have "blown up" if it had been handled differently. Tr. at 144:10–13. As to the January incident, N.L. said that while A.L. cursed, she did not "think any of it would happen if the teachers and administrators had made different choices." Tr. at 144:14–16. She argues that, as she read on a website, emotionally charged children are unable to follow discipline. The petitioner presented no other testimony or witness.

Based on the testimony and evidentiary record, I **FIND** the following to be the **FACTS** of the case:

1. A.L. is a student in the Aspire program at Hunterdon Central Regional High School and is in the class of 2025. He is eligible under Section 504 as a student with an impairment that substantially limits one or more major life activities. A.L. has "generalized anxiety." R-4. Accommodations were provided to him under a 504 Accommodation Plan. Ibid.

2. Edward Brandt is the principal of Hunterdon Central Regional High School, and Jessica Long is the vice principal. Resp't's Br. at 2.

3. On January 19, 2023, there was a reentry meeting conducted with A.L. The reentry meeting is to determine the student's readiness to return to school. The principal, the vice principal, the SAC, Ms. Sweet, A.L., and his mother were all in attendance. Tr. at 13:18–21.

4. Principal Brandt usually attends a reentry meeting after the second offense of a substance violation, because he handles the next step after the second violation for substance abuse.

5. During the reentry meeting, while Principal Brandt was discussing what would happen next if there were another violation, A.L. asked him how he knew he had a substance violation and told him that he should not judge a book by its cover. Principal Brandt responded that he did know two chapters of the book, referring to A.L.'s two prior substance violations. A.L. said something to the effect of "F this, I am leaving," and bolted from the room. A.L. did not return to the meeting. The staff, including the SAC, Ms. Sweet, and Ms. Long, were all engaged in trying to get him back into the reentry meeting while at the same time coordinating with security to not let him into a class, as he was not cleared to return to school. Vice Principal Long found him in the parking lot, where she asked him to return to the meeting, to which he responded, "What are you retarded? Do you really think I'm going to go back into that room? I am not doing it. You're such a cunt . . .."

6. Under the District's Regulation 5600, Student Discipline Code of Conduct, A.L.'s behavior on January 29, 2024, falls under Level 2 Discipline. It was A.L.'s third offense, and he was deemed a "chronic offender." R-3.

7. On February 7, 2023, A.L. was involved in an incident with his teacher, Mr. Saks. In an email written to Principal Brandt, Mr. Saks states:

> I informed him that if he was not going to complete the work, he wasn't going to be able to use his phone anymore. He then proceeded to pack and leave and continued using obscene language to show his disgust. As he was leaving, I let him know if this is going to be an everyday occurrence, he could stay in mid-campus for the next class.
>
> [R-2.]

8. On February 7, 2023, Vice Principal Long wrote a discipline referral, which states:

> Student refused to comply with work in his study hall arrangement (b3); student cursed (fuck) at Spanish teacher for asking him to put phone away, then left room without permission. Student went to SAC councelor [sic], she brought him to house office and student continued screaming and cursing about the Spanish situation to the councelor [sic] . . .
>
> [R-1.]

9. A.L.'s conduct on February 7, 2023, was his fourth offense. R-1.

10. The District practices progressive discipline.

LEGAL ANALYSIS AND CONCLUSION

The issue is whether the District's suspension of A.L. for a five-day out-of-school suspension on January 19, 2023, and a ten-day out-of-school suspension on February 7, 2023, were appropriate and should be upheld.

Local boards of education are charged with protecting the health and welfare of the students entrusted to their care, and with ensuring that a thorough and efficient education is provided every day to every student in an environment that is safe, orderly, and free from disruption. N.J.S.A. 18A:37-2 establishes the authority of local boards to impose discipline and provides that "[a]ny pupil who is guilty of continued and willful disobedience, or of open defiance of the authority of any teacher or person having

authority over him, . . . shall be liable to punishment and to suspension or expulsion from school."

The imposition of discipline on students is considered within the discretionary powers of the school board, and the decision of a local board as to the appropriate penalty to be imposed upon a student for a disciplinary infraction should not be disturbed, absent evidence that the board's action was arbitrary, capricious, or unreasonable. J.D. and E.D. ex rel. B.D. v. Bd. of Educ. of Toms River Reg'l Sch. Dist., 1997 N.J. AGEN LEXIS 521 (Nov. 19, 1997), adopted, Comm'r (Feb. 17, 1998), https://www.nj.gov/education/legal/commissioner/1998/66-98.pdf, adopted, 1998 N.J. AGEN LEXIS 835 (July 1, 1998).

In matters involving the exercise of a local board of education's discretion, the scope of the commissioner's review is "not to substitute his judgment for that of those who made the evaluation but to determine whether they had a reasonable basis for their conclusions." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 296 (App. Div. 1960). "Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewerage Co. v. Dep't of Envtl. Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974). Therefore, petitioner must demonstrate much more than simply a difference of opinion over the action taken by respondent. In order to satisfy the arbitrary and capricious standard, petitioner must prove that respondent acted in either bad faith or in disregard to the circumstances.

Here, A.L. was suspended for five days on January 19, 2023, at a reentry meeting, based on his conduct and use of profanity. At the reentry meeting, he said, "Fuck this," and ran out of the meeting. When asked by Ms. Long to return to the reentry meeting, his response, according to Ms. Long, was:

> What are you retarded? Do you really think I'm going to go back into that room? I'm not doing it. You're such a cunt, I can't believe you would want to make me do this. Are you

> deaf, are you dumb, are you blind, can't you see I can't do this? I don't want to do this and I'm never going to do it.
>
> [Tr. at 21:14–19.]

Based on the Board's Code of Conduct, students who engaged in three or more offenses of Abusive Language and/or Insubordination, are considered chronic offenders, and subject to Level 4 discipline. Resp't's Br. at 4. Level 4 discipline provides for out-of-school suspensions of five to ten days. The incident on January 19, 2023, was A.L.'s third offense. On February 7, 2023, A.L. was suspended for ten days based on his conduct, which began with Mr. Saks, his Spanish teacher, and ended with Ms. Long. A.L. was asked to put his phone away during class; disrupted class; left the class without permission, requiring staff to follow him; refused to listen when he was told to stop; and went to the house office, where he was heard by Ms. Long using abusive language (the "F word" multiple times) and disrupting the students that were there for counseling. This incident was the fourth offense by A.L. Petitioner argues that both incidents followed statements made by authority figures that triggered A.L. "to say things or act in a way that otherwise [he] would not have." Pet'r's Br.

A balancing must be undertaken, with the knowledge that the Board is required to maintain discipline in its schools. Further, the Board's discretionary powers must be given deference, as long as the Board did not act in an arbitrary, unreasonable, or capricious manner. I **CONCLUDE** that the petitioner has not shown that the Board's impositions of five-day and ten-day out-of-school suspensions were arbitrary, capricious, or unreasonable.

Based on the foregoing facts and the applicable law, I **CONCLUDE** that the Board's imposition of a five-day out-of-school suspension for A.L.'s violation of its policy on January 19, 2023, and the imposition of a ten-day out-of-school suspension for A.L.'s violation of its policy on February 7, 2023, should be **AFFIRMED**.

ORDER

It is **ORDERED** that the relief requested by petitioner is **DENIED**.

I hereby **FILE** my 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.

April 26, 2024
DATE

JOAN M. BURKE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

WITNESSES

For petitioner:

N.L.

For respondent:

Jessica Long

Edward Brandt

EXHIBITS

For petitioner:

Closing submission letter

For respondent:

R-1 A.L.'s Conduct Report

R-2 Email, February 7, 2023

R-3 Hunterdon Central Regional High School Code of Conduct

R-4 A.L.'s 504 Accommodation Plan, December 15, 2022

R-5 A.L.'s Behavior Plan on Reentry, February 24, 2023

Respondent's closing brief

210-24

New Jersey Commissioner of Education

Final Decision

Jayanthi Ramaswamy,

Petitioner,

v.

Board of Education of the City of Englewood, Bergen County,

Respondent.

Synopsis

Petitioner, a non-tenured chemistry teacher employed by the respondent Board from the 2019-2020 through 2022-2023 school years, did not receive a renewal contract at the end of her third year of teaching with the school district. Petitioner contended that she had positive performance evaluations and had been recommended for renewal by the school principal and the Acting Superintendent. The Board filed a motion for summary decision, arguing that: petitioner was non-renewed because of lack of engagement with the students she taught; that she had received proper notice that she was not going to be renewed at the end of the 2022-2023 school year and failed to request public discussion of her employment at a board meeting; petitioner also failed to request a *Donaldson* hearing after the Board's unanimous vote to non-renew her contract. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; boards of education have great latitude in making determinations regarding the renewal of a non-tenured teacher's contract; the Board in this matter complied with the statutory notice requirements for non-renewals; petitioner's personnel records supported the Board's stated reason for petitioner's non-renewal; petitioner failed to prove discrimination on the part of the Board; and further failed to prove that the Board's actions were arbitrary, capricious or unreasonable. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion, and adopted the Initial Decision of the Office of Administrative Law as the final decision in this matter. The Board's motion for summary decision was granted, and the petition was dismissed.

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.

210-24
OAL Dkt. No. EDU 08534-23
Agency Dkt. No. 215-8/23

New Jersey Commissioner of Education

Final Decision

Jayanthi Ramaswamy,

Petitioner,

v.

Board of Education of the City of Englewood, Bergen County,

Respondent.

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

Petitioner, a non-tenured chemistry teacher, challenges the decision of the Englewood Board of Education (Board) not to renew her contract. Following the Board's motion for summary decision, the Administrative Law Judge (ALJ) found that petitioner received *Rice*[1] notices on April 27 and May 3, 2023, informing her that her employment would be discussed by the Board at an upcoming meeting. The Board voted unanimously not to renew petitioner's employment on

[1] An employee is entitled to advance notice when a board of education intends to discuss in closed session a personnel matter that could adversely affect the employee. *Rice v. Union County Reg'l High Sch. Bd. of Educ.*, 155 *N.J. Super.* 64, 73 (App. Div. 1977).

[2] A *Donaldson* hearing is the colloquial name for the informal appearance before the Board in which a teaching staff member may discuss the statement of reasons for non-renewal and attempt to persuade the Board to renew the staff member's contract. *Donaldson v. Bd. of Educ. of N. Wildwood*, 65 *N.J.* 236 (1974).

May 11, 2023, but petitioner did not request a *Donaldson* hearing.[2] The Board provided petitioner with a Statement of Reasons on May 26, 2023, indicating that the reason for her non-renewal was lack of communication[3] with students.

The ALJ denied petitioner's motion to compel discovery, noting: 1) that petitioner did not formally request discovery from the Board; 2) the Board provided its executive session minutes in response to petitioner's Open Public Records Act request for them; and 3) while petitioner also requested notes from the executive session, no such notes existed. The ALJ found that petitioner did not prove that any discrimination occurred or identify how the Board's actions were arbitrary, capricious, or unreasonable. The ALJ further found that petitioner's personnel records supported the Board's stated reason for petitioner's non-renewal. Accordingly, the ALJ granted the Board's motion for summary decision.

In her exceptions, petitioner argues that she was not required to make a formal discovery request. Petitioner argues that she repeatedly requested the reason for her non-renewal and received nothing from the Board; she indicates that the minutes of the Board meeting do not include the reason for the non-renewal, and the Board has not produced any documents stating the justification for its decision. Petitioner contends that she cannot effectively challenge the non-renewal without knowing the reasons for it.

Upon review, the Commissioner concurs with the ALJ that the Board is entitled to summary decision. A board of education's non-renewal decision is afforded discretion and will only be overturned if it is arbitrary, capricious, or unreasonable, or if it violates constitutional or legislatively conferred rights. *N.J.S.A.* 18A:27-4.1; *Dore v. Bedminster Twp. Bd. of Educ.*, 185 *N.J. Super.*447, 456 (App. Div. 1982). Despite petitioner's exceptions to the contrary, the Board provided a justification

[3] The term used in the Statement of Reasons is "engagement," rather than communication.

for petitioner's non-renewal in its May 26, 2023 Statement of Reasons, consistent with its obligations under *N.J.S.A.* 18A:27-3.2. The Board further explained its position in subsequent correspondence to petitioner, indicating that "her particular area of weakness, despite overall positive evaluations, was at odds with the Board's goals in improving the educational quality within the district." June 7, 2023 letter, attached as Exhibit D to the petition of appeal. Petitioner's dispute appears to arise from the fact that she received positive performance evaluations, was recommended for renewal by the Acting Superintendent, and was allegedly never told that she needed to improve her student engagement skills. However, the fact that the Board made a different decision than the district's administration does not make its decision arbitrary, capricious, or unreasonable.

The Commissioner further concludes that the ALJ properly denied petitioner's motion to compel discovery. The record is clear that the Board has provided the minutes from its executive session and that notes from the executive session do not exist.

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

IT IS SO ORDERED.[4]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2024
Date of Mailing: May 31, 2024

[4] 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 08534-23
AGENCY DKT. NO. 215-8/23

JAYANTHI RAMASWAMY,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF ENGLEWOOD, BERGEN COUNTY,
Respondent.

Evan L. Goldman, Esq., and **Kelly A. Smith,** Esq., appearing for petitioner (Goldman, Davis, Krumholz, and Dillon, attorneys)

R. Scott Eveland, Esq., appearing for respondent (Inglesino Taylor, attorneys)

Record closed: January 16, 2024 Decided: April 22, 2024

BEFORE **JOSEPH A. ASCIONE**, ALJ (Ret., on recall):

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The respondent, Englewood City Board of Education (Englewood), hired the petitioner, Jayanthi Ramaswamy, for the 2019–2020 school year as a teacher of

chemistry. She continued in the employ of Englewood from year to year through the 2022–2023 school year. Petitioner received Rice[1] notices on April 27, and May 3, 2023, informing her that her contract would be considered by the respondent. Petitioner did not avail herself of her rights under the Rice notice. On May 11, 2023, her annual contract was not renewed. Petitioner did not request a Donaldson[2] hearing subsequent to learning of the failure to renew the contract. On or about May 19, 2023, counsel for petitioner requested a Statement of Reasons. On or about May 26, 2023, counsel for respondent responded to that request. On August 4, 2023, the petition in this matter was filed with the Commissioner of Education. On August 30, 2023, the New Jersey State Department of Education, Bureau of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13; N.J.A.C. 1:1-8.2. On November 2, 2023, the respondent moved for summary decision dismissing the petition. The petitioner opposed said motion after obtaining consent to extend her time to respond to December 19, 2023. Petitioner also moved for discovery seeking the "executive session notes" of the May 11, 2023, executive session. The executive-session minutes had already been requested by an Open Public Records Act (OPRA) request and supplied on July 25, 2023. No discovery request was formally made, nor included with the application for discovery. Counsel for respondent represents that no such "executive session notes" exist. The record on the application for summary disposition closed on January 16, 2024.

FACTUAL DISCUSSION

Petitioner, an untenured teacher, did not receive a renewal contract after her fourth year of service to Englewood. The Board of Education provided petitioner with a Rice notice prior to the agenda and regular meeting on May 11, 2023. Ramaswamy did not request a public discussion. The determination not to renew was made by unanimous vote, in executive session, at the May 11 meeting. Ramaswamy did not request a Donaldson hearing after the adverse vote. Counsel for Englewood provided

[1] Rice v. Union Cnty. Reg'l High Sch. Bd. of Educ., 155 N.J. Super. 64 (1977), certif. denied, 76 N.J. 238 (1978).
[2] Donaldson v. Bd. of Educ. of N. Wildwood, 65 N.J. 236 (1974).

the reason for non-renewal in a timely fashion, on request of counsel for Ramaswamy. The reason, lack of communication with students. An OPRA request was made for the minutes of the executive session, which were provided. Counsel for Ramaswamy requested executive-session notes, but the existence of such notes has been denied by counsel for Englewood. Englewood also maintains that if any notes existed, they are part of the deliberative process and are exempt from any discovery. Ramaswamy's petition does not allege any denial of a constitutional right. Englewood acknowledges that the principal and superintendent submitted Ramaswamy for renewal of contract. Ramaswamy's relief sought is an appeal of her denial of tenure/renewal, and a hearing to determine the validity of the Board's decision to deny her tenure.

LEGAL DISCUSSION

Summary decision, or as it is known in judicial matters, summary judgment, is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute and the application to that set of material facts of the applicable law and standard of proof lead to a determination of the case without the necessity of a hearing at which evidence and testimony need be taken. The procedure is equally applicable in judicial and executive-branch administrative cases. N.J.A.C. 1:1-12.5. The standards for deciding motions for summary decision are contained in Judson v. People's Bank and Trust Co. of Westfield, 17 N.J. 67, 74–75 (1954). The Supreme Court later elaborated on the motion and its standard in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995). Under the Brill standard, as in Judson, a motion for summary decision may only be granted where there is no "genuine issue" of "material fact." The determination as to whether genuine issues of material fact exist is made after a "discriminating search" of the record, consisting as it may of affidavits, certifications, documentary exhibits, and any other evidence filed by the movant and any such evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion. In order to defeat the motion, the opposing party must establish the existence of "genuine" issues of material fact. The facts upon which the party opposing the motion relies to defeat the motion must be something more than "facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful,

frivolous, gauzy or merely suspicious' . . . ." Judson, 17 N.J. at 75 (citations omitted). The Brill decision focuses on the analytical procedure for determining whether a purported issue of material fact is "genuine" or is of an "insubstantial nature." Brill, 142 N.J. at 530. Brill concludes that the same analytical process used to decide motions for a directed verdict is used to resolve summary-decision motions. "[T]he essence of the inquiry in each is the same: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Id. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52 (1986)). In searching the proffered evidence to decide the motion, the judge must be guided by the applicable substantive evidentiary standard of proof, that is, the "burden of persuasion" that would apply at trial on the merits, whether that is the preponderance-of-the-evidence standard or the clear-and-convincing-evidence standard. If a careful review under this standard establishes that no reasonable fact finder could resolve the disputed facts in favor of the party opposing the motion, then the uncontradicted facts thus established can be examined in the light of the applicable substantive law to determine whether or not the movant is clearly entitled to judgment as a matter of law. However, where the proofs in the record are such that "reasonable minds could differ" as to the material facts, then the motion must be denied, and a full evidentiary hearing held. Id. at 535.

In this case, Ramaswamy disputes the validity of the Board's decision to deny her tenure. The challenging party bears the burden of proving that the agency action was arbitrary, capricious, and unreasonable by the preponderance of the credible evidence. J.P. & M.P. v. Bd. of Educ. of S. Brunswick, Middlesex Cnty., 2002 N.J. AGEN LEXIS 952 at *10-12 (Dec. 17, 2002); New Jersey Soc'y for Prevention of Cruelty to Animals v. New Jersey Dep't of Agric., 196 N.J. 366, 385 (2008); In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 415, 432 (2004); New Jersey State League of Municipalities v. Dep't of Cmty. Affairs, 158 N.J. 211, 222 (1999); In re the 1999–2000 Abbott v. Burke Implementing Regulations, 348 N.J. Super. 382, 395 (App. Div. 2002). An action is determined to be arbitrary and capricious based on four inquiries: 1) was the action in violation of the State or Federal Constitution; 2) did it violate any express or implied legislative policies; 3) does the record contain substantial evidence to support the findings on which the agency based its action; and, 4) when applying the legislative

policies to the facts, did the agency clearly err in reaching a conclusion that couldn't reasonably have been made on a showing of the relevant factors? Brady v. Bd. of Review, 152 N.J. 197, 210–11 (1997); see also In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 385–86 (2013).

Here, Ramaswamy did not take advantage of a Rice or Donaldson hearing, allegedly relying on the recommendation of the principal and superintendent. Rice and Donaldson hearings are intended to afford the teacher the opportunity to present her position as to why she should be renewed. Instead, petitioner comes to this tribunal with a petition limited to the review of the actions of the Board, with no presentation of any claim of discrimination or violations of constitutional or legislative policy. The petition is not even verified by Ramaswamy. Ramaswamy's counsel claimed at the initial conference that the minutes of the meeting were not provided, when in fact they had been. Counsel was unsatisfied with the pro-forma minutes. Apparently, he was seeking further explanation of the determination, which was provided, but was still not acceptable to counsel. Counsel was fishing for something to provide him with a case, but did not zealously represent his client by formally requesting the limited discovery provided in this tribunal. Instead, he requested additional time to respond to the summary-decision motion and cross-moved seeking discovery, which was never specifically demanded, and refused to accept Englewood's counsel's representation that such additional documentation did not exist.

Englewood's counsel, on the other hand, relied on Dore v. Board of Education of Bedminster, Somerset County, 185 N.J. Super. 447 (App. Div. 1982), a case that predates the 1995 legislation, N.J.S.A. 18A:27-4.1(b), which provides,

> A board of education shall renew the employment contract of a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons. A nontenured officer or employee who is not recommended for renewal by the chief school administrator shall be deemed nonrenewed. Prior to notifying the officer or employee of the nonrenewal, the chief school administrator shall notify the board of the

> recommendation not to renew the officer's or employee's contract and the reasons for the recommendation. An officer or employee whose employment contract is not renewed shall have the right to a written statement of reasons for nonrenewal pursuant to section 2 of P.L.1975, c.132 (C.18A:27-3.2) and to an informal appearance before the board. The purpose of the appearance shall be to permit the staff member to convince the members of the board to offer reemployment. The chief school administrator shall notify the officer or employee of the nonrenewal pursuant, where applicable, to the provisions of section 1 of P.L.1971, c.436 (C.18A:27-10).

Englewood's counsel also relies on Truncellito v. Board of Education of Lyndhurst, Bergen County, 2019 N.J. AGEN LEXIS 643 (Sept. 18, 2019), rev'd, 2019 N.J. AGEN LEXIS 1093 (Dec. 3, 2019), rev'd and remanded, 2022 N.J. Super. Unpub. LEXIS 92 (App. Div. Jan. 24, 2022). Accordingly, the reversal does not support the position of Englewood.

This tribunal recognizes that the Department of Education's position is that there is great latitude in a board's determination regarding the renewal of a teacher's contract. This tribunal relies on the positions stated by the Department of Education in the Truncellito matter, despite the reversal by the Appellate Division. This tribunal also relies on Hubbard v. Springfield Board of Education, 80 Fed. Appx. 757 (3d Cir. 2003). The Hubbard case deals with a claim of discrimination. It places the burden of proof on the party claiming the discrimination. Here, Ramaswamy has not satisfied the burden of proof that any discrimination occurred. Nor has Ramaswamy identified where the actions of Englewood are arbitrary, capricious, or unreasonable. Englewood provided the reasons for the non-renewal. The personnel records appearing in the District's papers, support the deficiency Englewood relied upon. There are areas of Ramaswamy's performance where there was only partial competency. Ramaswamy's principal's own recommendation acknowledged the deficiency. One would think Ramaswamy would have appeared to present why the deficiencies should not result in denial of her renewal.

CONCLUSIONS

After reviewing the papers and arguments of petitioner and respondent and considering the documents and certifications submitted,

I **CONCLUDE** that petitioner has not shown by a preponderance of the evidence that the Department has acted unreasonably, arbitrarily, or capriciously in the denial of the renewal of Ramaswamy's contract for school year 2023–2024.

I further **CONCLUDE** that the petitioner's motion to compel discovery was never formally made, and it appears the requested discovery is non existent.

I further **CONCLUDE** that the Board of Education has shown by a preponderance of the evidence that the Board is entitled to prevail in its application for summary decision.

ORDER

It is hereby **ORDERED** that petitioner's request for a review of the actions of Englewood is **DENIED**.

It is further hereby **ORDERED,** that petitioner's undocumented motion to compel discovery is **DENIED**.

It is further hereby **ORDERED** that respondent's motion for summary decision 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. 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.

April 22, 2024
DATE

JOSEPH A. ASCIONE, ALJ (Ret., on recall)

Date Received at Agency: April 22, 2024

Date Mailed to Parties: April 22, 2024

APPENDIX

LIST OF EXHIBITS

For Petitioner:

P-1 Answering and Moving papers on Cross motion 5 pages double sided

P-2 Reply papers – 4 pages

For Respondent:

R-1 Moving papers – 17 pages plus exhibits A-J

R-2 Reply papers – 13 pages plus exhibits A-D

R-3 Correspondence of January 3, 2024

211-24
OAL Dkt. No. EDU 10546-23
Agency Dkt. No. 226-8/23

New Jersey Commissioner of Education

Final Decision

A.W., on behalf of minor children, K.W., T.B., A.W., and M.W., III,

Petitioner,

v.

Board of Education of the Borough of Lawnside, Camden County,

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2024
Date of Mailing: May 31, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. EDU 10546-23

AGENCY DKT. NO. 226-8/23

A.W., ON BEHALF OF MINOR CHILDREN,
K.W., T.B., A.W. and M.W., III,
Petitioner,

v.

BOARD OF EDUCATION OF THE
BOROUGH OF LAWNSIDE,
CAMDEN COUNTY,
Respondent.

Courtney Boyle-Wisinski, Esq., for petitioner A.W. (South Jersey Legal Services, Inc., attorneys)

Bryant L. Horsley, Jr., Esq., for respondent (Souder, Shabazz & Woodbridge Law Group, LLP, attorneys)

Record Closed: May 1, 2024 Decided: May 6, 2024

BEFORE **NICOLE MINUTOLI**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties, however, have settled this case without the need for a hearing. Their settlement agreement is attached to this decision.

Having reviewed the terms of their settlement agreement, I have determined that the settlement is voluntarily, consistent with the law, and fully dispositive of all issues in controversy between the parties.

I **ORDER** that the parties comply with the terms of their settlement agreement.

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.

May 6, 2024
DATE

NICOLE MINUTOLI, ALJ

Date Received at Agency: May 7, 2024

Date Mailed to Parties: May 7, 2024

NM/mph

SETTLEMENT AGREEMENT AND GENERAL RELEASE

BY AND BETWEEN

LAWNSIDE CITY BOARD OF EDUCATION

AND

A.W. O/B/O MINORS: K.W., T.B., A.W., M.W. III

1. PARTIES / DEFINITIONS

Under this Settlement Agreement and General Release ("Agreement"), "District" or "Board" means Lawnside Board of Education, located at 426 East Charleston Avenue, Lawnside, New Jersey 08045.

"A.W." means the Petitioner who filed the Petition.

"K.W., T.B., A.W., and M.W. III" are A.W.'s four minor children who currently attend Lawnside Public Schools.

"Parties" means the Board and A.W. on behalf of minor children: K.W., T.B., A.W., and M.W. III.

"Petition" means the petition filed under *A.W. o/b/o minor children, K.W., T.B., A.W. and M.W. III v. Borough of Lawnside Board of Education, Camden County*; OAL Docket. No. EDU 10546-2023S; Agency Ref. No. 226-8/23.

2. PURPOSE

The Parties are entering into this Agreement with the intent to amicably resolve the residency dispute and dispute over whether A.W.'s four minor children are entitled to attend the District free of charge.

3. CONSIDERATION

For the consideration set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties intend to be legally bound by the terms and conditions of this Agreement.

4. ATTENDANCE AT SCHOOL FREE OF CHARGE FOR REMAINDER OF 2023-2024 SCHOOL YEAR

For the remainder of the 2023-2024 school year, which ends June 30, 2024, the Board agrees to allow K.W., T.B., A.W., and M.W. III to attend school within the District without payment of tuition.

5. ENROLLMENT OF K.W., T.B., A.W., and M.W. III AFTER JUNE 30, 2024, PROHIBITED / EXCEPTIONS

A.W. agrees that K.W., T.B., A.W., and M.W. III shall not be enrolled in the District after June 30, 2024. A.W. agrees to not seek enrollment of K.W., T.B., A.W., and M.W. III after June 30, 2024. A.W. agrees to not solicit, encourage, or enter into any verbal or written agreement with

another person for the purposes of enrolling K.W., T.B., A.W., and M.W. III in the District. However, District agrees that should A.W. secure permanent housing within the District after June 30, 2024 that they will abide by *N.J.A.C.* 6A:22 and register the students provided that A.W. offers proof of residency sufficient to establish that A.W. has, in fact, secured housing within the District.

6. NO PARTICIPATION IN SUMMER PROGRAMS

K.W., T.B., A.W., and M.W. III shall not participate in, nor be eligible to participate in, any of the District's summer programs.

7. REFRAIN FROM SEEKING TUITION / RESULT OF BREACH

In addition to removal from the District, the Board is seeking full payment of tuition for K.W., T.B., A.W., and M.W. III for school years' 2022-2023 and 2023-2024. The Board will refrain from seeking collection of the tuition on the condition that this Agreement is fully executed and A.W. does not breach the Agreement. Should A.W. breach the Agreement and not remove the students from the District by June 30, 2024, then A.W. shall be financially responsible for immediate full payment of tuition.

8. REFRAIN FROM SEEKING REMOVAL OF STUDENTS / RESULT OF BREACH

In addition to seeking payment of tuition for school years' 2022-2023 and 2023-2024, the Board was seeking the immediate removal of K.W., T.B., A.W., and M.W. III. The Board will refrain from seeking removal of the students on the condition that this Agreement is fully executed and A.W. does not breach the Agreement. Should A.W. breach the Agreement, then K.W., T.B., A.W., and M.W. III shall be immediately removed from the District.

9. REFRAIN FROM SEEKING CRIMINAL CHARGES / RESULT OF BREACH

The Board has reserved its right to press criminal charges for residency fraud and submit the matter to the prosecutor's office. The Board will refrain from pressing criminal charges and submitting the matter to the prosecutor's office on the condition that this Agreement is fully executed and A.W. does not breach the Agreement. Should A.W. breach the Agreement, then the Board may exercise its rights to press criminal charges and submit the matter to the prosecutor's office.

10. CUSTODIAL PARENT WARRANTY / EFFECT OF ANOTHER DECISION-MAKER SEEKING TO ENROLL STUDENTS IN THE DISTRICT

A.W. represents and warrants that she is the custodial parent of K.W., T.B., A.W., and M.W. III., with the ability to make educational decisions on their behalf. Should another parent or guardian seek to fraudulently exert educational decision-making authority over K.W., T.B., A.W., and M.W. III, and seek to enroll one, some, or all four children in the District, then: **a)** this Agreement shall be terminated; **b)** A.W. shall immediately pay the tuition for K.W., T.B., A.W., and M.W. III, for school years 2022-2023 and 2023-2024; and **c)** K.W., T.B., A.W., and M.W. III, shall be immediately removed from the District.

11. WARRANTY THAT FOUR CHILDREN WERE NEVER HOMELESS WHILE ENROLLED IN DISTRICT SCHOOLS

For the purposes of this section, "homeless" refers to the term "homeless" as defined under the McKinney Vento Act, Title 18A New Jersey Statutes, and Title 6A of the New Jersey Administrative Code.

A.W. represents and warrants that K.W., T.B., A.W., and M.W. III., have *never* been homeless at *any* time during their attendance or enrollment at the District.

12. GENERAL RELEASE

In consideration of all benefits, A.W. hereby fully and forever generally releases, waives, and discharges District from any and all liability and claims related to and/or arising out of A.W.'s engagement with the District as a parent or on behalf of her four minor children: K.W., T.B., A.W., and M.W. III. This general release includes, but is not limited to, a full release, waiver, and discharge from any and all past, present, or future claims for: homelessness, McKinney-Vento Act, residency, domicile, bussing and transportation, home instruction, attendance at school free of charge, discrimination, harassment, intentional and/or negligent infliction of emotional distress, defamation, libel, slander, personal injury, tort, lost wages, and any other economic and/or non-economic damages or losses whatsoever. This section hereby fully and forever releases, waives, and/or discharges District from all foreseeable and unforeseeable claims that A.W. is or is not aware of resulting or arising from any occurrence leading up to the latest date that this Agreement is signed by the three signatories on the signature page.

13. COVENANT NOT TO SUE

A.W. shall be forever barred and shall never file, charge, claim, sue, or cause or permit to be filed any civil, criminal, or administrative action, suit, or legal proceeding against the District that is directly related to any residency issue resolved herein. A.W. shall not file, charge, claim, sue, or cause or permit to be filed any civil, criminal, or administrative action, suit, or legal proceeding against the District that is directly or indirectly related to A.W. or her four minor children: K.W., T.B., A.W., and M.W. III specifically with regard to the residency issue herein. Should any person, organization, or other entity file, charge, claim, sue, or cause or permit to be filed any such any civil, criminal, or administrative action, suit, or legal proceeding with regard to the residency issue herein, A.W. will not seek or accept any relief, personal or on behalf of her four minor children, therefrom.

14. CLAIMS NOT RELEASED

This Agreement impacts and effects only the residency and tuition dispute between the Parties. It shall have no bearing whatsoever on any pending complaint or charge against either party the other has. This Agreement also shall be without prejudice to A.W.'s ability to seek services related to an IEP or 504 plan.

15. PROMPT WITHDRAWAL OF PETITION

Immediately upon the signing of the Agreement by A.W., A.W. shall immediately file a dismissal of the Petition with the Office of Administrative Law and New Jersey Department of Education, Bureau of Controversies and Disputes.

16. PROPER DECORUM REQUIRED / EFFECT OF NON-CORDIAL BEHAVIOR

All parties shall act with proper and professional decorum at all times while on Board property, and District events, and toward one another. Neither party shall engage in or encourage others to, harass, intimidate, curse, or act unprofessionally toward the other.

17. NO ADMISSION OF ERRONEOUS DETERMINATION
Entering into this Agreement shall in no way tacitly or expressly suggest that the Board's determination that A.W.'s four minor children are not entitled to a free public education in the District, and therefore must be removed and pay tuition, was erroneous, nor shall it suggest that the District's determination was correct.

18. ACKNOWLEDGEMENT OF BENEFITS / MATERIALITY OF TERMS & CONDITIONS
Each Party understands that the promises and covenants in each section and paragraph of this Agreement are material and significant, whereby the neither party would have entered into this Agreement but for the mutual Agreement to all terms and conditions.

19. GOVERNING LAW AND JURISDICTION
The Parties acknowledge that District resides in Camden County, New Jersey. New Jersey law shall govern this Agreement. Other than the local, state, administrative agencies, and federal courts, or administrative tribunals in New Jersey, no other court or tribunal shall have jurisdiction over this matter.

20. COMPLETE AGREEMENT
The Parties are not aware of any other express or implied agreements, promises, representations, or warranties between the Parties except as stated in this document. This Agreement embodies the entire Agreement and understanding between the Parties, and shall supersede all express or implied agreements related to the subject matter of this Agreement.

21. HEADINGS
The headings in this Agreement are for convenience and reference only, and shall not limit or otherwise affect the meaning of this Agreement or its provisions.

22. MODIFICATIONS AND AMENDMENTS
This Agreement may not be modified unless the Parties agree in writing.

23. COUNTERPARTS
This Agreement may be executed in more than one counterpart, and each counterpart shall be considered an original, but all of which together shall constitute one and the same.

24. SAVINGS CLAUSE
If a specific section, subsection, paragraph, sentence, phrase, word, or other clause within this Agreement is declared to be illegal, against public policy, void, or ineffective, the remainder of the Agreement shall not be affected by the declaration, and shall remain valid, in full force and effect.

25. INDIVIDUALS BOUND
This Agreement shall be binding upon and shall inure to the benefit or detriment of the Parties, and their respective parents, guardians, educational decision-makers, heirs, executors, administrators, personal or legal representatives, successors and/or assigns.

[SIGNATURES ON NEXT PAGE]

BY SIGNING BELOW, both Parties represent and warrant that:

1. They have thoroughly read and fully understands this Agreement;

2. Both parties are aware that of their right to seek independent legal counsel before signing the Agreement;

3. Both parties have had ample time and resources to fully consider and contemplate the past, present, and future consequences of signing this Agreement;

4. The signing of this Agreement is voluntary and made on both parties own free will, being of sober and sound mind, and is not the result of fraud, duress, coercion, or undue influence; and

5. Both Parties agree that the signatures of all persons below create a contract that is legally binding on the Parties to this Agreement.

PETITIONER

By: Antoinette Warren (Apr 9, 2024 09:42 EDT) Dated: Apr 9, 2024

A.W. o/b/o four minor children:
K.W., T.B., A.W., and M.W. III

LAWNSIDE BOARD OF EDUCATION

By: Sabrina R. Forrest Dated: April 11, 2024

Sabrina Forrest
Board President

By: Dated: April 11, 2024

Dr. Ronn Johnson
Superintendent

Settlement Agreement Board approved on April 11, 2024

LAWNSIDE SCHOOL DISTRICT
BOARD OF EDUCATION
426 Charleston Avenue
Lawnside, New Jersey 08045

RONN H. JOHNSON, ED. D.
SUPERINTENDENT
856-546-4850
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ronnjohnson@lawnside.k12.nj.us

KAREN WILLIS
BUSINESS ADMINISTRATOR
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CERTIFIED MINUTE EXTRACT
OF THE LAWNSIDE BOARD OF EDUCATION

The Board of Education of the Borough of Lawnside, in the County of Camden, New Jersey, convened a public meeting on April 11, 2024, at 7:00 PM, in the conference room of the school located at 426 Charleston Avenue, Lawnside, New Jersey.

The following members of the Board were present:
Chanelle Arterbridge; Ferin Catlet; Sabrina Forrest; Michael Harper; Fatimah Hayes; Bridgett Kittles; Darlene Still

The following member(s) of the Board were absent:
Nana Cauthorne

Motion
The motion to approve the following resolution was made by Michael Harper, and seconded by Bridgett Kittles:

> AUTHORIZATION TO APPROVED THE SETTLEMENT AGREEMENT in A.W. o/b/o MINOR CHILDREN, K.W., T.B., A.W. and M.W. III v. BOROUGH OF LAWNSIDE BOARD OF EDUCATION, CAMDEN COUNTY; OAL Docket No. EDU 10546-2023S; Agency Ref. No. 226-8/23
>
> WHEREAS, the Board issued a residency determination and demand to pay tuition to A.W., and A.W. thereafter filed a petition of appeal of that residency determination with the Commissioner of Education, under A.W. o/b/o minor children, K.W., T.B., A.W. and M.W. III v. Borough of Lawnside Board of Education, Camden County; OAL Docket. No. EDU 10546-2023S; Agency Ref. No. 226-8/23; and
>
> WHEREAS, the parties negotiated a settlement agreement through their attorneys; and

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby approves the settlement agreement in A.W. o/b/o minor children, K.W., T.B., A.W. and M.W. III v. Borough of Lawnside Board of Education, Camden County; OAL Docket. No. EDU 10546-2023S; Agency Ref. No. 226-8/23.

Roll Call Vote

Forrest - Yes	Hayes - Yes	Harper - Yes	Catlett - Yes
Cauthorne - Absent	Arterbridge - Yes	Kittles - Yes	Still - Yes

Motion Result
Passed

I, KAREN WILLIS, School Business Administrator/Board Secretary of the Board of Education of the Borough of Lawnside, County of Camden, State of New Jersey, hereby certify that the foregoing extract from the minutes of the meeting of the Lawnside Board of Education duly called and held on April 11, 2024, has been compared by me with the original minutes as officially recorded in my office in the minute book of said Lawnside Board of Education, and is a true, complete representation of said original minutes so far as the same relate to the subject matter referred to in said extract, and in witness I have hereunto set my signature and affixed the corporate seal of the Lawnside Board of Education this April 29, 2024.

Karen Willis April 29, 2024

Karen Willis
School Business Administrator / Board Secretary

212-24

New Jersey Commissioner of Education

Final Decision

E.H. and B.H., on behalf of minor child, J.H.,

Petitioner,

v.

Board of Education of the Township of Jefferson, Morris County,

Respondent.

Synopsis

Petitioners challenged the determination of the respondent Board that their son, a fifth grade student during the 2022-2023 school year, committed an act of harassment, intimidation, and bullying (HIB), pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 *et seq,* against a female classmate when he placed his hands in her lap. Petitioners contended that their son did not fully understand his conduct because he suffers from behavioral dysregulation and other disabilities. They sought to set aside the Board's decision and have the HIB finding removed from J.H.'s school record.

The ALJ found, *inter alia*, that: an action by a board of education is entitled to a presumption of correctness and will not be undermined unless it can be shown that the decision was arbitrary, capricious or unreasonable; under the Act, an HIB finding requires the demonstration of three elements: 1) the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic, 2) the behavior must substantially disrupt or interfere with the rights of other students or the orderly operation of the school, and 3) the conduct must satisfy one of the three criteria enumerated in the Act regarding the effect of the conduct; in this case, the incident undeniably took place on school grounds as it was recorded on a video camera in the school hallway; the female victim could reasonably perceive J.H.'s actions, i.e. touching the area of her "private parts", to be motivated by her gender; the victim reported being scared and uncomfortable because of J.H.'s physical contact; she was reluctant to attend school the next day and requested to be excused from a group activity, which interfered with her rights and education; there is no doubt that a reasonable person should know that touching a student in a private area would result in emotional harm or insult, and J.H.'s reactions upon observing his conduct on video demonstrated that he recognized the nature of his behavior, as he apologized. The ALJ concluded that the Board's HIB conclusion had a rational basis and that evidentiary support existed to support its conclusion. Accordingly, the Board's motion for summary decision was granted and the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination in this case. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

212-24
OAL Dkt. No. EDU 00642-24
Agency Dkt. No. 344-12/23

New Jersey Commissioner of Education

Final Decision

E.H. and B.H., on behalf of minor child, J.H.,

Petitioners,

v.

Board of Education of the Township of Jefferson, Morris County,

Respondent.

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

Upon review, the Commissioner concludes that petitioners failed to demonstrate that respondent Board of Education's determination that J.H. committed an act of harassment, intimidation, or bullying (HIB) was arbitrary, capricious, or unreasonable.

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

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2024
Date of Mailing: May 31, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 00642-24
AGENCY DKT. NO. 344-12/23

E.H. AND B.H.,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWNSHIP OF JEFFERSON, MORRIS COUNTY,

Respondent.

E.H. and B.H., petitioners appearing pro se

Patrick Carrigg, Esq. for Respondent (Lenox, Socey, Formidoni, Giordano, Carrigg, Lang & Casey, LLC, attorneys)

Record Closed: April 18, 2024 Decided: April 22, 2024

BEFORE: **NANCI G. STOKES**, ALJ

STATEMENT OF THE CASE

Petitioners challenge a determination that J.H., their minor child, engaged in Harassment, Intimidation, and Bullying (HIB) against a female classmate on June 19,

2023, when he placed his hands in her lap twice. Should the HIB conclusion stand, even though J.H. suffers from behavioral dysregulation and other disabilities? Yes. Students with disabilities remain subject to HIB prohibitions, and a Board of Education's decision will stand unless it is arbitrary, capricious, or unreasonable.

PROCEDURAL HISTORY

On December 18, 2023, E.H. and B.H. filed a Petition of Appeal with the Commissioner of Education (Commissioner) challenging the Jefferson Board of Education's (Board) HIB determination against J.H. Petitioners largely dispute that J.H. knew that his behavior could harm the other student given his disabilities and maintain that the Board never explained what it considered to be the victim's perceived distinguishing characteristic. Further, petitioners contend that J.H. did not target the victim because she was female and that J.H.'s disabilities prevent him from forming the necessary intent to support an act of HIB. Thus, petitioners seek to set aside the Board's decision and remove the HIB finding from J.H.'s record.

On January 9, 2024, the Board answered the petition denying the petitioners' allegations, maintaining it followed all required procedures and that its decision met the HIB criteria. The Board requests that this tribunal and the Commissioner uphold the Board's HIB determination.

The Department of Education (DOE) transmitted this case to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to-15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to-13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On January 9, 2024, the OAL received and filed the transmittal.

On March 18, 2024, the Board filed a motion for a summary decision as the parties did not dispute the events of June 19, 2023. Petitioners filed no response. On April 17, 2024, the Board submitted the video of the June 19, 2023, event. On that date, I closed the record.

FINDINGS OF FACT

Viewing the facts in the most favorable light to the non-movants, I **FIND** the following as **FACT** after considering the sufficiency of the documents:

In June 2023, J.H. attended Jefferson Township's (Jefferson) Arthur Stanlick Elementary School as a fifth-grade student. On June 19, 2023, J.H. was ten years old and under a 504 plan to accommodate the following disabling conditions: (1) attention deficit hyperactivity disorder (ADHD); (2) Central auditory processing disorder, (3) autism, and (4) sensory processing disorder. In an assessment in July 2023, Jefferson also noted that J.H. suffered from childhood emotional disorder and disruptive mood dysregulation disorder. The Board does not dispute that J.H. has disabilities, is classified, or that J.H.'s disabilities may have impacted his ability to fully appreciate his conduct.

On June 19, 2023, J.H. attended school. At drop-off, B.H. alerted the school's principal and his teachers that J.H. was exhibiting mood swings and sensory dysregulation because of a medication issue. J.H. had behavioral problems during the day.

At dismissal, J.H. sat on the school's hallway floor, waiting to be picked up. A female student sat next to him in the hallway. Soon after, J.H. placed his hands in her lap twice, touching her private area. Jefferson supplies a forty-seven-second video of these events. In the upper left part of the video, J.H. is sitting cross-legged on the blue carpet on the floor, facing the camera. At the twelve-second mark, a girl with brown hair and a tan backpack walks over and sits next to J.H. at the fourteen-second point, with her back facing the camera. Between the seventeen and twenty-second points in the video, J.H. reaches his right hand over her leg into her lap area twice. Immediately after, the girl moves slightly away from J.H. on his right and turns her back to him.

Jefferson's anti-bullying specialist, Gina Santini, investigated the incident and interviewed the alleged victim and J.H. On the day of the incident, Santini interviewed the alleged victim, who was crying and relayed that someone touched her "private part" twice while next to her. The alleged victim told Santini that she tried to tell an adult but

was not sure what to do, reporting that she was scared and uncomfortable. Someone observed the incident and reported it, leading to Santini's investigation. Notably, petitioners do not dispute J.H.'s actions.

The female student was reluctant to attend school the next day, and her parent asked the principal to excuse her from a group activity.

On June 21, 2023, Santini interviewed J.H. Initially, J.H. did not recall his actions but acknowledged that he touched the girl after seeing the video. J.H. apologized after realizing that he did, expressing remorse and a desire to make things right.

On July 18, 2023, Jefferson completed its HIB investigation, concluding that a gender-based physical contact HIB was confirmed. Jefferson previously reported the incident to the police department, which concluded that no crime occurred, and that the administration could address the behavior. The incident report highlights that J.H.'s actions made the victim fearful of physical or emotional harm.

On that same date, the principal notified petitioners of the school's HIB determination, and the school reported its findings to the Board.

J.H.'s discipline for the HIB action was student counseling and a one-day suspension.

On August 24, 2023, the Board wrote to petitioners advising that it affirmed its conclusion that J.H. committed an act of HIB.

Subsequently, J.H.'s parents requested a hearing and appeared before the Board on September 18, 2023. They maintain that their son did not fully understand his conduct because of his disabilities and blame the school for not appropriately addressing his behavioral problems. Still, the only issue before this tribunal is whether the Board's HIB determination should stand.

Yet, on September 20, 2023, the Board confirmed that J.H.'s actions constituted an act of HIB that caused emotional harm to the victim, leading to a substantial disruption to the school and the victim's rights. This appeal followed.

J.H.'s parents maintain that the HIB finding caused significant distress to J.H., a student already struggling with the school environment, and urging compassion for his circumstances. They placed J.H. in therapy to help him self-reflect and have a better understanding of his disabilities.

DISCUSSION AND CONCLUSIONS OF LAW

The Legislature designed the Anti-Bullying Rights Act (ABRA), N.J.S.A. 18A:37-13 to -37, "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises." N.J.S.A.18A:37-13.1(f). Each school district must adopt a policy that prohibits HIB and provides "a procedure for prompt investigation of reports of violations and complaints." N.J.S.A. 18A:37-15(b)(6).

Under the ABRA, "harassment, intimidation or bullying" (HIB) is defined as:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;

> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
>
> [N.J.S.A. 18A:37-14]

Thus, a HIB finding requires demonstrating three elements, assuming the alleged incident or incidents occurs on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in N.J.S.A. 18A:37-15.3. First, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic, and second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third element requires satisfaction of one of the three criteria enumerated in the Act regarding the effect of the conduct. Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County, EDU 10981-18, Initial Decision (December 29, 2019), http://njlaw.rutgers.edu/collections/oal, rejected and remanded Comm'r Decision No. 51-20 (February 4, 2020), 2020 N.J. AGEN. LEXIS 50.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness that will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). To overcome that presumption, the petitioner must prove by a preponderance of the evidence that the board "acted in either bad faith or in disregard to the circumstances." T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07 (February 6, 2008), aff'd, Comm'r (April 25, 2013) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966)). In other words, the burden is a heavy one. Indeed, the Commissioner recognizes that Boards should "have the discretion to operate their schools in a manner that best serves their unique communities," the Commissioner will not interfere with that discretion concerning HIB matters unless the Board acted arbitrarily, capriciously, or unreasonably. G.H. & E.H. o/b/o K.H. v. Franklin Lakes Bd. of Educ., EDU 13204-13 (Feb. 24, 2014), aff'd, Comm'r (Apr. 10, 2014), n.4. Further, "where there is room for two opinions, action is

not arbitrary or capricious when exercised honestly and upon due consideration[,]" the Commissioner will not substitute his judgment for that of the Board. Bayshore Sewerage Co. v. Dep't. of Envtl. Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974).

Still, the Board's factual determinations require such deference only when supported by substantial credible evidence, e.g., having a rational basis. Quinlan v. Board of Ed. of North Bergen Tp., 73 N.J. Super. 40 (App. Div. 1962); Schinck v. Board of Ed. of Westwood Consol. School Dist., 60 N.J. Super. 448 (App. Div. 1960). Additionally, the reviewing tribunal may reject the findings of fact if the evidentiary record does not support them. In re Suspension of License of Silberman, 169 N.J. Super. 243, 255-56 (App. Div. 1979), aff'd, 84 N.J. 303 (1980).

Undeniably, the incident took place on school grounds and is subject to the HIB statutory directives. Regarding the first element, the statute defines HIB is an action "that is reasonably perceived as being motivated either by any actual or perceived characteristic." N.J.S.A. 18A:37-14. Here, the statute requires an analysis of the victim's perception of the actor's motivation and whether that perception is reasonable. Yet, an analysis of the actual motivation of the actor is not required. Webbeh, at *8. Here, I **CONCLUDE** it was not arbitrary, capricious, or unreasonable for the Board to conclude that the female victim could reasonably consider J.H.'s actions, touching her "private part" area, motivated by her gender.

The second element is similarly clear because the victim reported being scared and uncomfortable because of J.H.'s physical contact. She was also reluctant to attend school the next day and requested she be excused from a group activity, interfering with her rights and education. The incident was limited, but the victim was crying during her interview with Santini, reported being scared, and was afraid of returning to school. Further, the victim did not report the incident due to fear, but another individual alerted the school after observing the interaction.

In D.D.K. o/b/o D.K v. Board of Education of the Township of Readington, Hunterdon County, EDU 07682-15 (October 6, 2016), adopted, Comm'r Decision (November 11, 2016), https://njlaw.rutgers.edu/collections/oal/, the Commissioner

discussed those situations where the Board's HIB determination satisfied the second prong, explaining that:

> [C]onduct has been determined to substantially disrupt the orderly operation of the school when students are so upset or embarrassed that they are "not fully available for learning. " G.H. and E.H. on behalf of K.H. v. Board of Education of the Borough of Franklin Lakes, Bergen County, OAL Dkt. No. EDU 13204-13, decided February 24, 2014, adopted Commissioner Decision No. 157-14, April 10, 2014. Additionally, when other students are "so affected" by behavior that they report it, the orderly operation of the school may be substantially disrupted. T.R. and T.R. on behalf of E.R. v. Bridgewater-Raritan Regional Board of Education, OAL Dkt. No. EDU 10208-13, decided September 25, 2014, adopted Commissioner Decision No. 450-14, November 10, 2014.
>
> Id.

Thus, I **CONCLUDE** that the Board satisfied the second requirement necessary to conclude that J.H. committed a HIB.

The third element under N.J.S.A. 18A:37-14(a) requires a conclusion that the HIB act is one that "a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student," "has the effect of insulting or demeaning a student," or "creates a hostile educational environment." In Wehbeh, the Commissioner highlighted that "none of these criteria require the actor to have actual knowledge of the effect that their actions will have, or to specifically intend to bring about that effect." Id. Further, any one of the three criteria satisfies the third element. Here, the Board found that J.H.'s actions made the victim fearful of school. While the Board accepts thar J.H. did not fully appreciate his actions or intend to harm the victim, J.H.'s disabilities do not excuse his inappropriate actions. Every student is bound by the District's HIB policy, and the District is required to investigate HIB complaints and enforce its HIB policies. N.J.S.A. 18A:37-15(b)(6).

Although petitioners feel the school, aware of J.H.'s struggles, could have done more to help J.H. avoid such behavior, that does not change what J.H. did, even if J.H.'s actions were careless. In other words, there is no doubt that a reasonable person

should know that touching a student in a private area would result in emotional harm or insult.

Notably, once J.H. observed his conduct on video, he apologized, recognizing the nature of his behavior. Hence, I **CONCLUDE** the Board was not arbitrary, capricious, or unreasonable in reaching the conclusion that the third prong of the HIB analysis was met.

Notably, N.J.A.C. 6A:16-7.7(a)2 requires that the consequences stemming from a HIB reflect the nature of the actions and the perpetrator's disabilities, if any. Here, the discipline imposed was only a one day suspension and counseling. While the HIB report could arguably better reflect J.H.'s disabilities, the Board certainly considered J.H.'s circumstances raised by his parents at the hearing.

Here, petitioners present no credible evidence that the Board acted arbitrarily or that its decision was unreasonable. I appreciate that petitioners wish to protect their son from a determination with which they disagree and took laudable steps to help their son better understand his disabilities. Still, I found that the Board's HIB conclusion had a rational basis and that evidentiary support existed to support its conclusion. Thus, I **CONCLUDE** that the Board's decision that J.H. committed a HIB should stand.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Board's motion for summary decision be **GRANTED** and **DISMISS** the petitioners' appeal.

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.

April 22, 2024

DATE

NANCI G. STOKES, ALJ

Date Received at Agency: April 22, 2024

Date Mailed to Parties: April 22, 2024

ljb

APPENDIX

Submssions Considered

For Petitioner

Petition

For Respondent

Motion, brief, and supporting certification with exhibits
Video and certification

221-24E
OAL Dkt. No. EDU 07247-24
Agency Dkt. No. 167-5/24

New Jersey Commissioner of Education

Order on Emergent Relief

K.F.-M., on behalf of minor child, P.F.,

Petitioner,

v.

Board of Education of the Township of Branchburg, Somerset County,

Respondent.

The record of this emergent matter and the Initial Decision Denying Emergent Relief have been reviewed. Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the portion of the Initial Decision denying petitioner's application for emergent relief is adopted, for the reasons stated therein.

The ALJ noted that there are no other issues to be decided on the underlying petition and dismissed the petition. Pursuant to *N.J.A.C.* 1:1-18.4, parties may file exceptions to an Initial Decision within 13 days. Accordingly, the Commissioner's decision herein is limited to the issue of emergent relief. Following the filing of any exceptions from the parties, or the expiration of

the time period without any exceptions being filed, the Commissioner will issue a final agency decision in the usual course.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 10, 2024
Date of Mailing: June 10, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION DENYING EMERGENT RELIEF
OAL DKT. NO. EDU 07247-24
AGENCY DKT. NO. 167-5/24

K.F.M., ON BEHALF OF MINOR CHILD P.F.,

Petitioner,

v.

THE BOARD OF EDUCATION OF THE TOWNSHIP OF BRANCHBURG,

Respondent.

K.F.M., **o/b/o P.F.**, petitioner, pro se

David B. Rubin, Esquire, for respondent

Record Closed: June 3, 2024 Decided: June 4, 2024

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

Petitioner, K.F.M., on behalf of P.F., moves for emergent relief, appealing that P.F. be permitted to attend the 8th grade school dance on June 8, 2024, and walk for

graduation on June 18, 2024. Respondent, the Township of Branchburg Board of Education, declines and presents safety concerns.

PROCEDURAL HISTORY

Petitioner filed a verified petition and request for emergent relief with the Commissioner of the Department of Education, Office of Controversies and Disputes (DOE). On May 29, 2024, DOE transmitted this matter to the Office of Administrative Law (OAL), where it was filed as a contested case seeking emergent relief. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing was held on June 3, 2024, and the record closed that day.

The request for emergent relief is now ripe for adjudication.

FACTUAL DISCUSSION AND FINDINGS

Petitioner articulated that on October 11, 2023, Mr. Tylin, P.F.'s math teacher, placed a trashcan to her face in front of the class and addressed her in front of her peers as a spoiled brat and spoiled Jersey girl and told her how she is not in the hood. Despite his apology and being told he was joking, this incident set an unfortunate tone for further inappropriate behavior.

On November 29–30, 2023, during health class, students were asked to close their computers. P.F.'s computer was open, as she was logging off. Ms. McGirl, who is the health teacher, walked over to P.F. and slammed the computer shut with P.F.'s hands inside. While her hands were still inside, Ms. McGirl snatched the computer away. Ms. McGirl then physically yanked P.F. by the arm to pull her from her chair to leave the class. P.F. turned and told her "If you touch me that way again, I will punch you in the face." She walked to the office to explain what transpired and was sent to the nurse to have her hands and arm checked. K.F.M. received a call from the school notifying her that P.F. was in the nurse's office being checked, as her hands were smashed, and she was forcibly yanked from her chair by her teacher. When asked if K.F.M. could speak to the teacher, she was told that she could not for the teachers' safety. K.F.M. didn't quite

understand that response because P.F. had never been hostile or aggressive in speech or action. Shortly after, she received a phone call from the vice principal, Mr. Derflinger, stating that they had to write an HIB against P.F. because her remarks were threatening to the teacher, and she also received a in school suspension. For this incident, K.F.M. did file a police report in Branchburg, as it was an assault, to document the event. This was not the first time Ms. McGirl has shown aggression towards P.F. and even K.F.M. in conversation.

P.F. was not removed from the class but was isolated by Ms. McGirl during class time. She would pull any students who would sit next to or talk to P.F. Because of the number of reoccurring incidents with Branchburg Central Middle and because a few of the other African American parents were having similar issues with staff and even some students calling the children "n*****s," referring to them as "monkeys," and making it a point to tell them they won't have the same opportunities, K.F.M. began to pay closer attention to the discipline and reasoning when presented with problems that were concerning P.F. Her first encounter with acting principal Steffner was on January 11, 2024.

January 11, 2024, Ms. Steffner, school principal, informed K.F.M. that P.F. was on the list for retention, adding to the growing concerns about her academic standing, which was alarming because after reading both the student handbook and the code of conduct, P.F. didn't meet any of the qualifications. K.F.M. and P.F.'s grandmother met with Ms. Steffner, where she said P.F. wasn't on a retention list and then in front of the superintendent said she never mentioned a retention list to K.F.M. K.F.M. was a bit confused, as Ms. Steffner had spoken with not just K.F.M., but her husband also. This incident "drew more red flags," and K.F.M. began to get more frequent calls about P.F. from Ms. Steffner that were bothersome.

On January 29, 2024, Ms. Steffner and K.F.M. had an in-person meeting for the first time, and she started the meeting with the incident that happened on November 29, 2023, with Ms. McGirl. She stated that she was alarmed by what she read concerning P.F. and how it was unacceptable to threaten a teacher. K.F.M. was confused because at that time, Ms. Steffner was not the acting principal. P.F. then began to be reprimanded

for everything. K.F.M. was notified that there were mass emails sent to every teacher in the school to look out for her, if they saw her in the hall to stop her, find out where she was going or where she should be, and send her there or to the office for a conduct (disciplinary form). The teacher (Ms. Jordan) who mentioned the emails also shared with P.F. that the reason she is not liked by the adults in the building is because they can't take her strong personality. All of these were red flags for K.F.M.

On January 22, 2024, P.F. received conduct emails for being late to class due to a misunderstanding with the resource teacher, Ms. Jordan, resulting in two after-school detentions. P.F. was on a list for one teacher's class but was told she was supposed to be somewhere else. On January 23, 2024, P.F. received another conduct report for being late to class, despite confirmation from the nurse about P.F.'s legitimate health concern. P.F. was in the nurse's office with a runny stomach. On January 24, 2024, P.F. received a conduct report for having her computer open during a Spanish class, with the teacher's reaction appearing disproportionate. On January 25, 2024, P.F. received another conduct report from the same Spanish teacher, raising questions about the consistency and fairness of disciplinary actions. On January 25, 2024, K.F.M. received an email regarding academic dishonesty from the science teacher, Ms. Furnari, which was later proven unfounded but contributed to the overall distress. During P.F.'s music class, the teacher gave them free time, and P.F. asked if she could complete a science worksheet. The music teacher told her, yes. There were other students in her class who were also unaware they had to complete the back of the worksheet, so they all began to work on it. The music teacher, Ms. Devita, sent an email to the science teacher saying that P.F. was copying another student's work, and K.F.M. received the email explaining she was cheating, but it was an ungraded assignment (busy work for students). She wanted students to complete it alone. After speaking to P.F., she of course said she wasn't cheating and that she in fact had not even completed the page, just what she and K.F.M. had done at home the night before. When this was shown, to everybody's amazement, it was a misunderstanding and proven unfounded. Again, K.F.M. was confused because the educator Ms. Devita, who claimed to have seen her cheating, never once said anything to her while in class; she just sent the email to her coworker. On January 29, 2024, on this day as listed above, K.F.M. was actually in the building meeting with Principal Steffner. P.F. and her friends were walking to their science class, where Ms.

Furnari is the teacher, and as they walked to the class and got closer to the door, the teacher stopped her to ask if she had everything she needed. They responded yes, the bell rang, and Ms. Furnari said, "sorry you guys are late" and closed the door. Despite providing evidence that she was indeed close enough to have a brief conversation with the teacher, P.F. received an unexcused tardy for a class, highlighting potential communication issues within the school.

On January 30, 2024, K.F.M. received a phone call from Ms. Steffner suggesting K.F.M.'s involvement in P.F.'s request to leave school early, reflecting a lack of accurate communication. Ms. Steffner called K.F.M. and told her that P.F. told her that K.F.M. called her, and during this alleged phone conversation, K.F.M. told her to come home because she had to go to class. K.F.M. had never spoken to P.F., but did indeed have class, so she was confused. Upon P.F.'s arrival home from school, K.F.M. asked if what Ms. Steffner reported was true. P.F. explained she didn't say what Ms. Steffner claimed, but she was overwhelmed and really wanted to come home, so she asked Ms. Steffner if she could make up the detention (which she receives for every conduct). K.F.M. spoke to Ms. Steffner, and she then said that P.F. made it seem like she spoke to her because she asked if she could make up the detention another day because her mom had class. Now normally, K.F.M. picks P.F. up from school because it saves her from an hour-long bus ride and gives her some extra time to complete homework assignments. If K.F.M. is unable because of school, her husband will go. Ms. Steffner then said that P.F. had double detention for dishonesty. She said P.F. lied to her and made it seem like K.F.M. called her and told her to come home. But K.F.M. didn't understand, nor did K.F.M. want to send the wrong message with what she was being punished for, so K.F.M. told Ms. Steffner that P.F. would not be serving detention for something that was assumed on her end and that K.F.M. didn't like that she lied to her and said P.F. told her she called. Ms. Steffner began to yell that if P.F. did not serve her detentions, that she would suspend her from school and if K.F.M. didn't comply, she would have her removed from the school altogether before hanging up.

On January 31, 2024, Ms. Steffner shared screenshots suggesting academic dishonesty, creating confusion and seemingly escalating the situation from January 25th unnecessarily.

In February 2024, during math class, Mr. Tylin walked up to P.F., snapping his fingers in her face and asking why she doesn't do that. P.F. responded, because she "just don't." Mr. Tylin continued and said, "but why you don't do that? She gave him the same response. Mr. Tylin went on to say, "I didn't like you before but now I have a reason." He continued with, get mad. "I like it when you're mad, I like to make P.F. mad, I like to see her roll her eyes." P.F. repeatedly asked to be excused from class to go to the office. Mr. Tylin refused, and P.F. walked out and went to the office, where she explained what was happening, and the supporting teacher explained that "Mr. Tylin was being very inappropriate and that he seemed a little off," but she wanted P.F. to relax and go to the office after class. K.F.M. didn't understand how P.F. could even function in the classroom after this happened and all that was said to her in front of her peers. P.F. was issued a warning for walking out of the class. Ms. Steffner said she is to stay in class until it's over and get a pass to come to the office for incidents such as this. She is not to leave class in conflict; she is to wait until the class is over.

On February 9, 2024, K.F.M. met with both Ms. Steffner and superintendent Dr. Chase, who seemed to be very understanding of all of her discomforts with P.F. and how she felt she was being targeted by the acting principal, Ms. Steffner, and some of the staff. That nothing was being done when P.F. was wrongfully accused, reprimanded, and harshly punished for things that other students got passes on. K.F.M. explained that the books on suicide and the conversations about how the white students feel about Newark and Irvington, a place where the majority is the minority, were inappropriate and made her daughter uncomfortable to listen to. Students say that criminals, unclean people, poor people live in these places, and they feel unsafe, how it's dirty and run down. She assured K.F.M. that they would speak to the teachers, that the town was changing, and they had a lot of work to do. P.F. has also reported to the guidance counselor, Ms. Nelson, that she has been called "n*****r" by some of the same students, and nothing was done. P.F. was also spoken to by an educator (Ms. Kepner) who said to her she already has a tally against her because of the color of her skin and that she won't get away with what the other students get away with because of that. The teacher felt it was best if P.F. just laid low and kept her head down.

On February 22, 2024, the family received a call from Ms. Steffner, notifying that P.F. was being issued an in-school suspension for leaving the class without a pass. Both P.F. and K.F.M. were confused, as class didn't start until 8:07 a.m., and it wasn't even 8:00 a.m. yet. Initially, Ms. Steffner said it was because she was late, but P.F.'s bus arrived at school early at 7:45 a.m. She took her things to her first period class to be prepared when classes started and went to her resource teacher's classroom. K.F.M. spoke to the superintendent, who reiterated what Ms. Steffner said: that P.F. left the class and didn't have a pass, so that behavior warranted an in-school suspension. She then went on to say that P.F. was being disrespectful to a teacher by the name of Ms. Gatti, whom P.F. has shared on numerous occasions that she can be a bit touchy, and on this day, with getting in trouble first thing in the morning and not understanding why, P.F. didn't like that she kept rubbing her arms, shoulders, and neck. She also wasn't feeling too great and was later picked up from school with a fever of 104 (reported by the nurse). She also received documented medical care that day.

On March 1, 2024, P.F. was suspended from school for cutting class and theft. K.F.M. received a call that P.F. received a pass from her technology teacher to leave class and that she and another student met up and walked the halls until they were outside of a teacher's class where student pencil cases and supplies were left outside. K.F.M. was made aware that the incident happened on February 21, 2024. They received an anonymous tip from a student and teacher who reported that there were two black girls going through the pencil cases in the hall, so they checked the cameras and saw P.F. going in another student's pencil case. After investigation, they found that P.F. had permission from the student to take lead for a pencil out of the pencil case but said it is against school policy to go in another student's belongings. There is also a record that P.F. got the pass from her teacher whose class she allegedly cut to go to the nurse. The nurse called K.F.M. on February 21, 2024, and asked if she could give P.F. Tylenol for a headache. K.F.M. had the understanding that by law, when medication is administered, the child is watched while taking the medication and is monitored a little while after to make sure there are no reactions.

Once P.F. left the nurse's office, she ran into her classmate, which isn't uncommon, and before going back to class, she went to get the lead she asked her friend

for that morning and reported back to class. K.F.M. was told she received the suspension for cutting and theft because she didn't go straight back to class, so it was considered a cut despite the pass, and despite having consent to go in her friend's pencil case, it's against school policy to do so.

On March 7,2024, K.F.M. had a meeting with principal Steffner, vice principal Derflinger, two of the school counselors, one being Ms. Nelson, and the teacher who reported P.F. was stealing. They wanted to set up a behavioral plan along with each of her teachers (even the ones who don't like her) because she is insubordinate and blatantly defiant among many others, all words used by principal Steffner. After K.F.M. shared her concerns and how the suspension was not warranted as P.F. hadn't broken any rules according to their student handbook and code of conduct, there was complete silence, as if amazed she had read it in its entirety. K.F.M. explained she felt at this point that P.F. was being targeted, and it was made plausible when mass emails were sent out about her and teachers felt the need to watch her so closely that she was publicly ostracized and verbally and physically attacked, and that had become her norm when walking the halls at Branchburg Central Middle School. Since starting at Branchburg Middle, she had never seen such a drastic change in her daughter's behavior as to always be on guard, and at times, defeated. She even got so overwhelmed with school and the adjustment to the culture of the school, with not many students who look like her in her classes and them so freely being able to call her a nigger or a monkey with no penalty, that she took a handful of Tylenol with the intent to not only stop the headaches she always having now, but to go to sleep and never wake up. It has been affirmed by teachers that "she is not liked and is targeted because of her personality and because of the color of her skin" (their words). It had gotten so bad that P.F. was coming home every day with a headache and was in the nurse's office every other day complaining of headaches, where the nurse administered medicine. With no resolve, and to save her daughter from being a partaker in the abuse of power from the authorities at Branchburg Middle School, K.F.M. removed her, and she is now being homeschooled for the remainder of the year. At this point, it is the safest option, as K.F.M. does not feel P.F. is protected while in school.

The petition is for P.F. to attend the 8th grade prom and graduation. P.F. entered the education system with boundless enthusiasm, eager to learn and excel. Her early years in school were marked by academic promise and a thirst for knowledge. However, P.F.'s journey turned dark when she became the target of discrimination. It began subtly, with biased remarks and microaggressions from classmates and even some educators. P.F. found herself marginalized and isolated, her confidence eroded by the constant reminders of her perceived differences. Each incident that K.F.M. has shared highlights a pattern of unfair treatment and prejudice against P.F., causing significant distress and harm to her well-being. The cumulative effect of the nine incidents in one month cannot be overstated, causing immense stress and isolation. The behavior exhibited by the staff at Branchburg Central Middle School created an intimidating and hostile environment for P.F., further exacerbating her distress. Even in the face of such blatant discrimination and harassment, the school failed to take appropriate action. Several meetings were held with no change; K.F.M.'s only recourse was to disenroll P.F. from school to protect her physical and mental health.

Closing the chapter of middle school is a big deal, and though P.F. faced many challenges to get through the school year, she maintained her grades to participate in her 8th grade festivities. P.F. should be given the opportunity to attend her 8th grade dance and graduate with her peers. P.F. has endured enough and deserves some relief.

Respondents claim that P.F. is a fourteen-year-old 8th grade student who no longer attends school in the Branchburg School District. P.F. was unilaterally disenrolled from the district by her parent on or about March 7, 2024. During the 2023–2024 school year, there were forty-one (41) incidents of various forms of inappropriate behavior reported by sixteen (16) different staff members involving P.F. Of the forty-one violations of the code of conduct, she received consequences ten times—the remaining thirty-one infractions involved conversations with counselors or administration. Additionally, there are several other infractions that have not been captured here and did not result in disciplinary outcomes, as respondent was trying to build a relationship with the student. These incidents illustrated a consistent pattern of non-compliance, disrespect, and disruption in the school environment.

On October 5, 2023, at 11:13 a.m., Mr. Tylin, a teacher, reported that P.F. was asked multiple times to spit out her gum, but she refused. Instead, she continued chewing gum while denying having any, demonstrating a failure to comply and being disrespectful. The recommended action was for P.F. to take a few minutes to reset before returning to class. On October 11, 2023, at 11:04 a.m., Mr. Tylin reported that P.F. used profanity in class, telling the teacher to "eat her dick." This behavior was categorized as inappropriate language, disruptive, work avoidance, and disrespectful. The action taken was to have P.F. remain in the office for the period, with work sent down for her to complete, and she was assigned two lunch detentions.

On October 16, 2023, at 8:31 a.m., Ms. Furnari, another teacher, reported that substitute Victoria Nguyen noted P.F.'s disrespect during her instruction. P.F. talked to a friend during Mrs. Nguyen's instruction and responded dismissively to the substitute's request to pay attention. This behavior was categorized as failure to comply, work avoidance, and disrespect. The recommended action was for P.F. to be sent back to class after speaking to someone.

On October 18, 2023, at 8:55 a.m., Ms. Valinoti, another teacher, reported that P.F. refused to start her Social Studies assignment, choosing instead to check emails and work on Science Gizmo. Despite verbal prompts and GoGuardian chats, she softly refused redirection and continued working on other assignments. This behavior was categorized as failure to comply and work avoidance. The recommended action was for P.F. to be sent back to class after speaking to someone.

On October 26, 2023, at 3:04 p.m., Mr. Wright, another teacher, reported that P.F. used foul language in class. This behavior was categorized as inappropriate language. The action taken was to have P.F. remain in the office for the period, with work sent down for her to complete. On November 21, 2023, at 9:03 a.m., Ms. Valinoti reported that P.F. was eating Twizzlers in class and lied about the quantity she had. This behavior was categorized as failure to comply, disruptive, and disrespectful. The behavioral focus was on respecting teachers. On November 22, 2023, at 7:42 a.m., Ms. Furnari reported that P.F. was in the bathroom for approximately seventeen minutes on November 21, cutting

class. This behavior was categorized as a student not being where they need to be. The behavioral focus was on respecting teachers and herself.

On November 22, 2023, at 7:44 a.m., Ms. Furnari reported that P.F. was in the bathroom for approximately ten minutes on November 13, cutting class. This behavior was categorized as a student not being where they need to be. The behavioral focus was on respecting teachers and herself. Also on November 22, 2023, at 7:46 a.m., Ms. Furnari reported that on November 14, P.F. left to go to the nurse's bathroom and did not return within a reasonable time. She was found hanging out with a friend in a different bathroom. This behavior was categorized as a student not being where they need to be. The behavioral focus was on respecting teachers and herself. On November 27, 2023, at 10:28 a.m., Ms. Furnari reported that P.F. was out of the classroom for more than ten minutes, cutting class. This behavior was categorized as a student not being where they need to be. The recommended action was for P.F. to be sent back to class after speaking to someone, with a focus on respecting teachers and herself.

On November 28, 2023, at 8:16 a.m., Vicki Brody, another teacher, reported that P.F. refused to take her new assigned seat after the entire class was given new seating assignments. P.F. voiced her refusal to the entire class and was told to either take her new seat or go to the office. She chose to leave for the office. This behavior was categorized as failure to comply and disruptive. The recommended action was for P.F. to take a few minutes to reset before returning to class. Also on November 28, 2023, at 11:49 a.m., Debbie Glick, another teacher, reported that she caught P.F. at her locker with a lollipop in her mouth. When asked what she had in her mouth, P.F. ignored the question and walked away. After being followed and asked again, she responded with "a stick" and then ran into Mr. Tylin's classroom. This incident was not the first time she had been told not to have candy in the halls. The behavior was categorized as failure to comply and disrespectful. The behavioral focus was on respect in the hallways and respect to teachers.

On November 29, 2023, at 3:10 p.m., Ms. Maloney, another teacher, reported that P.F. was off task during an activity and given an alternate task, which she tore up and refused to complete. She later asked to go to the bathroom and returned with her

backpack and jacket, suggesting she went to her locker instead. The behavior was categorized as failure to comply and student not being where they need to be. The behavioral focus was on respect to teachers.

On December 1, 2023, Ms. McGirl, another teacher, reported that P.F. got upset at a teacher and told her that "If you weren't a teacher, I would punch you in the face." The behavior was categorized as disrespectful to a staff member. The student was assigned an in-school suspension that was served on December 4, 2023.

On December 6, 2023, at 2:45 p.m., Ms. Maloney reported that P.F. appeared to be speaking negatively about another student's appearance. When asked about it, she told the teacher to mind their own business, mimicked the teacher, and then left the class to see Ms. Nelson despite being told to wait. This behavior was categorized as failure to comply, disruptive, and disrespectful. The behavioral focus was on respect to teachers and respect to each other.

On December 8, 2023, at 10:52 a.m., Mr. Tylin reported that P.F. came to class on time and was praised for making up her homework but left the classroom without notice when the bell rang. She returned only after being called back and was unaccounted for five minutes. The behavior was categorized as failure to comply, student not being where they need to be, and disruptive. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers.

On December 13, 2023, at 10:25 a.m., Mr. Tylin reported that P.F. disappeared after the bell without checking in. The behavior was categorized as failure to comply and student not being where they need to be. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers and accountability.

On December 14, 2023, at 8:25 a.m., Ms. Brody reported that after two verbal prompts and two GoGuardian messages, including a code word, P.F. refused to put her food back in her locker, hiding a bag of food under her hoodie. The behavior was categorized as failure to comply and disruptive. The recommended action was to send

the student back to class after speaking to someone. The behavioral focus was on following school rules.

On December 14, 2023, at 8:28 a.m., Ms. Brody reported that P.F. refused to go to the office, claiming her food was put away, but this was not confirmed. The behavior was categorized as failure to comply and disruptive. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers.

On December 15, 2023, at 3:16 p.m., Ms. Villanova reported that P.F., along with other students, was seen hanging out at a locker and meandering down the hallway during class. Despite being told to get to class, they ignored the instruction and continued strolling outside the gym. The behavior was categorized as failure to comply, student not being where they need to be, disrespectful, and physical/disrespectful towards school property. The behavioral focus was on respect to the school and its rules.

On December 19, 2023, at 2:15 p.m., Ms. Valinoti reported that P.F. entered a classroom to give a gift to another student and disrupted the class. She refused to leave when asked. The behavior was categorized as failure to comply and student not being where they need to be. The behavioral focus was on respect to teachers.

On December 20, 2023, at 8:49 a.m., Ms. Brody reported that P.F. left for the bathroom at 8:32 a.m. but had not returned by 8:47 a.m. She was reported to be hanging out in the 7th grade hall during her Social Studies class. This behavior was categorized as a failure to comply. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect in the hallways.

On December 21, 2023, at 10:29 a.m., Ms. Furnari reported that P.F. cut class by hanging out in the hallway, visiting the nurse, and then going to the office to avoid attending her class. The previous day, she had received a 5/50 on quiz. This behavior was categorized as student not where they need to be and work avoidance. The behavioral focus was on respect for teachers and self.

On December 21, 2023, at 11:02 a.m., Mr. Tylin reported that P.F. was not where she needed to be, which showed a lack of accountability. She asked to go to the bathroom and ended up in another room. The behavioral focus was on respect to teachers.

On January 8, 2024, at 8:56 a.m., Ms. Valinoti and Ms. Brody reported that P.F. had done no work for the entire class period, despite several redirections. She was talking to other students, using foul language, and disrupting classmates. This behavior was categorized as failure to comply, inappropriate language, disruptive, and work avoidance. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers.

On January 8, 2024, at 11:43 a.m., Ms. Pereira, another teacher, reported that P.F. did not show up to resource class and was missing for twelve minutes. This behavior was categorized as failure to comply and student not where they need to be. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on cutting class.

On January 17, 2024, at 8:36 p.m., Ms. Gatti, an instructional aide, reported repeated defiance of instructions by P.F. This behavior was categorized as failure to comply. The behavioral focus was on respect for each other.

On January 22, 2024, at 9:54 a.m., Ms. Furnari and Ms. Brody reported that P.F. and another student were over five minutes late to class without a pass, claiming they were in the bathroom. Both students left their first period early as well. This behavior was categorized as student not where they need to be. The behavioral focus was on respect in the hallways and respect to teachers.

On January 22, 2024, at 12:20 p.m., Ms. Pereira reported that P.F. did not report to her assigned resource class, was missing for over ten minutes, and falsely claimed she was pulled to another resource list. She argued and refused to follow directions, showing disrespect and work avoidance. This behavior was categorized as failure to comply, student not where they need to be, and disrespectful. The behavioral focus was on

respect to teachers. P.F. was assigned two (2) after-school detentions on January 23 and 25, 2024.

On January 23, 2024, Ms. McGirl reported that P.F. had arrived to her class late and was considered absent. She was assigned an after-school detention on January 3, 2024. On January 24, 2024, at 2:25 p.m., Ms. Maloney reported that P.F. refused to hand over her Chromebook when asked and was working on a project instead of listening to a presentation. This behavior was categorized as a failure to comply. The behavioral focus was on respect to teachers. She was assigned an after-school detention on February 1, 2024.

On January 25, 2024, at 9:06 a.m., Ms. Gatti reported that P.F. openly defied instructions and did not report to her scheduled class. This behavior was categorized as failure to comply and disrespectful. The behavioral focus was on respect to teachers.

On January 25, 2024, at 9:52 a.m., Ms. Furnari reported that P.F. was caught copying another student's science packet for the third time. This behavior was categorized as cheating/academic integrity. The behavioral focus was on respect to teachers and each other. P.F. was assigned a lunch detention on January 26, 2024.

On January 30, 2024, at 11:26 a.m., Mr. Tylin reported that P.F. asked to go to the office in the middle of class, did not accept the answer to wait until the end, and walked out of class. This behavior was categorized as failure to comply, technology misuse/electronics, student not where they need to be, disruptive, and disrespectful. The recommended action was for P.F. to take a few minutes to reset before returning to class. The behavioral focus was on respect to teachers. P.F. conferenced with the principal.

On February 7, 2024, at 3:20 p.m., Ms. Volpe reported that P.F. was observed pushing and shoving another student during dismissal, creating a potential safety hazard. This behavior was categorized as disruptive. The behavioral focus was on respect in the hallways. P.F. conferenced with the principal.

On February 9, 2024, at 10:36 a.m., Ms. Furnari reported that P.F. left for the bathroom at 10:13 a.m. and did not return, missing an entire lab session. This behavior was categorized as student not where they need to be. The behavioral focus was on respect for teachers and self. P.F. was assigned lunch detention on February 9, 2024.

On February 22, 2024, at 8:25 a.m., Ms. Maloney reported that P.F. was found in the World Language hallway going through another student's locker without a pass and without communicating her reason for being there. This behavior was categorized as student not where they need to be. The behavioral focus was on respect in the hallways.

On February 22, 2024, at 9:35 a.m., Mr. Wright reported that P.F. was in another student's locker in the 7th grade wing while she should have been in her first period class in the 8th grade wing. This behavior was categorized as cutting class. The behavioral focus was on respect in the hallways and respect for each other. (This may be two write-ups for the same situation since the student has gym first period—Mr. Wright wrote her up for the cut since she was supposed to be with him, and Ms. Maloney witnessed it and wrote it up because she was in someone else's locker.)

On February 23, 2024, at 8:24 a.m., Ms. Valinoti and Ms. Brody reported that P.F. left homeroom to talk to a friend and then went to Ms. Jordan's room despite being told to return to homeroom. This behavior was categorized as failure to comply. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers. P.F. was assigned in-school suspension on February 23, 2024.

On February 29, 2024, at 8:25 a.m., Mr. Updegrove reported that P.F. was walking down the hallway eating from a bag of goldfish crackers and responded disrespectfully when asked why she was eating in the hallway. This behavior was categorized as disrespectful. The behavioral focus was on respect in the hallways and respect to teachers. P.F. was assigned a lunch detention on March 1, 2024.

On March 1, 2024, a student reported property missing. Camera footage verifies that P.F. went into the student's belongings and stole items. Additionally, P.F. was

wandering hallways prior to this incident. P.F. was suspended from March 4 to March 6, 2024, spanning three days, due to theft and cutting class.

On or about March 7, 2024, a re-entry meeting was held with Mr. Derflinger, vice principal; Ms. Volpe, 8th-grade team leader; Ms. Nelson, counselor (attending virtually); and Mr. Harris, school psychologist. During this meeting, respondent offered a variety of strategies, including, among other things, regular check-ins with P.F.'s counselor, Ms. Nelson, counseling sessions with Ms. Ryan, MSW, LCSW, EdS, LMFT, who is the district's Mental Health & Well-Being Social Worker, and access to the school's behaviorist to determine methods that could help P.F. be more successful. When respondent asked the parent for her thoughts on the plan and whether she had any other suggestions, she abruptly stated that she would be homeschooling P.F. for the remainder of the school year. She was given the necessary paperwork and signed her child out of school. The parent completed the appropriate paperwork and disenrolled P.F. from the district shortly thereafter.

P.F. is ineligible to participate in the 8th grade prom and graduation, as she was disenrolled from the district several months ago. Unfortunately, based on the course of conduct set forth above and the likelihood that her presence at these events would be disruptive, it is unlikely that P.F. would have been allowed the privilege of attending the 8th grade dance and graduation even if she were still enrolled in the district. (Policy & Regulation 5541.)

LEGAL ANALYSIS AND CONCLUSIONS

The regulations governing controversies and disputes before the Commissioner of Education provide that "[w]here the subject matter of the controversy is a particular course of action by a district board of education . . . [,] the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may "[t]ransmit the motion to the OAL for immediate hearing on the motion." N.J.A.C. 6A:3-1.6(c)(3).

At a hearing for emergent relief, petitioner must show that they satisfy the following four standards:

> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
>
> 2. The legal right underlying petitioner's claim is settled;
>
> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
>
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than respondent will suffer if the requested relief is not granted.
>
> [N.J.A.C. 6A:3-1.6(b) (citing Crowe v. DeGioia, 90 N.J. 126 (1982)).]

The petitioner must prove each of these standards by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). Arguably, the standard is a high threshold to meet, and I will address each prong separately.

1. Irreparable harm

As the New Jersey Supreme Court explained in Crowe, "[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Indeed, the purpose of emergent relief is to "prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case." Ibid. (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854).)

"Irreparable harm is shown when money damages cannot adequately compensate plaintiff's injuries." Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "More than a risk of irreparable harm must be demonstrated." Cont'l Grp., Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). "The requisite for injunctive relief has been characterized as a 'clear

showing of immediate irreparable injury' . . . or a 'presently existing actual threat; [an injunction] may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by the common law.'" Ibid. (citations omitted).

Here, with respect to the first prong, despite the fact that K.F.M. testified that they "don't care about the dance," P.F. will suffer irreparable harm if the requested relief is not granted. If she does not attend either event, that opportunity will be lost forever.

Petitioner sustains her burden to show by clear and convincing evidence that P.F. will suffer irreparable harm. Accordingly, **I CONCLUDE** that petitioner has shown irreparable harm.

2. Settled Legal Right

However, as explained to the petitioner, there is a difference between emergent and important. I understand that the requests here are important; however, they are not emergent. Emergent relief "should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. at 304–05). While it is understood that P.F. will receive her diploma, the legal right underlying petitioner's claim is well settled. That is, case law establishes that attendance at a graduation ceremony is a privilege and not a right. See I.K. v. West Windsor-Plainsboro School District, 97 N.J.A.R. 2d (EDU) 639; M.P. v. Hackettstown Board of Education, 95 N.J.A.R. 2d (EDS) 210. Therefore, because she has no legal right to attend the ceremony, she cannot satisfy that prong of the test. Therefore, **I CONCLUDE** that petitioner has not shown a legal right underlying this claim.

3. Likelihood of Success on the Merits

Petitioner has not demonstrated that she is likely to succeed on the merits of the underlying claim. Under this emergent relief prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)).

This typically "'involves a prediction of the probable outcome of the case' based on each party's initial proofs, usually limited to documents." Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)).

Because I have found that petitioner has not shown a legal right underlying this claim, it logically follows that there is not a likelihood of success on the merits. The number of incidents allegedly perpetrated by P.F. that warranted discipline was exorbitant. Petitioner's claim is that there is a "cultural difference." Petitioner has not provided any clear and convincing evidence or legal authority showing that they have a reasonable probability of ultimate success on the merits, and **I CONCLUDE** that petitioner has not shown a reasonable probability of ultimate success on the merits.

4. Balancing the Equities

The fourth and final emergent relief standard involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

The only evidence presented here regarding relative hardship to the parties pertains to the fact that P.F. will not walk at graduation nor attend her dance. However, that was dealt with in the above analysis.

I CONCLUDE that the Board will suffer greater harm should emergent relief be granted than the student if the requested relief is not granted.

Based upon the foregoing, **I CONCLUDE** that petitioner failed to meet the requirements set forth in N.J.A.C. 6A:3-1.6(b), warranting an order for emergent relief in this matter.

ORDER

Accordingly, **I ORDER** that the petitioner's application for emergent relief be and hereby is **DENIED**. From representations made by counsel for the parties during prehearing conferences, I understand that there are no other issues to be decided on the underlying petition, and accordingly, the 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 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.

June 4, 2024
DATE

DEAN J. BUONO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

DJB/onl

APPENDIX

WITNESSES

For petitioner

K.F.M.

For respondent

None

EXHIBITS

For petitioner

Request for emergent relief dated May 24, 2024

For respondent

Opposition dated May 31, 2024

222-24

New Jersey Commissioner of Education

Final Decision

Sherry Marcus,

Petitioner,

v.

Board of Education of the Township of Upper Deerfield, Cumberland County,

Respondent.

Synopsis

Petitioner – formerly a non-tenured instructional aide in the respondent Board's school district – filed an appeal with the Commissioner that was dated August 23, 2022, though not received until September 1, 2022, challenging the non-renewal of her employment for the 2022-2023 school year. Petitioner had been employed by the Board as a non-tenured instructional aide under annual contracts for a number of years. The Board filed a motion for summary decision, which was opposed by the petitioner.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioner was employed by the district as a part-time instructional aide for the 2021–2022 school year, and had been employed for a number of years prior; her position was non-certificated and nontenured, and was a yearly position which required annual renewal; on April 20, 2022, the district superintendent issued a *Rice* notice to petitioner, providing formal notification that the Board was considering the possibility of non-renewal of her contract; subsequently, a letter dated May 10, 2022, was sent to petitioner, advising that her employment contract would not be renewed for the 2022-2023 school year; pursuant to *N.J.A.C.* 6A:3-1.3(i), the filing of an appeal to the Commissioner must be done within ninety days from the date of the nonrenewal notice, and nothing tolls the ninety-day time limit; here, petitioner's appeal was due no later than August 12, 2022, but was not filed with the Office of Controversies and Disputes until September 1, 2022; the petition was therefore late filed; and petitioner's argument that the 90-day rule should be relaxed based upon her belief that the nonrenewal notice was "void" is without merit. Accordingly, the ALJ granted summary decision to the Board, and dismissed the petition.

Upon comprehensive review of the record, the Commissioner, *inter alia*, adopted the ALJ's factual findings and conclusion that the petition was untimely filed. Accordingly, the Board's motion for summary decision was granted, and the petition of appeal was dismissed as untimely.

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.

222-24
OAL Dkt. No. 09462-22
Agency Dkt. No. 226-9/22

New Jersey Commissioner of Education

Final Decision

Sherry Marcus,

Petitioner,

v.

Board of Education of the Township of Upper Deerfield, Cumberland County,

Respondent.

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 respondent Board's reply thereto, have been reviewed and considered.

The threshold procedural issue in this case is whether the petition should be dismissed pursuant to the 90-day rule, *N.J.A.C.* 6A:3-1.3(i). *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 *N.J.* 572, 582 (1993). Petitioner was previously employed as a nontenured part-time instructional aide with respondent's district. Respondent sent petitioner a letter dated May 10, 2022, advising her that her employment contract would not be renewed for the 2022-2023 school year. On May 14, 2022, petitioner requested a written statement of reasons for the nonrenewal of her contract. On June 10, 2022, the Board Superintendent provided petitioner with a written statement of reasons. Petitioner appealed the nonrenewal decision to the Commissioner of Education. According to an acknowledgment notice in the case file, her petition – dated

August 23, 2022 – was received by the Office of Controversies and Disputes on September 1, 2022.

After the matter was transmitted to the OAL, respondent filed a motion for summary decision. Petitioner filed opposition. The Administrative Law Judge (ALJ) requested supplemental briefs regarding whether the petition was filed in compliance with the 90-day rule, *N.J.A.C.* 6A:3-1.3(i). Following review of all written submissions and oral argument, the ALJ granted the Board's motion for summary decision upon concluding that the petition was untimely filed. The ALJ reasoned that because petitioner received the May 10, 2022, nonrenewal letter sometime between May 10 and May 14, 2022, the petition should have been filed no later than August 12, 2022 (ninety days from May 14, 2022). Additionally, the ALJ considered and rejected petitioner's argument that the 90-day rule should be relaxed based upon her belief that the nonrenewal notice was "void" because: (1) the Board violated the Open Public Meetings Act (OPMA), *N.J.S.A.* 10:4-6 to -21, on April 26, 2022, when it prevented her from discussing her employment status during the public portion of the board meeting despite her prior written request regarding same; and (2) the Board violated *Rice v. Union County Regional High School Board of Education*, 155 *N.J. Super.* 64, 73 (App. Div. 1977), as it never provided her with a *Rice* notice for the special board meeting held on May 9, 2022, at which, she contends, the Board must have taken action regarding her employment.

In her exceptions, petitioner does not challenge the ALJ's factual findings. Rather, she disputes the ALJ's legal conclusions and reiterates arguments that were previously considered and rejected. She contends that the 90-day rule should be relaxed because of the Board's violation of OPMA and its failure to provide her with a *Rice* notice for the May 9, 2022, special

board meeting. In response, the Board maintains that the 90-day rule should not be relaxed under the circumstances as the ALJ correctly concluded that petitioner's contentions regarding the Board's violations of OPMA and *Rice* notice requirements are unsupported by law.

Upon review, the Commissioner adopts the ALJ's factual findings and conclusion that the petition was untimely filed. *N.J.A.C.* 6A:3-1.3(i) mandates that petitions shall be filed "no later than the 90th day from the date of receipt of the notice of a final . . . action by the district board of education." 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. It "provides a measure of repose" and "gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days." *Ibid.*

Here, the ALJ correctly concluded that the 90-day limitation period began when petitioner received the May 10, 2022, nonrenewal letter. *Salazar-Linden v. Bd. of Educ. of Twp. of Holmdel, Monmouth Cnty.*, Commissioner Decision No. 99-08 (March 3, 2008), at 5-6, *aff'd*, 2009 *N.J. Super. Unpub.* LEXIS 2713 * (App. Div. Oct. 28, 2009). It is undisputed that petitioner received the May 10, 2022, nonrenewal letter by May 14, 2022. Therefore, she had a meaningful opportunity to file her petition by August 12, 2022. The mandatory filing deadline is not subject to change based upon a petitioner's legal strategy, as that would defeat the measure of repose to which school districts are entitled. *See Nissman v. Bd. of Educ. of Twp. of Long Beach Island, Ocean Cnty.*, 272 *N.J. Super.* 373, 382 (App. Div. 1994) (affirming State Board decision to dismiss petition as time barred and explaining that while petitioner may have opted not to file a petition sooner for tactical reasons, the Board "was entitled to know within 90 days of its action whether

its [decision] was going to be challenged"). Consequently, petitioner's belief that the May 10, 2022, nonrenewal letter was void based upon the Board's violation of OPMA and *Rice* notice requirements—even assuming these contentions had merit—does not constitute "unusual and compelling circumstances" warranting relaxation of the mandatory 90-day filing deadline.[1] *Id.* at 591. Moreover, petitioner has not demonstrated that this matter implicates a novel constitutional issue or a compelling public interest.

Accordingly, respondent's motion for summary decision is granted, and the petition of appeal is hereby dismissed as untimely.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 10, 2024
Date of Mailing: June 12, 2024

[1] To the extent that the ALJ rendered conclusions regarding the merits of petitioner's contentions that the Board violated OPMA or *Rice* notice requirements, the Commissioner declines to adopt those conclusions because it is unnecessary to do so in light of the petition's procedural defect.

[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

SUMMARY DECISION

OAL DKT. NO. EDU 09462-22

AGENCY REF NO. 226-9/22

SHERRY MARCUS,

Petitioner,

v.

TOWNSHIP OF UPPER DEERFIELD SCHOOL DISTRICT,

Respondent.

Kevin McCann, Esq., for petitioner (Chance & McCann, LLC, attorneys)

Amy Houck-Elco, Esq., for respondent; **Carl Taylor,** Esq., on the briefs (Cooper Levenson, attorneys)

Record Closed: April 10, 2024 Decided: April 29, 2024

BEFORE **ELAINE B. FRICK,** ALJ:

STATEMENT OF THE CASE

Respondent, Township of Upper Deerfield School District (the District), did not renew petitioner's annual contract as a nontenured part-time aide for the 2022–2023 school year. Petitioner appealed the District's action. The District filed a motion for

summary decision, asserting that as a matter of law, summary decision shall be entered affirming the District's nonrenewal of petitioner's contract. Petitioner contends the motion should be denied as there are genuine issues of material facts regarding the District's actions in its nonrenewal of her contract.

PROCEDURAL HISTORY

The District's superintendent issued a letter on May 10, 2022, to petitioner, advising her that her contract would not be renewed. Petitioner submitted her appeal request to the Commissioner of the Department of Education (DOE) on August 23, 2022. The matter was transmitted to the Office of Administrative Law on October 19, 2022, where it was filed to be heard as a contested matter. N.J.S.A. 52:14B-1 to 14B-15 and N.J.S.A. 52:14F-1 to 14F-13.

Telephonic conferences were conducted with counsel for the parties. Respondent requested to submit a summary decision motion and a briefing schedule was set. The parties submitted their motion filings and briefs. Oral argument on the motion was scheduled for November 29, 2023. On that date, before oral argument was to be heard, the undersigned ALJ sua sponte raised the procedural issue regarding the ninety-day appeal filing requirement of N.J.A.C. 6A:3-1.3(i). The parties agreed to adjourn the oral argument and submit supplemental briefs on the ninety-day appeal issue. Oral argument was rescheduled.

Respondent submitted its supplemental letter brief. Petitioner's supplemental brief was not submitted as scheduled. Prior to the next scheduled oral argument date, respondent's then counsel of record left the law firm, and counsel assigned to take over the file requested to adjourn the oral argument, to which petitioner's counsel consented. The attorneys requested a telephonic conference to reset the motion scheduling. During the telephonic conference, petitioner's request for a new date for the submission of their supplemental brief, with consent of respondent, was granted. The parties further confirmed a mutually agreeable date for oral argument, which was scheduled. Petitioner's supplemental submission on the motion was filed thereafter. Oral argument was heard via Zoom audio/video technology on April 10, 2024.

FACTUAL DISCUSSION AND FINDINGS

The following facts were confirmed as uncontested by the parties, or otherwise deemed to be factual from the written submissions and argument of counsel. I thus **FIND** as **FACTS**:

Sherry Marcus was an employee of the District as a part-time instructional aide for the 2021–2022 school year. The position was non-certificated and nontenured. It is an annual position, requiring annual renewal.

Marcus was first hired as a part-time instructional aide by the District for the 2008–2009 school year. She asked on an annual basis to renew her contract. Her contract was not renewed after the end of the 2010 school year. She was hired again as a part-time instructional aide in November 2011, and was so employed through the end of the 2021–2022 school year.

The superintendent of the District, Dr. Peter Koza, issued a letter to Marcus on April 20, 2022, which the parties confirm is commonly known as a Rice notice, which is referencing the case Rice v. Union Cnty. Reg'l High Sch. Bd. of Educ., 155 N.J. Super. 64, 73 (App. Div. 1977) (pursuant to the rights afforded under the Open Public Meetings Act, reasonable advance notice is to be provided to an employee of an upcoming public meeting if their rights might be adversely affected at the meeting, and the employee is provided the opportunity to request a public discussion).

The Rice notice stated:

> This letter is to notify you that there will be a discussion regarding your employment in the Upper Deerfield Township school District. If it is determined that a non-renewal is necessary in the best interest of the district, you will be notified of such decision. Therefore, accept this communication as formal notification that there will be a discussion regarding your employment status in our district. Notification will be provided to you with respect to the outcome of the discussion.

> You have the right to request that the Board conduct any discussions that may affect your employment in open session at the next Board meeting on Tuesday, April 26, 2022 at 7:00 PM in the Woodruff School Library. Please notify Mrs. Lisa D'Imperio at the Woodruff School or Dr. Frank Badessa at the Board Office by noon on Monday, April 25, 2022 if you plan on attending the meeting and having this discussion in the public forum.
>
> (Koza letter, April 20, 2022, attached to the District's Statement of Material Facts, Exhibit C.)

Marcus sent an email to the school representative on April 20, 2022, indicating that she would be attending the board meeting and would like any discussions pertaining to her employment to be done in open session. (Marcus email, April 20, 2022, attached to Petitioner's Response to Respondent's Statement of Material Facts and Counter Statement of Material Facts, Exhibit B.)

Marcus attended the Board of Education (BOE) meeting on April 26, 2022. She contends she was prevented from discussing her employment status at the meeting as she had requested, which she asserts is a violation of the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-12(b)(8). She claims that when a BOE member asked about the nonrenewal, the meeting was moved to a closed session.

The BOE meeting minutes of April 26, 2022, were attached as Exhibit C to Petitioner's Response to Respondent's Statement of Material Facts and Counter Statement of Material Facts. The minutes confirm that motions were approved to table the issuance of notices of continuation of employment for the 2022–2023 school year to multiple staff members, such as nontenured professional staff, noninstructional staff, secretaries, computer technicians, crossing guards, etc. (BOE meeting minutes of April 26, 2022, at 1–6.) Marcus' name was not on the agenda.

Under the heading "Public Participation" of the meeting minutes, the following appears:

> Sherry Marcus questioned Dr. Koza and the Board as to why she was not being renewed for the 2022-2023 school year? Barb Ostberg also question [sic] them as well? Dr. Koza stated they are not meeting the performance standards of the Board.
>
> (BOE Minutes of April 26, 2022, at 9, punctuation original.)

Petitioner contends that there was no discussion at the meeting about her nonrenewal. She claims that Superintendent Koza did not make a statement about her performance, as the meeting minutes indicate.

A BOE special meeting was held on May 9, 2022. Marcus did not receive a Rice notice regarding the meeting.

The day after that BOE meeting, Superintendent Koza issued a letter on May 10, 2022, which stated:

> Please be advised that at the May 9, 2022 Special Meeting of the Upper Deerfield Township Board of Education, your name was not included among those individuals for renewal. Prior to the April 26, 2022 Board of Education meeting you were notified in a meeting and via a letter that it was possible your position would be non-renewal [sic]. At this time I am formally notifying you that you will not be renewed for the 2022-2023 school year.
>
> (Superintendent Koza letter, May 10, 2022, to Marcus regarding nonrenewal, attached as Exhibit D to District's initial motion submission.)

Marcus issued an email to Superintendent Koza on May 14, 2022, requesting a written statement of reason for the nonrenewal of her contract for the 2022–2023 school year. (Marcus letter May 14, 2022, attached as Exhibit E to petitioner's response to statement of facts.) A few weeks thereafter, Marcus' attorney, Kevin P. McCann, issued a letter on May 31, 2022, to Superintendent Koza, indicating "Sherry Marcus accepts you[r] offer for reemployment for the 2022-2023 school year." (Kevin P. McCann, Esq., letter May 31, 2022, attached as Exhibit E to the District's initial motion submission.) The

letter outlined that Marcus had received the Rice notice for the April 26, 2022, BOE meeting, that her request to discuss the matter in open session had been "improperly denied" and tabled, and that the BOE had gone into executive session. McCann's letter further indicated that Marcus did not receive Rice notice for the May 9, 2022, BOE meeting, at which time "action of employment was taken" and Superintendent Koza issued his May 10, 2022, letter to Marcus. McCann further indicated that due to the superintendent's failure to comply with Rice requirements and failure to comply with the statute, N.J.S.A. 18A:27-4, et seq, the superintendent's action in issuing the May 10, 2022, letter was invalid. McCann requested that the superintendent forward a reemployment contract for Marcus for the 2022–2023 school year. (McCann letter, May 31, 2022.)

Superintendent Koza issued a letter response on June 10, 2022, to Marcus' email request of May 14, 2022, for a statement of written reasons for nonrenewal of her contract. The superintendent's letter indicated:

> I did not recommend your renewal, as I believe you are not the right fit in your position at the district. Among other reasons, as an educator, your responsibility is to adhere to policies and procedures, protect student interest, and work to educate students in a healthy environment. In general you failed to demonstrate skills and performance sufficient to warrant a recommendation that you be renewed.
>
> The items listed above resulted in the decision to non-renew your employment contract.
>
> You have ten days from the date of this letter to notify me in writing whether you are requesting an informal hearing before the Board to permit you to convince the Board to offer you reemployment. Be advised that should you request an informal hearing it will be scheduled within thirty (30) days.
>
> (Superintendent's letter, June 10, 2022, attached as Exhibit F to the District's initial motion submission.])

The "informal hearing before the Board" is commonly referred to as a Donaldson hearing, referring to the case Donaldson v. Bd. of Educ. of the City of North Wildwood, 65 N.J. 236 (1974) (an informal hearing before a BOE shall be conducted, if timely

requested, for a nontenured teaching professional to present information to convince the BOE to offer reemployment rather than nonrenewal of their contract). Such a hearing must be requested by the individual within ten days of the issuance of a statement of reasons by the chief school administrator as to why a nontenured teaching staff member's contract was not renewed.

On the same date when the superintendent issued his letter of reasons for nonrenewal to Marcus, counsel for the District issued a letter to Marcus' attorney, McCann, in response to McCann's letter of May 31, 2022, wherein McCann indicated Marcus was accepting the superintendent's offer of reemployment for the 2022–2023 school year. (The District's counsel's letter, June 10, 2022, attached at Exhibit G of the District's initial motion submission.) Counsel for the District stated in their letter that Marcus "does not have a contract for employment for the 2022-2023 school year. Your client was non-renewed by the Superintendent." (District's counsel's letter, June 10, 2022.) Further, counsel for the District indicated that under the law, Marcus was not required to receive Rice notice for the May 9, 2022, BOE meeting because Marcus' name was not on the agenda. There was no action to be taken. The letter further indicated that pursuant to N.J.S.A. 18A:27-10, the superintendent exercised his statutory authority to provide a nontenured teacher with notification of nonrenewal, which authority does not require BOE approval. (District's counsel's letter, June 10, 2022.)

The District's counsel noted that upon receipt of a nonrenewal notice, a nontenured teacher may request a statement of reasons within fifteen days of the notice, which Marcus had done. The written reasons response from the superintendent must be issued within thirty days of receipt of the request for reasons. The District confirmed that the superintendent's letter of reasons of June 10, 2022, was within thirty days of Marcus' request email of May 14, 2022. (District's counsel's letter, June 10, 2022.)

Marcus' attorney issued a letter to Superintendent Koza thereafter on June 13, 2022. The letter stated:

> It seems to me that you are way out of time to schedule a Donaldson hearing. We will be filing a Petition with

> Commissioner. The letter that you are addressing to my client was supposed to be done before May 15, 2022, not June 10, 2022, when it was received. Thank you[,] we will copy you with position to commissioner.
>
> (McCann's letter of June 13, 2022, attached at Exhibit I to petitioner's response to statement of facts.)

Marcus did not request a Donaldson hearing. Marcus submitted a petition for reinstatement/renewal of her position of employment to the Commissioner of the DOE on August 23, 2022.

The District asserts that this matter is ripe for summary decision. Petitioner was timely notified of nonrenewal prior to May 15. When she asked for a statement of reasons for nonrenewal, the superintendent properly complied by issuing his June 10, 2022, letter within a thirty-day timeframe from petitioner's request for the reasons. Petitioner could have sought a Donaldson hearing but did not do so. Instead, petitioner chose to submit a petition to the DOE. Her petition was untimely, as it was submitted more than ninety days from the date of her receipt of the nonrenewal letter of May 10, 2022.

Even if the petition were considered timely filed, the District contends there is no basis for petitioner to claim that a Rice notice violation occurred and invalidated the issuance of the nonrenewal letter. The District asserts that it went beyond what is statutorily required by the superintendent having issued the Rice notice regarding the April 26, 2022, BOE meeting. The BOE tabled the issue of renewals of employment contracts. The District acknowledges there was no discussion in the open session by the BOE about nonrenewal of petitioner's contract. It argues that there is no statutory right for a nontenured employee to be heard by the BOE, or to have their employment status discussed at a BOE meeting, prior to the issuance of a nonrenewal notice by the superintendent. The statute empowers the superintendent to issue the nonrenewal notice prior to May 15. There is no requirement that the superintendent must gain the "approval" of the BOE before the superintendent issues their determination.

The District indicates that there was no obligation to issue a Rice notice for the May 9, 2022, BOE meeting. Marcus' name did not appear on the agenda, so there would

be no discussion regarding her nonrenewal. Again, the authority rests with the superintendent to issue a nonrenewal letter by May 15, and the superintendent is not required to obtain approval from the BOE before issuing a nonrenewal letter. The superintendent's letter of May 10, 2022, satisfied the statutory requirement to notify petitioner by May 15, 2022. Petitioner timely requested reasons for her nonrenewal, which were timely furnished by the superintendent in his June 10, 2022, letter. The asserted reasons were sufficient, as there is no statutory nor case law requirement that a detailed listing or explanation of reasons is required.

Petitioner had the opportunity thereafter to request a Donaldson hearing, or to have an informal hearing before the BOE to convince them of reasons why she should be renewed. She never requested a Donaldson hearing. The District asserts she cannot now claim that there was a violation of her Rice rights or that she did not have the opportunity to appear before the BOE. Under such circumstances, the District contends that summary decision should be entered, since there is no factual dispute regarding the District's compliance with the notification requirements for the nonrenewal of a nontenured employee's contract. N.J.S.A. 18A:27-3.2.

Petitioner asserts that summary decision should be denied. She contends that the BOE improperly tabled the issue of her employment status. Her recollection of the April 26, 2022, BOE meeting differs from the meeting minutes, where it is noted that the superintendent commented about her performance. She contends this is a genuine issue of material fact in dispute, as she asserts there was no discussion and that her OPMA rights were violated by the BOE opting not to discuss her employment. Moreover, she was never provided Rice notice of the May 9, 2022, BOE meeting, at which time the list of staff members to be renewed was ratified. Petitioner acknowledges that her name was not on the agenda. However, she argues that does not circumvent the Rice notice requirement since the exclusion of her name from the list of staff who were to be renewed meant that she was an employee whose contract was not going to be renewed. This is a violation of Rice notice requirements, and a violation of her right to request to have her employment discussed in open session.

Petitioner further contends that the May 10, 2022, letter of nonrenewal by

Superintendent Koza was improper, having been issued the day after the BOE meeting. This demonstrates that there had to have been some discussion about her nonrenewal by the BOE members, which petitioner asserts may have happened in executive session at the May 9, 2022, BOE meeting.

Marcus contends there are deficiencies in the superintendent's letter of reasons for nonrenewal. The June 10, 2022, deficiencies letter was sparse and incomplete, without details or context as to what skills or performance petitioner failed to demonstrate. The reasons provided further do not align with her annual evaluation report. (Evaluation report dated June 14, 2022, for 2021–2022 school year.) She received all satisfactory ratings for effectiveness and attitude. Comments for Marcus indicated that she provides instructional support in the academic setting, fulfills her responsibilities as a Basic Skills Intervention aide, assists the teachers, and has provided coverage for the teachers. This discrepancy demonstrates that there is a dispute as to whether the superintendent properly satisfied his requirement to provide a statement of reasons for nonrenewal, and thus summary decision must be denied.

Petitioner thus contends that there are genuine issues of material fact in dispute to warrant denial of the District's summary decision request.

Petitioner asserts that the issue of filing her petition in ninety days, since the May 10, 2022, letter of nonrenewal is void on its face due to her OPMA rights having been violated, should be dismissed. Her right to be heard at the April 26, 2022, BOE meeting was denied, and she thereafter never received notice of the May 9, 2022, BOE meeting. Recognizing that the letter of nonrenewal would be void on its face, her attorney transmitted a letter of acceptance of continuing her contract of employment. Petitioner asserts that letter was not responded to by the District, so the ninety-day limitation for filing has yet to be tolled.

Petitioner acknowledges that she received the June 10, 2022, letter of reasons for nonrenewal. Since that could be considered a response to her counsel's May 31, 2022, letter of acceptance of a position of employment, the ninety-day clock would run from

petitioner's receipt of the June 10, 2022, letter. If that date is applied, then the petition submitted to the Commissioner on August 23, 2022, was within the ninety-day time limit.

Petitioner further asserts that the New Jersey Administrative Code provides for a relaxation of the rules in such circumstances, to consider the June 10, 2022, letter as the date from which the ninety days should toll. Petitioner asserts that N.J.A.C. 6A:3-1.16 gives the Commissioner of the DOE authority to relax or dispense with the rules in determining controversies and disputes under the school laws, in situations where strict adherence may be inappropriate, unnecessary, or result in injustice. The ninety days should be relaxed here since petitioner was denied her OPMA rights on April 26, 2022, she never received Rice notification for the May 9, 2022, meeting, and her belief that the May 10, 2022, letter of nonrenewal was void on its face was reasonable. Thus, petitioner's appeal should not be dismissed for having been filed more than ninety days after the "voided" May 10, 2022, letter of nonrenewal and within ninety days of the June 10, 2022, letter of reasons for nonrenewal.

LEGAL ANALYSIS AND CONCLUSIONS

In an administrative law matter, a "party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). The motion "shall be served with briefs and with or without supporting affidavits." N.J.A.C. 1:1-12.5(b). The judge may grant the motion "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." Ibid. The non-moving party will prevail if they "set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid.

The law surrounding the nonrenewal of nontenured teachers is established by both statute and case law. The pertinent statute, N.J.S.A. 18A:27-10, provides that "[o]n or before May 15 in each year, each nontenured teaching staff member continuously employed by a board of education since the preceding September 30 shall receive either (a) A written offer of a contract for employment . . ., or (b) A written notice from the chief school administrator that such employment will not be offered." Ibid. The primary purpose

of the statute is to provide nontenured teaching staff with timely notice when their contract is not being renewed so that they can look for other employment. See Wachstein v. Burlington Cnty. Bd. of Educ., 1976 S.L.D. 928, 931.

The chief school administrator, here the superintendent, is required to issue the nonrenewal letter to a nontenured teaching staff member before May 15, as required by N.J.S.A. 18A:27-10. A nontenured teacher who is not recommended for renewal by the chief school administrator is deemed nonrenewed. N.J.S.A. 18A:27-4.1(b). Prior to notifying the employee of their nonrenewal, the superintendent shall notify the BOE of the recommendation not to renew the contract and the reasons for the recommendation. Ibid. An employee whose contract is not renewed shall have the right to receive a written statement of reasons for nonrenewal and thereafter request a Donaldson hearing. N.J.S.A. 18A:27-4.1(b).

The employee's request for a written statement of reasons for nonrenewal must be made by the employee within fifteen days of their receipt of the nonrenewal letter. N.J.S.A. 18A:27-3.2. The response shall be given to the teaching staff member "in writing within 30 days after the receipt of such request." N.J.S.A. 18A:27-3.2.

The employee has the right to a Donaldson hearing, which is an informal appearance before the BOE, to permit the employee "to convince the members of the board to offer reemployment." N.J.S.A. 18A:27-4.1(b); see N.J.A.C. 6A:10-9.1(c). The Donaldson hearing must be requested within ten days of the employee's receipt of the written reasons for nonrenewal. N.J.A.C. 6A:10-9.1(a). Once requested, the Donaldson hearing must occur within thirty calendar days thereafter. N.J.A.C. 6A:10-9.1(b).

The BOE is required to notify a nontenured teaching staff member of its final determination regarding nonrenewal only when the teacher has requested and participated in the informal Donaldson hearing. N.J.A.C. 6A:10-9.1(i); Donaldson v. Bd. of Educ. N. Wildwood, 65 N.J. 236 (1974). The BOE is not required to notify the teacher of nonrenewal if the employee never requested the Donaldson hearing. Thus, if a Donaldson hearing is not requested, once the employee has received the notice of

nonrenewal from the superintendent, as a matter of law, the employee's contract is deemed nonrenewed.

Although the controlling statute of N.J.S.A. 18A:27-10 requires affirmative action from the chief school administrator to notify nontenured teaching staff members of nonrenewal, it does not require the BOE to resolve or ratify a nonrenewal at a public meeting in advance of the issuance of the superintendent's nonrenewal letter. Welch v. Bd. of Educ., 159 N.J. Super. 29 (App. Div. 1978). Thus, regardless of whether an employee who received a nonrenewal letter requested a Donaldson hearing or not, the BOE is never required to take formal action to accept or reject the chief school administrator's determination of nonrenewal. N.J.S.A. 18A:27-10.

The nonrenewed member may seek an appeal of the determination of nonrenewal by submitting a petition for relief with the Commissioner of the DOE, asserting a controversy has arisen under the school laws. N.J.A.C. 6A:3-1.3(a); 6A:3-1.3(d). The petition must be filed "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." N.J.A.C. 6A:3-1.3(i). The ninety-day time frame in a dispute of the nonrenewal of a nontenured teaching staff member begins to run from the date the employee receives the notice of nonrenewal.

The New Jersey Open Public Meetings Act (OPMA), N.J.S.A. 10:4-1 to 4-21, imposes certain notice and other requirements with which a BOE must comply. Under the OPMA, the public has a right to advance notice of governmental meetings where public business is discussed. N.J.S.A. 10:4-9. The regulation specifies that "[a] public body may exclude the public only from that portion of a meeting at which the public body discusses any . . . matter involving the employment" of a public employee "unless all the individual employees or appointees whose rights could be adversely affected request in writing that the matter or matters be discussed at a public meeting." N.J.S.A. 10:4-12(b)(8).

In the matter of Rice v. Union Cnty. Reg'l High Sch. Bd. Of Educ., 155 N.J. Super. 64 (App. Div. 1977), the Appellate Division held that:

> [t]he plain implication of the personnel exception to the New Jersey Open Public Meetings Act is that if all employees whose rights could be adversely affected decide to request a public hearing, they can only exercise that statutory right and request a public hearing if they have reasonable advance notice so as to enable them to (1) make a decision on whether they desire a public discussion and (2) prepare and present an appropriate request in writing.
>
> (Rice, 155 N.J. Super. at 73.)

Thus, "when 'all individual employees . . . whose rights could be adversely affected request in writing that the matter or matters be discussed at a public meeting,' the governing body may not opt to shut its doors." Kean Federation of Teachers v. Morell, 233 N.J. 566, 584–5 (2018) (quoting N.J.S.A. 10:4-12(b)(8)). However, "[t]he OPMA does not contain a requirement about the robustness of the discussion that must take place on a topic." Id. at 588.

Where any action taken by a public body at a meeting does not conform with the provisions of OPMA, a potential remedy is the voiding of the action taken by the public body. There is no remedy if the public body "took no action that could be voided." McGovern v. Rutgers, 211 N.J. 94, 112 (2012).

Here, it must be determined whether the District will prevail on its motion for summary decision, seeking to dismiss Marcus' petition for relief as a matter of law. The first contention is whether Marcus adhered to the ninety-day period for the filing of an appeal with the Commissioner. The May 10, 2022, notice of nonrenewal from the superintendent to Marcus is straightforward and plainly notifies Marcus that she will not be renewed for the 2022–2023 school year. There are no conditions, nor ambiguity in the letter for Marcus to dispute.

Marcus does assert that the nonrenewal notice was voided when her Rice rights were violated by the BOE not having an open public discussion regarding her employment at the April 26, 2022, BOE meeting. She further contends the May 10, 2022, nonrenewal

letter was voided by the District having failed to provide to her Rice notice for the May 9, 2022, BOE meeting, where she asserts there must have been some discussion by the BOE either at the meeting or sometime prior, regarding her nonrenewal. The District contends that the issuance of the Rice notice for the BOE meeting of April 26, 2022, did not trigger an absolute requirement that Marcus' employment status would be discussed at the meeting. It further contends that it is not statutorily required to provide Rice notice if Marcus' name was not on the agenda. She was not on the agenda for the May 9, 2022, BOE meeting. Only those getting renewed were listed on that agenda. Marcus asserts that the absence of her name on the agenda was a trigger that she would be nonrenewed, and thus possible discussion would be had, and must have occurred, so her Rice notice requirements were violated, and thus the May 10, 2022, nonrenewal notice was voided.

The statute governing the nonrenewal notice requirement, N.J.S.A. 18A:27-10, does not trigger the need for a Rice notice to be issued to the nontenured teaching staff member if they are not going to be renewed. The statute places the authority to issue the renewal or nonrenewal notice in the hands of the chief administrative officer, which is the superintendent here. The statute does not require petitioner to have the opportunity to discuss her nonrenewal status in advance of receipt of the notice. The superintendent is required to advise the BOE in advance of the issuance of the nonrenewal notice to the employee. N.J.S.A. 18A:27-4.1(b). This again does not trigger a Rice notice requirement. There is no requirement that the BOE must formally approve or disapprove of the superintendent's determination in advance of the issuance of the nonrenewal letter. The only requirement for a BOE "discussion" to be had on the issue is where the nonrenewed employee has requested a statement of reasons for nonrenewal in a timely manner, and thereafter timely requests a Donaldson hearing. The Donaldson hearing is not an adversarial proceeding. It is the employee's opportunity to assert their reasons to convince the BOE to consider renewal of the employee's contract. If no action is taken by the BOE to change the nonrenewal, the employee's next form of recourse is to initiate a petition with the Commissioner, which must be done within ninety days from the date of the nonrenewal notice. Nothing tolls the ninety-day time limit.

Marcus' assertion that the nonrenewal notice was voided is not supported by the plain reading of the statutes, regulations, and the case law. The notice was issued in

advance of the statutory deadline of May 15. I **CONCLUDE** the nonrenewal notice dated May 10, 2022, was properly issued, in unambiguous and unconditional form. I **CONCLUDE** that petitioner received the notice sometime between May 10, 2022, and May 14, 2022, which is the date petitioner requested her statement of reasons for nonrenewal. Considering the latest date of May 14, 2022, and counting ninety days thereafter, Marcus was required to submit a petition to the Commissioner by August 12, 2022. The petition was submitted on August 23, 2022. I thus **CONCLUDE** that the petition was not timely filed, and this matter shall be **DISMISSED**.

Consideration has been given to Marcus' contention that there should be a relaxation of the rules, given her belief that the May 10, 2022, letter was voided, and rather that the June 10, 2022, letter of reasons for nonrenewal should be deemed the controlling date to trigger the ninety-day time frame. Marcus further contends that this relaxation should further be considered, given that she notified the District she was accepting reemployment, as per the May 31, 2022, letter from her counsel, since the May 10, 2022, letter would have been voided and the BOE was not in compliance with issuing nonrenewal by May 15. Her reemployment should have thus occurred since the statute requires reemployment for the year if the District failed to issue an intended nonrenewal letter by May 15, 2022.

These arguments rely upon the acceptance that a Rice notice requirement was violated. As addressed above, there is no Rice requirement. Marcus has not raised a genuine issue to require an evidentiary hearing by asserting that the BOE possibly discussed her employment in closed or executive session, in violation of OPMA. The fact that the BOE had issued notice for the April 26, 2022, meeting does not trigger a mandate to have a discussion. Nor is the statute somehow overridden by Rice and OPMA if there was no discussion had where the Rice notice had been issued. There is no "robustness" requirement for discussions to be had under the OPMA, and even if the Board somehow violated the OPMA, the Board took no action on Marcus' employment at the April 26th meeting; thus, there is no Board action that could be voided as a result of any OPMA violation. Just as there was no requirement for Marcus to receive a Rice notice in advance of the April 26, 2022, BOE meeting, there was no requirement for Marcus to receive a Rice notice in advance of the May 9, 2022, meeting.

Marcus promptly acted to request a notice of reasons for nonrenewal, which was issued to her in a timely manner. The purpose of the statement of reasons is to disclose any "correctible deficiencies" in a teacher's performance that may help to aid them in obtaining and maintaining future positions in teaching employment. Donaldson, 65 N.J. at 245. Although a BOE should provide a nonrenewed teacher with the true reasons for its decision, if it fails to do so, there is "no authority to impose a penalty for a board's failure to provide accurate reasons unless it is established that the real reasons for the board's action are in violation of constitutional or legislatively conferred rights." Sheridan v. Bd. of Educ., EDU 08068-03, Initial Decision (October 18, 2004), modified, Commissioner Final Agency Decision (December 1, 2004) https://njlaw.rutgers.edu/collections/oal/. "Absent constitutional constraints or legislation affecting the tenure rights of teachers, local boards of education have an almost complete right to terminate the services of a teacher who has no tenure and is regarded as undesirable by the local board." Dore v. Bd. of Educ., 185 N.J. Super. 447, 456 (App. Div. 1982). The BOE may decline to follow the superintendent's recommendation for renewal, but "may not do so arbitrarily and capriciously." Jackson Twp. Bd. of Educ. v. Jackson Educ. Ass'n ex rel Scelba, 334 N.J. Super. 162, 168 (App. Div. 2000).

Reasons for nonrenewal that are vague do not override a board's broad discretion in deciding whether to retain nontenured teachers. See, Sheridan and Guerriero v. Bd. of Educ. of the Borough of Glen Rock, State Board of Education (February 5, 1986), aff'd, No. A-3316-85T6 (App. Div. 1986). Even when a teacher has received satisfactory evaluations, a board has no obligation to renew a nontenured teacher's employment. See, Bd. of Educ. v. Wyckoff Educ. Ass'n, 168 N.J. Super. 497 (1979).

Marcus' contention that the letter of reasons for nonrenewal was vague and contrary to her annual evaluation does not present a genuine issue of material fact to be determined at an evidentiary hearing. The letter stated she was not a good fit and "failed to demonstrate skills and performance sufficient to warrant a recommendation that [she] be renewed." The letter also alludes to her responsibility as a teacher to "adhere to policies and procedures," but does not provide any more description as to what that means. In Marcus' final evaluation, her performance was graded as satisfactory, but did

note recommendations for improvement regarding her attendance and compilation of data to provide to teachers to assist them. As established in Wyckoff and Sheridan, satisfactory evaluations and vague statements of reasons do not override the virtually unlimited discretion that a BOE has in deciding whether or not to renew nontenured teaching staff. Considering this fact in the light most favorable to Marcus that the letter provided a vague explanation is of no consequence because Marcus has not alleged that the statement of reasons was pretextual and that the Board nonrenewed her for an unconstitutional or illegal reason. Thus, Marcus' contention regarding the vagueness of the letter of reasons further does not support her request for a relaxation of the rules to consider her petition to have been timely filed.

Marcus was advised in the letter of reasons that she had the right to request an informal hearing, being a Donaldson hearing, within ten days of receipt of the June 10, 2022, letter of reasons. Marcus did not request a Donaldson hearing, and instead opted to file her petition. She was not mandated to have a Donaldson hearing before opting to file the petition, as the District suggested in its motion submission that Marcus failed to exhaust her administrative remedies. However, she was required to have the petition filed with the Commissioner of the DOE within ninety days of the notice of nonrenewal.

The case law pertaining to adherence to the ninety-day time limit for filing does not provide for a relaxation of the rules for untimely filing. The language of the statute setting the ninety-day time frame to file a petition is mandatory. If a petitioner spends part of that time period attempting to resolve the matter in other ways, it does not provide justification to toll or extend the ninety-day limit. Pacio v Bd. of Educ. of Lakeland Reg'l High Sch. Dist., 1989 S.L.D. 2060. Likewise here, petitioner's assertions that her belief that the nonrenewal letter was void and that she took other efforts to assert her objection under Rice and OPMA violations did not toll the ninety-day time frame or otherwise require a relaxation of the rules.

Taking into consideration Marcus' arguments for relaxation of the rules in the light most favorable to her, there still is no genuine issue of material fact presented to mandate an evidentiary hearing on the matter, nor any compelling reason to relax the rules. Hence,

I **CONCLUDE** that summary decision should be entered in favor of the District, and the matter shall be **DISMISSED**.

ORDER

It is **ORDERED** that respondent's motion for summary decision is **GRANTED** and this matter shall be **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 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.

April 29, 2024
DATE

ELAINE B. FRICK, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

EBF/sg/jm

APPENDIX

May 1, 2023, Motion for Summary Decision filed by respondent

June 1, 2023, Opposition to the motion filed by petitioner

June 9, 2023, Reply brief to opposition filed by respondent

November 29, 2023, Supplemental brief on ninety-day-rule issue by respondent

March 11, 2024, Supplemental brief on ninety-day-rule issue by petitioner

223-24
OAL Dkt. No. EDU 11367-23 (EDU 00264-23 On Remand)
Agency Dkt. No. 373-12/22

New Jersey Commissioner of Education

Final Decision

Corey Gallagher,

Petitioner,

v.

Board of Education of the Township of Byram, Sussex County,

Respondent.

The record of this matter, the proposed Settlement Agreement and Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 10, 2024
Date of Mailing: June 12, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 11367-23
AGENCY DKT. NO. 373-12/22

COREY GALLAGHER,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF BYRAM, SUSSEX COUNTY,
Respondents.

REMAND OF
OAL DKT. NO.: EDU 00264-23

Randi Doner April, Esq. for petitioner (Oxfeld Cohen, attorneys)

Paul E. Griggs, Esq. for respondent (Cornell, Merlino & Osborne, LLC, attorneys)

Record Closed: May 2, 2024 Decided: May 8, 2024

BEFORE **JOHN P. SCOLLO**, ALJ:

The New Jersey Department of Education transmitted to the Office of Administrative Law for determination as a contested case on October 26, 2023, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On October 6, 2023, The Acting Commissioner of Education remanded the matter for factual findings regarding the dates on which Petitioner Gallagher attended

Lenape Valley practices; and the dates for which the Board withheld Petitioner's pay for attending Lenape Valley practices, but which, according to Petitioner he should have been paid because he did not attend Lenape Valley practices on those dates.

The parties have settled this matter and have filed a Stipulation of Settlement and Resolution setting forth the terms of their settlement.

Having reviewed the Stipulation of Settlement and Resolution, I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by the signatures of the parties and/or their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that the stipulation of settlement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the stipulation of settlement and, therefore, **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

John P. Scollo

May 8, 2024
DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency: MAY 10, 2024

Date Mailed to Parties: MAY 10, 2024
db

Batista, Diana [OAL]

From: Paul Griggs <pgriggs@cmmolaw.com>
Sent: Thursday, May 2, 2024 4:16 PM
To: Batista, Diana [OAL]
Cc: Randi April
Subject: [EXTERNAL] FW: Settlement Agreement on Gallagher v. BOE Byram
Attachments: Corey Gallagher Signed Settlement April 2024.pdf

Hi Diana,
See attached.
Paul

Paul E. Griggs, Esq.
Cornell, Merlino & Osborne, LLC
1136 Route 22, Suite 204
Mountainside, New Jersey 07092
(P) 908.481.5010 | (F) 908.264.2045
pgriggs@cmmolaw.com
www.cmolaw.com

From: Batista, Diana [OAL] <Diana.Batista@oal.nj.gov>
Sent: Thursday, May 2, 2024 3:46 PM
To: Paul Griggs <pgriggs@cmmolaw.com>
Cc: Randi April <RApril@oxfeldcohen.com>
Subject: RE: Settlement Agreement on Gallagher v. BOE Byram
Importance: High

Since this matter was remanded by the Agency, the caption on the Settlement Agreement must reflect the new remanded OAL Dkt. No.:

Kindly resend the caption with the correct OAL Dkt. No.

It should read: OAL Dkt. No. EDU 11367-23
Remand of OAL Dkt. No. EDU 00264-23.

Thank you.

CORNELL, MERLINO & OSBORNE, LLC
238 St. Paul Street
Westfield, New Jersey 07090
Office: (908) 481-5000
Fax: (908) 264-2045
Attorneys for Respondent, Township of Byram Board of Education

COREY GALLAGHER,	BEFORE THE COMMISSIONER OF EDUCATION, STATE OF NEW JERSEY DEPARTMENT OF EDUCATION
Petitioner,	
	OAL DKT. NO. EDU 11367-23
v.	REMAND OF OAL DKT. NO. EDU 00264-23
	AGENCY DOCKET NO. 373-12/22
TOWNSHIP OF BYRAM BOARD OF EDUCATION	
	SETTLEMENT AGREEMENT
Respondent.	

SETTLEMENT AGREEMENT

This Agreement is made on March 4, 2025, by and between the Board of Education of the Township of Byram, Sussex County ("Board") and Corey Gallagher ("Petitioner")

WHEREAS, the Board previously determined that Petitioner's absences on November 21, 2022, November 22, 2022, November 23, 2022, November 28, 2022, November 29, 2022, November 30, 2023, December 1, 2022, December 2, 2022, December 5, 2022, and December 6, 2022, were unexcused and in violation of Board policy, and as a result docked Petitioner's pay 10 days; and

WHEREAS, in response to the Board docking Petitioner's pay for 10 days, Petitioner filed a Petition of Appeal with the New Jersey Commissioner of Education ("Commissioner") on December 20, 2022; and

WHEREAS, on January 9, 2023, the Commissioner transmitted the matter to the Office of Administrative Law and assigned to the Honorable John P. Scollo, A.L.J.; and

WHEREAS, in an Initial Decision Summary Decision dated July 11, 2023, Judge Scollo determined "that Byram BOE was justified in withholding ten days of Gallagher's wages in order to recoup the monies which Gallagher had already received from the Byram BOE" and dismissed the Petition; and

WHEREAS, the Initial Decision was filed with the Commissioner pursuant to *N.J.A.C.* 1:1-18.3; and

WHEREAS, in her Final Decision dated October 6, 2023, the Acting Commissioner upheld the Board's action docking Petitioner's pay as not arbitrary, capricious, or unreasonable however, remanded the matter to the Judge Scollo for "factual findings regarding the dates on

which petitioner attended Lenape Valley practice to address exceptions filed by Petitioner indicating "that the district withheld petitioner's salary for two days that he did not attend practice, noting the Board may not withhold pay on days which Petitioner did not appear at practice; and

WHEREAS, the parties have reached an agreement to resolve and settle the matter with the Board returning to Petition two days pay that was previously docked.

NOW THEREFORE, the parties hereby agree as follows:

1. The Board shall refund and pay the Petitioner two days pay previously docked within thirty (30) days from the date that the matter and Judge Scollo's approval of the Settlement Agreement is approved by the Commissioner of Education.
2. The parties have entered into this Settlement Agreement to avoid the expense and inconvenience of another hearing or any other proceeding regarding the docking of Petitioner's salary.
3. In consideration of the settlement of this matter, Petitioner shall release the Board from any and all claims, rights and liability, including but not limited to any and all claims for attorneys' fees, compensatory education, money damages, civil liability, or any other equitable or legal relief through the date of the execution of this Settlement Agreement.
4. This Agreement contains the entire Agreement and understanding between the parties and constitutes a full and final Agreement on any and all issues.
5. This Agreement shall be governed by the laws of the State of New Jersey.
6. If, during the term of this Agreement, a specific clause of the Agreement is determined to be illegal or in violation of any Federal or State law, the remainder of the Agreement shall not be affected by such a ruling and shall remain in full force and effect.

7. The parties have entered into this Agreement freely and voluntarily with a full understanding of their rights and the contents of this Agreement. The parties acknowledge that they had the opportunity to consult with legal counsel or a representative of their choice and that they reviewed the Agreement in detail with their counsel or representative and fully understand its requirements and limitations.

8. This Agreement may not be altered, amended or modified except by writing, signed and duly authorized by all parties.

9. This Agreement is subject to ratification by the Board.

ON BEHALF OF COREY GALLAGHER:

Corey Gallagher

Date: 3/4/2024

ON BEHALF OF THE BOARD OF EDUCATION OF THE TOWNSHIP OF BYRAM:

Julie Lucente, Board President

Date: 4-17-24

224-24R

New Jersey Commissioner of Education

Final Decision

A.T., on behalf of minor child, L.B.,

Petitioner,

v.

Board of Education of the City of Burlington, Burlington County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that her minor grandchild, L.B., was not entitled to a free public education in the Burlington School District. L.B. had been attending school in Edgewater Park, where she is domiciled with her mother. However, on September 7, 2023, the family sought to enroll L.B. in the Burlington School District based on an application for admission as an affidavit student; in the application, petitioner stated in the "Explanation of Hardship" section that L.B. had been experiencing bullying at her school in Edgewater Park and the family wanted her to attend school in Burlington for her safety. The Board rejected the petitioner's application, determining that "family economic hardship was not demonstrated" as required under *N.J.S.A.* 18A:38-1; the Board subsequently filed a motion for summary decision and sought tuition reimbursement for the period of L.B.'s ineligible attendance in Burlington Schools at a daily rate of $180.16.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; pursuant to *N.J.S.A.* 18A:38-1(a), public school is free to a minor who is domiciled within the school district; New Jersey has consistently held that the domicile of the child follows the domicile of the parent; pursuant to *N.J.A.C.* 6A:22-6.2, the Commissioner may assess tuition when a child does not have a right to attend the school district; petitioner bears the burden of proof in a determination of residency ineligibility; here, petitioner failed to appear at the pre-hearing conference scheduled in this matter, and failed to respond to the motion for summary decision. The ALJ concluded that petitioner failed to sustain her burden of establishing that her grandchild, L.B., was entitled to attend school in Burlington as an "affidavit student" pursuant to *N.J.S.A.* 18A:38-1; therefore, L.B. was not entitled to a free public education in Burlington schools during the 2023-2024 school year. Accordingly, the ALJ granted summary decision to the Board, dismissed the petition, and ordered petitioner to pay the Board tuition at the rate of $180.16/day for each day of L.B.'s ineligible attendance in Burlington schools.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions but noted that the record lacks the detail necessary to calculate the tuition owed to the Board. Accordingly, the matter was remanded to the OAL for further proceedings to develop the record regarding the number of days of L.B.'s ineligible attendance so that the tuition amount owed to the Board may be calculated.

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.

224-24R
OAL Dkt. No. 12774-23
Agency Dkt. No. 288-10/23

New Jersey Commissioner of Education

Final Decision

A.T., on behalf of minor child, L.B.,

Petitioner,

v.

Board of Education of the City of Burlington, Burlington County,

Respondent.

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.

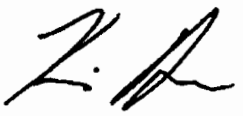
Upon review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain her burden of establishing that her grandchild, L.B., was entitled to attend school in Burlington as an "affidavit student" pursuant to *N.J.S.A.* 18A:38-1. The Commissioner further concurs with the ALJ's conclusion that L.B. was, therefore, not entitled to a free public education in the district during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in the district. Tuition is "computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance." *N.J.S.A.* 18A:38-1b. The ALJ found that the tuition rate is $180.16 per day, based on the certification of the district's Superintendent,

and the Commissioner concurs with this finding. However, the record lacks information regarding the number of days of ineligible attendance, such that the Commissioner is unable to assess tuition against petitioner at this time.

Accordingly, the respondent's motion for summary decision is granted, and petitioner's residency appeal is hereby dismissed. This matter is remanded to the OAL for further proceedings to develop the factual record regarding the number of days of L.B.'s ineligible attendance so that the tuition amount owed to the Board may be calculated.

IT IS SO ORDERED.[1]



ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 10, 2024
Date of Mailing: June 12, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 12774-23
AGENCY DKT. NO. 288-10/23

A.T. ON BEHALF OF MINOR CHILD L.B.,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF BURLINGTON, BURLINGTON COUNTY,
Respondent.

A.T., petitioner, pro se

Alicia D'Anella, Esq., for respondent (Parker McCay, P.A, attorneys)

Record Closed: March 27, 2024 Decided: May 8, 2024

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

A.T on behalf of minor child L.B. challenges the residency determination by respondent, the Board of Education of the City of Burlington (Board). Under N.J.S.A. 18A:38-1(a), public schools shall be free to a minor who is domiciled within the school

district. The Board filed a motion for summary decision. The Board also seeks reimbursement for the period of ineligibility that L.B. attended school in the district.

PROCEDURAL HISTORY

On September 28, 2023, the respondent notified petitioner A.T. that L.B. was not entitled to a free education in the City of Burlington Public School District (District) because "family hardship" was not demonstrated. On October 18, 2023, A.T. appealed the District's decision. On November 13, 2023, the respondent filed an answer and a notice of motion for summary decision.

On November 16, 2023, the Department of Education, Office of Controversies and Disputes, transmitted the case to the Office of Administrative Law as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing.

On December 5, 2023, I was assigned this case for a hearing. On January 9, 2024, the matter was scheduled for a pre-hearing conference. The petitioner failed to appear. The matter was rescheduled to January 29, 2024. At that time a status conference was held and a motion schedule was set for the response to respondent's motion. The petitioner had until February 29, 2024, to respond, and respondent's reply was due on March 7, 2024. There was no response from the petitioner. On March 27, 2024, an email was sent regarding the responses that were due. Again, no response was received from the petitioner. The record closed on March 27, 2024.

FINDINGS OF FACT

Based on the documents submitted in support of the motion for summary decision and the due-process petition, I **FIND** the following as **FACT**:

1. Petitioner, A.T., is the grandmother of L.B. and is domiciled in the city of Burlington, New Jersey. (Affidavit Student, Part 1—Sworn Statement of Resident.)

2. John Russell is the superintendent of the City of Burlington Public School District. (Russell Certif. paragraph 1.)

3. On September 7, 2023, L.B.'s family sought to enroll her in the District as an "affidavit student." (Russell Certif. paragraph 2.)

4. A completed affidavit was received from L.B.'s family on September 25, 2023, and was provided to the vice principal, Nick Rancani. (Russell Certif. paragraph 4.)

5. A.M. is the mother of L.B. She lives in Edgewater Park, New Jersey. (See Affidavit of Student, Part 2—Application for Admission.) In A.M.'s affidavit, under the section titled "Explanation of Hardship," she wrote the following: "At her other school she was being bullied by a male student and [L.B.] didn't want to attend back and all family member[s] didn't want her to go back to that school do [sic] to her safety." Ibid.

6. On September 28, 2023, A.T. was notified by Vice Principal Rancani that L.B. was not entitled to a free education in the City of Burlington Public School District because "family economic hardship was not demonstrated." (District Letter.) The District determined that the petitioner's explanation of hardship did not meet the definition under N.J.S.A. 18:A:38-1. (Russell Certif. paragraph 7.)

7. The District's tuition rate for students in L.B.'s age range is $180.16 per day for an annual rate of $19,468. (Russell Certif. paragraph 10.)

8. The petitioner appealed the decision on October 18, 2023. (Pro Se Residency Appeal.)

9. The petitioner failed to respond to the motion for summary decision.

CONCLUSIONS OF LAW

A party may move for summary decision upon any or all of the substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. "The decision sought may 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." N.J.A.C. 1:1-12.5(b).

In this case, no genuine issue of any material fact exists, and the Board is entitled to prevail as a matter of law for the reasons stated below.

Public school shall be free to a minor who is domiciled within the school district, N.J.S.A. 18A:38-1(a); New Jersey has consistently held that the domicile of the child follows the domicile of the parent, Shim v. Rutgers, 191 N.J. 374, 399 (2007); and if a student does not have a right to attend the school district, the commissioner of the Department of Education may assess tuition, N.J.A.C. 6A:22-6.2. Petitioner has the burden of proof in a determination of residency ineligibility. N.J.S.A. 18A:38-1.

In this case, L.B. is domiciled in Edgewater, NJ, with her mother, A.M. Because of "bullying" she was experiencing at the school in Edgewater the family sought to enroll L.B. in the District as an "affidavit student." As part of the "Application for Admission," completed by the legal parent, there is an "explanation of hardship" requirement that the parent/guardian must complete.

N.J.S.A. 18A:38-1 provides, in pertinent part:

> Any person who is kept in the home of another person domiciled within the school district and is supported by such other person gratis as if he were such other person's own child, upon filing by such other person with the secretary of the board of education of the district, if so required by the board, a sworn statement that he is domiciled within the district and is supporting the child gratis and will assume all personal obligations for the child relative to school

> requirements and that he intends so to keep and support the child gratuitously for a longer time than merely through the school term, and a copy of his lease if a tenant, or a sworn statement by his landlord acknowledging his tenancy if residing as a tenant without a written lease, and upon filing by the child's parent or guardian with the secretary of the board of education a sworn statement that he is not capable of supporting or providing care for the child due to a family or economic hardship and that the child is not residing with the resident of the district solely for the purpose of receiving a free public education within the district. The statement shall be accompanied by documentation to support the validity of the sworn statements, information from or about which shall be supplied only to the board and only to the extent that it directly pertains to the support or nonsupport of the child. If in the judgment of the board of education the evidence does not support the validity of the claim by the resident, the board may deny admission to the child.

Here, L.B.'s mother's explanation of hardship was, "[a]t her other school she was being bullied by a male student and [L.B.] didn't want to attend back and all family member[s] didn't want her to go back to that school do [sic] to her safety." See Affidavit of Student, Part 2—Application for Admission. This, the respondent argues, does not fit within the hardship criteria to be accepted as a student in the District. I agree. I **CONCLUDE** that there was no sworn statement that A.M. is not capable of supporting or providing care for L.B. due to a family or economic hardship pursuant to N.J.S.A. 18A:38-1. I further **CONCLUDE** that L.B. is residing with the resident of the District solely for the purpose of receiving a free public education.

Accordingly, I **CONCLUDE** that A.T. owes the respondent $180.16 per day for the period of ineligibility that L.B. attended the City of Burlington public schools pursuant to N.J.S.A. 18A:38-1(b)(1) and N.J.A.C. 6A:22-6.2.

ORDER

It is **ORDERED** that the petition is **DENIED** based upon petitioner's failure to meet her burden of proof that the District acted arbitrarily or capriciously in disputing L.B.'s entitlement to a free education in the City of Burlington Public School District.

It is further **ORDERED** that the Board of Education of the City of Burlington is entitled to tuition reimbursement from petitioner in an amount based on the per-diem rate of $180.16 for each day L.B. attended while ineligible.

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.

May 8, 2024
DATE

JOAN M. BURKE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

EXHIBITS

For Petitioner:

Pro Se Residency Appeal

For Respondent:

Respondent's Answer, Motion for Summary Decision, Brief with Certification of John Russell, Superintendent, City of Burlington Public Schools, with supporting documents

225-24

OAL Dkt. No. EDU 04724-24
Agency Dkt. No. 318-11/23

New Jersey Commissioner of Education

Final Decision

K.E., on behalf of minor child, J.R.,

Petitioner,

v.

Morris Hills Regional School District,
Morris County.

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement), and the Initial Decision issued by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 7 of the Agreement includes a confidentiality clause. The parties are reminded that the Board must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* in regard to information concerning this matter, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

The Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 10, 2024
Date of Mailing: June 12, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 04724-24
AGENCY DKT. NO. 318-11/23

K.E. ON BEHALF OF THE MINOR CHILD J.R.,

Petitioner,

v.

MORRIS HILLS REGIONAL SCHOOL DISTRICT, MORRIS COUNTY,

Respondent.

Laura A. Siclari, Esq., for petitioner (Santomassimo Davis, LLP, attorneys)

Andrew W. Li, Esq., for respondent (Comegno Law Group, P.C., attorneys)

Record Closed: April 30, 2024 Decided: May 3, 2024

BEFORE **R. TALI EPSTEIN**, ALJ:

On or about November 21, 2023, petitioner K.E. on behalf of minor child J.R. filed a Petition of Appeal with the Commissioner of Education challenging the residency determination by respondent Board of Education of the Morris Hills Regional School District (Morris). The Department of Education transmitted the matter to the Office of

Administrative Law (OAL) under the caption K.E. on behalf of minor children J.R. and J.C. v. Board of Education of the Township of Denville and Morris Hills Regional School District, Morris County, where it was filed for determination as a contested case under OAL Docket No. EDU 14258-23. On or about December 15, 2023, Morris filed an Answer to the Petition of Appeal and Counter-Petition, which included a request for tuition and transportation costs.

By order dated April 15, 2024, and with the parties' agreement, the undersigned bifurcated the matter so that petitioner's claim regarding the minor child J.R. (and Morris's Counter-Petition) could proceed separately from petitioner's claim regarding the minor child J.C. (and the counterclaim asserted by the Board of Education of the Township of Denville). The bifurcation order directed that the matter against Morris Hills, involving the minor child J.R., proceed under the caption K.E. on behalf of the minor child J.R. v. Morris Hills Regional School District, Morris County, with OAL docket number EDU 04724-24, and the matter against Denville, involving the minor child J.C., proceed under the caption K.E. on behalf of the minor child J.C. v. Board of Education of the Township of Denville, with OAL docket number EDU 14258-23.

During the course of prehearing proceedings and following extensive settlement negotiations, petitioner and Morris advised the tribunal that they had reached a settlement of their dispute. Attached hereto is the executed Settlement Agreement and General Release between petitioner and Morris and the April 29, 2024 Board Certification approving same.

Having reviewed the record and the settlement terms, I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and, therefore, **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

May 3, 2024
DATE

R. TALI EPSTEIN, ALJ

Date Received at Agency: MAY 10, 2024

Date Mailed to Parties: MAY 10, 2024
cc

SETTLEMENT AGREEMENT AND GENERAL RELEASE

COMEGNO LAW GROUP, P.C.
521 Pleasant Valley Avenue
Moorestown, New Jersey 08057
(856) 234-4114
(856) 234-4262 Fax
Attorneys for the Morris Hills Regional District Board of Education
BY: ANDREW W. LI, ESQUIRE

K.E. o/b/o minor children J.R. and J.C., Petitioners, v. BOARD OF EDUCATION OF THE TOWNSHIP OF DENVILLE and BOARD OF EDUCATION OF THE MORRIS HILLS REGIONAL SCHOOL DISTRICT, MORRIS COUNTY, Respondents.	STATE OF NEW JERSEY OFFICE OF ADMINISTRATIVE LAW OAL DOCKET NO. EDU-04724-24 AGENCY REFERENCE NO.: 318-11/23 **SETTLEMENT AGREEMENT AND STIPULATED CONSENT JUDGMENT**

THIS SETTLEMENT AGREEMENT AND STIPULATED CONSENT JUDGMENT (hereinafter referred to as the "Agreement") is entered into by and between K.E., individually and on behalf of their child, J.R. (hereinafter collectively referred to as "Petitioner") and the Morris Hills Regional School District Board of Education (hereinafter referred to as the "Board") to resolve and settle all outstanding student residency claims and related disputed issues as follows:

RECITALS

WHEREAS, a Notice of Final Ineligibility was sent to K.E. advising that J.R. had been determined by the Board to be ineligible to receive a free public education from the Board and was to be removed from enrollment because J.R. is not a resident of the Morris Hills Regional School District (hereinafter referred to as the "School District"); and

WHEREAS, Petitioner filed a Pro Se Residency Appeal (hereinafter referred to as the "Residency Appeal"), captioned as K.E. on behalf of minor children, J.R. and J.C. v. Board of Education of the Township of Denville and the Board of Education of the Morris Hills Regional School District, Morris County, OAL Docket No. EDU-14258-2023N, Agency Ref. No. 318-11/23, which disputes the ineligibility determination and removal; and

WHEREAS, the Board filed an Answer to the Pro Se Residency Appeal with a Counter-Petition

seeking tuition and the costs of transportation associated with J.R.'s attendance in the School District while ineligible (hereinafter referred to as the "Counter-Petition"); and

WHEREAS, as the Residency Appeal and Counter-Petition has proceeded through litigation, the Petitioner and the Board (hereinafter collectively referred to as the "Parties"), through their respective counsel, have engaged in thorough and extensive discussion and negotiations to resolve their disagreement; and

WHEREAS, the Parties, after the opportunity for consultation with and between their respective legal counsel and following said discussion and negotiations, desire to fully, efficiently, and amicably resolve all aspects of their dispute and to memorialize the further relation between the Parties by entering into this Agreement so as to avoid the uncertainty, expenditure of time and resources, and the incurring of costs and expenses associated with further proceedings and/or litigation; and

WHEREAS, neither of the Parties admits or acknowledges, either explicitly or implicitly, any misconduct, wrongdoing, and/or liability, but through and by this Agreement are taking this action solely as a matter of a business judgment and at the recommendation of their respective legal counsel; and

WHEREAS, the Parties, in view of the above recitals and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, enter into this Agreement to outline their agreement, release claims, and express the full and complete terms of same; **NOW, THEREFORE, THE PARTIES HEREBY AGREE:**

1. **Settlement – Tuition and Transportation:** The Parties understand and agree that J.R. will continue to be enrolled in the Morris Hills Regional School District, as a tuition-paying student, for the remainder of the 2023-2024 school year. In consideration of and in exchange for J.R.'s continued enrollment, Petitioner agrees and shall pay tuition in the total amount of Five Thousand Dollars ($5,000.00) (hereinafter referred to as the "Tuition"). to the Morris Hills Regional School District Board of Education. The total amount of Tuition shall be payable in equal installment payments of two hundred eight dollars and thirty-three cents ($208.33) over a twenty-four (24) month period (hereinafter referred to as the "Tuition Payment Period"). All payments shall be made to the Board by personal or certified check from the Petitioner made payable to the Morris Hills Regional School District Board of Education. The Tuition Payment Period shall begin on the first day of the month following the Commissioner of Education's approval of the Agreement, with each successive Tuition payment to also be made on the first day of the month for the remaining Tuition Payment Period.

a. The Parties agree and understand that the Tuition referred to above reflects a reduction by the Board of the overall tuition and transportation costs owed for J.R.'s enrollment, and that this Agreement is contingent on Petitioner's timely payment of the first installment and each subsequent installment payment during the Tuition Payment Period. As such, in the event that the Board does not receive any Tuition payment in full by the close of business of the date when that payment is due, the Petitioner will be provided with written notice and have the opportunity to "cure" the default within ten (10) calendar days of the date of such notice.
b. The Parties further agree and understand that if the default is not cured within the allotted time period, Petitioner shall owe the Board the full amount of tuition and transportation costs incurred by the Board for J.R. attending its schools since April 25, 2023.
    i. The Parties agree and understand that the Board shall then submit an *ex parte* certification to the Superior Court of New Jersey with notice to Petitioner, setting forth her failure to pay in accordance with the terms set forth herein, with a consent judgment to be entered by the Court in favor of the Morris Hills Regional School District Board of Education (hereinafter referred to as the "Consent Judgment") in the form attached hereto as **Exhibit A**.
    ii. The Consent Judgment shall be for the full amount of tuition and transportation costs incurred by the Morris Hills Regional School District Board of Education since April 25, 2023, the period when the parties agree that Petitioner and J.R. have been domiciled in Springfield, New Jersey, which shall be forty-seven thousand, seven hundred seventy six dollars and ninety cents ($47,776.90), less the amount of any Tuition payments made by Petitioner and received by the Board in accordance with this Agreement.
    iii. Petitioner waives all rights to contest entry of the Consent Judgment.
c. The Parties agree and authorize their respective attorneys to execute the Consent Judgment on their behalf. Petitioner's attorney shall execute and deliver the signed Consent Judgment to the Board's Attorney within ten (10) days of Petitioner executing this Agreement. Petitioner understands and agrees that this is a condition of this Agreement.
d. The original fully executed Consent Judgement shall be maintained with the Board's Attorney and shall not be filed with the Superior Court until and unless required to effectuate the payment of the tuition, and only after Petitioner was provided with notice of her default and provided with time to cure any such default, as specified herein.
e. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.
f. No delay or omission on the part of the Board in exercising any right under this Agreement will operate as a waiver of that right or of any other right under this

Agreement.

2. **Transportation:** The Parties understand and agree that the Board shall in no way be responsible and shall have no obligation to provide J.R. with transportation as of April 15, 2024, even if the Commissioner of Education has not yet approved the Agreement. The Parties further understand and agree that, effective April 15, 2024, Petitioner is solely responsible for J.R.'s transportation to and from school, including but not limited to school-related activities and events, even if the Commissioner of Education has not yet approved the Agreement.
3. **Status as Student:** The Parties understand and agree that, as a result of this Agreement, J.R. may continue attending the public schools of the Morris Hills Regional School District through June 30, 2024 and attend graduation. J.R.'s ability to attend graduation and/or to participate in other school-related activities is contingent upon and subject to the Code of Student Conduct, the Student Handbook, and the Board's policies and regulations governing student expectations, conduct and behavior. The Parties understand and agree that J.R.'s continued enrollment in the Morris Hills Regional School District is only due to the Parties entering into and complying with the terms of this Agreement and that it is the intention of the Parties that J.R. will cease to be a student of the School District upon matriculation and/or graduation from Morris Hills Regional School District and/or the end of the 2023-2024 school year, whichever shall come first. The Parties further understand and agree that J.R. shall not be deemed and/or considered a student for whom the Board bears and/or owes any responsibility to provide a free public education, special education, and/or related services, including but not limited to compensatory education/services, occupational and/or physical therapy, speech/language services, counseling, and/or transportation, even if J.R. withdraws and/or does not graduate from the Morris Hills Regional School District by the end of the 2023-2024 school year.
4. **Prevailing Parties and Attorney's Fees:** Neither Party will be considered to be a "prevailing party" in this matter for any purpose, and each Party shall be responsible, except as specifically set forth in this Agreement, for payment of their own attorney's fees, expert costs, and any other costs and/or expenses incurred in connection with this matter and/or with the development of this Agreement.
5. **Withdrawal, Waiver and General Release:** As and in consideration for this Agreement, Petitioner understands and agrees that the pending Pre Se Residency Appeal shall be deemed as resolved upon approval of this Agreement by the Commissioner of Education. The Parties also understand and agree that the Board shall not be considered or determined to have denied J.R. a free public education, special education, and/or any related services, including but not limited to compensatory education/services, occupational and/or physical therapy, speech/language services, counseling, and/or transportation, nor shall the Board be considered or determined to have discriminated or otherwise acted or failed to act in any wrongful manner towards to Petitioner, either individually or jointly. As such, Petitioner, individually and on behalf of J.R., hereby forever and fully waives and releases the Board from any and all such claims that have accrued as of the date of this Agreement and/or which the Petitioner, either individually or jointly, have, had, and/or may have against the Board related to any federal,

state, or local laws, regulations, and/or causes of action arising from and/or related to the claims asserted in the Pro Se Residency Appeal. Petitioner agrees to indemnify and hold harmless the Board, its current and former members, officers, directors, agents, servants, employees, successors, attorneys, assigns, and affiliates, against and from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys' fees, damages, indemnities, and obligations of every kind and nature, in law, equity, or otherwise, known and unknown, suspected or unsuspected, disclosed or undisclosed, related to such action(s). The Parties further understand and agree that, in the event that the Board is required to defend any such action(s), the Board shall be permitted to hire counsel of its own choice at the sole cost of Petitioner. Nothing set forth in this provision shall be construed as a release or waiver of any claims between the Parties that may arise after the date of this Agreement. Nothing set forth in this provision shall be construed as a release or waiver of any claims between the Parties seeking to enforce any term or provision of this Agreement.

6. **Tax/Lien Liability:** The Board makes no representations or warranties regarding the taxability of any portion of the Tuition payments referenced above. The Petitioner agrees to assume full liability for any applicable state, federal, and/or local taxes and/or liens of any sort that may be required by law to be paid with respect to any portion of this Agreement. In the event the Internal Revenue Service, the New Jersey Division of Revenue, and/or any taxing authority and/or party holding lien may assess the Board with any taxes or penalties arising from the Tuition payments, Petitioner agrees to defend, indemnify and hold harmless the Board, and Petitioner shall be fully responsible for any such taxes, liens, and/or penalties.
7. **Confidentiality and Non-Disparagement:** Each of the Petitioners, individually and jointly, including J.R., understands and agrees that this Agreement, including its terms, must remain confidential to the full extent allowed by law as a material term of this Agreement. As such, the Parties further understand and agree that the terms and existence of this Agreement are and shall remain confidential to the extent permitted by law and shall not be disclosed by any of the Petitioners, individually and/or jointly, to any other individual or entity, other than counsel, financial professional and/or services provider, without the written consent of the other Party, unless enforcement of this Agreement is sought by the non-breaching Party in a court of law. None of the Parties shall engage in disparaging and/or negative comments or statements regarding any other Party and/or their conduct, with regard to the claims covered by this Agreement, this Agreement and/or the terms thereof, and/or the settlement process for this Agreement, in any forum or media, including, but not limited to, any and all social media statements or posts of any kind on any platform, website or application such as, but not limited to, Facebook, Instagram, YouTube, Twitter, or any other platform(s), website(s) or application(s).
8. **Authority to Sign:** The Parties understand and agree that that they respectively have the authority and ability to enter into this Agreement, and further understand and agree that this Agreement is binding on the Parties, individually and/or jointly.
9. **Board Approval:** Petitioners understand and agree that, following the execution of this

Agreement by Petitioners, this Agreement is subject to approval by the Board at next regularly scheduled meeting following receipt of a copy of the Agreement signed by Petitioner. If so approved, a fully executed copy of this Agreement and accompanying Board resolution shall be provided to the Court and Petitioner within ten (10) calendar days of such approval.

10. **Review of Agreement:** The Parties acknowledge that they have read and understand the terms of this Agreement, have had an opportunity to have had the Agreement reviewed by their respective legal counsel (if they so choose), are satisfied with the advice of such counsel, and that they are entering into this Agreement knowingly, freely, voluntarily, without coercion, and not under the influence of anything or anyone.
11. **Interpretation of Agreement:** This Agreement shall be interpreted, enforced, and governed under the laws of the State of New Jersey, without regard to that jurisdiction's choice-of-law doctrines. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. The Parties understand and agree that that this Agreement is the product of mutual draftsmanship and any rule or law requiring that it be construed against the drafter shall not apply.
12. **Entire Agreement:** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations. This Agreement may only be amended in writing by way of a document signed by all Parties.
13. **Counterparts:** This Agreement may be executed in one (1) or more counterparts, all of which shall be considered a single and the same and shall become effective when one (1) or more counterparts have been signed by each Party. It is understood and agreed that the Parties need not sign the same counterpart, and this Agreement shall be fully valid, legally binding, and enforceable whether executed in a single document or in such counterparts.

INTENDING TO BE legally bound hereby and **IN WITNESS WHEREOF**, the Parties hereto hereby execute this Settlement Agreement and General Release as witnessed by their signatures below.

PETITIONERS

K.E.., *individually and on behalf of* J.R.

Date:

RESPONDENT

Board President
MORRIS HILLS REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION

Date:

EXTRACT FROM THE MINUTES OF THE PUBLIC MEETING OF
THE MORRIS HILLS REGIONAL DISTRICT BOARD OF EDUCATION
ROCKAWAY, MORRIS COUNTY, NJ AS RECORD IN THE OFFICIAL MINUTES

The Board of Education of Morris Hills Regional District, in the County of Morris, New Jersey, convened in regular session on **Monday, April 29, 2024**, at **7:00 p.m.** in the Morris Hills Regional District Board of Education, Board Conference Room, 50 Knoll Drive, Rockaway, NJ 07866.

ATTENDANCE ROLL CALL

William Serafin, *President*	Present
Michael Wieczerzak, *Vice President*	Present
Michael Bertram	Present
Robert Crocetti, Jr.	Present
Christie D'Asti	Present
Barbara C. Levy	Present
William Maher	Absent
Patrick Napolitano	Present
Theresa Yeager	Present

SECTION

B- Finance

RESOLUTION #

4

MOTION OFFERED BY:

Mr. Crocetti, Chairperson

SECONDED BY:

Mr. Wieczerzak

RESOLUTION ADOPTED: Approval of a settlement agreement regarding residency pertaining to student 20241257 on file in the Business Office.

ADOPTION ROLL CALL

Ayes William Serafin, President, Michael Wieczerzak, Vice President, Michael Bertram, Robert Crocetti, Jr., Christie D'Asti, Barbara C. Levy, Patrick Napolitano, and Theresa Yeager.

Nays N/A **Abstain** N/A

CERTIFICATE: I, **GAIL M. LIBBY**, Board Secretary of the Morris Hills Regional District Board of Education, in the County of Morris, State of New Jersey, **HEREBY CERTIFY** that the preceding annexed extract from the minutes of the meeting of the Board of Education of said district duly called and held on **APRIL 29, 2024**, has been compared by me with with the original minutes as officially recorded and is an accurate and complete copy thereof and of the whole of said original minutes so far as the same relate to the subject matter referred to in said extract. **IN WITNESS THEREOF**, I have hereunto set my hand and affixed the corporate seal of said Board of Education on this **29th day of APRIL 2024**.

Gail M. Libby
Board Secretary

Robinson, Denishia [OAL]

From: Carty, Cecile [OAL]
Sent: Friday, May 10, 2024 4:22 PM
To: Robinson, Denishia [OAL]
Subject: RE: EDU 4724-24 SETTLEMENT

Hi Denishia,

No pages are missing, the pages are just numbered incorrectly. That is how the original document was received.

Cecile Carty
Office of Administrative Law
33 Washington Ave, 7th Floor
Newark, NJ 07102
Tel: (973) 681-6295

Judicial Support Specialist to:
R. Tali Epstein, ALJ (973) 648-6015
Joseph Ascione, ALJ (Ret., on call) (973) 681-6269

From: Robinson, Denishia [OAL] <Denishia.Robinson@oal.nj.gov>
Sent: Friday, May 10, 2024 4:08 PM
To: Carty, Cecile [OAL] <Cecile.Carty@oal.nj.gov>
Subject: EDU 4724-24 SETTLEMENT

HI LINDA,

THE SETTLEMENT PAGES MISSING 7 TO 9
CAN YOU E-MAIL THOSE TO ME SO I CAN CLOSE OUT THIS CASE.

THANKS!!

226-24E
OAL Dkt. No. 05711-24
Agency Dkt. No. 61-3/24

New Jersey Commissioner of Education

Order On Emergent Relief

Philip Brady,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

The record of this emergent matter, the sound recording of proceedings at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the recommended Order of the OAL denying petitioner's application for emergent relief is adopted for the reasons stated therein. This matter shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 10, 2024
Date of Mailing: June 12, 2024

BEFORE THE BOARD OF EDUCATION OF KEARNEY SCHOOL DISTRICT/ COMMISSIONER OF EDUCATION

In the Matter of Tenure Charges

between

Kearney School District, Bergen County,

Petitioner,

and

Rossana Allen Markarian, Retired Teacher,

Respondent.

Agency Docket No. 319-11/23

MOTION TO DISMISS

Dr. Andrée Y. McKissick
Arbitrator

APPEARANCES:

For the Petitioner:

Dennis McKeever, Esquire
Cornell, Merlino, McKeever & Osborne, LLC
238 St. Paul Street
Westfield, New Jersey 08879

For the Respondent:

Evan L. Goldman, Esquire
Goldman Davis Krumholz & Dillon, P.C.
Three University Plaza, Suite 400
Hackensack, New Jersey 07601

MOTION TO DISMISS SUBMITTED: **March 21, 2024**
OPPOSITION TO MOTION TO DISMISS: **May 16, 2024**
REPLY TO OPPOSITION: **May 30, 2024**

DECISION:

This Motion to Dismiss is granted. Correspondingly, the tenure charges must be dismissed due to its mootness because of a valid settlement agreement and a subsequent resignation of the Respondent, certified by the School District.

DATE OF DECISION: **June 12, 2024**

BEFORE THE BOARD OF EDUCATION OF KEARNEY SCHOOL DISTRICT/ COMMISSIONER OF EDUCATION

In the Matter of Tenure Charges

between

Kearney School District, Bergen County,

Petitioner,

and

Rossana Allen Markarian, Retired Teacher,

Respondent.

Agency Docket No. 319-11/23

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Dr. Andrée Y. McKissick
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APPEARANCES:

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MOTION TO DISMISS SUBMITTED: **March 21, 2024**
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REPLY TO OPPOSITION: **May 30, 2024**

DECISION:

This Motion to Dismiss is granted. Correspondingly, the tenure charges must be dismissed due to its mootness because of a valid settlement agreement and a subsequent resignation of the Respondent, certified by the School District.

DATE OF DECISION: **June 12, 2024**

STATEMENT OF FACTS

On August 10, 2023, Respondent, Rossana Allen Markarian, submitted a letter of resignation with the effective date of January 1, 2024 from Kearney School District, Bergen County (see Petitioner's Exhibits III and IV). On September 29, 2023, Respondent Markarian filed an Amended Complaint against the Town of Kearney School District for religious discrimination in violation of the New Jersey law against discrimination. On October 26, 2023, the School District submitted a Certificate of Service and Final Salary Form to New Jersey, confirming the Respondent's resignation. The record reflects that nonetheless on November 12, 2023, the Town of Kearney School District brought tenure charges against the Respondent.

ISSUES

(A) Whether or not the Kearney School District had a right to bring tenure charges against a teacher who has resigned?

(B) Whether or not such resignation renders the tenure charges moot and should be dismissed?

PERTINENT PROVISIONS

N.J.A.C. 6A:3, Controversies and Disputes

6A:3-5.6 Withdrawal, settlement, or mooting of tenure charges

(a) Once tenure charges are certified to the Commissioner, they may be withdrawn or settled only with approval. Any proposed withdrawal or settlement, whether submitted to the Commissioner or to the arbitrator, shall address the following standards established by the State Board of Education in the matter entitled In re Cardonick, State Board decision of April 6, 1983 (1990 School Law Decisions (S.L.D.) 842, 846):

1. Accompaniment by documentation as to the nature of the charges;

2. **Explication of the circumstances justifying settlement or withdrawal;**
3. **Consent of both the charged and charging parties;**
4. **Indication the charged party entered into the agreement with a full understanding of the charged party's rights;**
5. **A showing the agreement is in the public interest; and**
6. **If the charged party is a teaching staff member, a showing the teaching staff member has been advised of the Commissioner's duty to refer tenure determinations resulting in loss of position to the State Board of Examiners for possible suspension or revocation of certificate.**

POSITIONS OF THE PARTIES

It is the position of the Kearney School District, Bergen County (hereinafter called "Petitioner") that when Rossana Allen Markarian (hereinafter called "Respondent") was negotiating a settlement with the Petitioner that she never mentioned that she had a pending civil discrimination lawsuit against the Petitioner. Thus, the Petitioner asserts that the Respondent negotiated her settlement in bad faith. Moreover, the Petitioner also asserts that the Respondent deliberately omitted advising the Petitioner of this pending lawsuit to the detriment of the Petitioner. Hence, the Petitioner further argues that she should not now be rewarded by a dismissal of the tenure charges.

In addition, the Petitioner maintains that it had no notice of this lawsuit. Moreover, the Petitioner's offer of settlement to her was premised on what it now knows was a lie of omission. Therefore, the Petitioner reasons that the Respondent failed to negotiate in good faith, violated the implied covenant of fair dealing and actively misled the Petitioner with regard to this situation. Correspondingly, the Petitioner urges the Arbitrator that the

Respondent should not be rewarded for her willful and wanton misbehavior by allowing the tenure charges filed against her to be dismissed.

In response to the Respondent that these tenured charges are moot due to her prior resignation, the Petitioner vehemently disagrees. That is, the Respondent explains that she did not unilaterally resign when she filed a lawsuit that she had been terminated. Moreover, the Petitioner argues that this view is too narrow and fails to take into consideration the numerous issues surrounding a tenure charge.

In addition, the Petitioner also asserts that to allow the Respondent to continue to teach elsewhere would be against public policy and the public interest. In sum, the Petitioner argues that she takes no responsibility for her actions, but instead blames everyone else. Based on the foregoing, the Petitioner urges the Arbitrator to allow it to pursue these tenure charges against the Respondent.

On the other hand, it is the Respondent's view that this dispute is moot because her resignation was accepted prior to the activation of the current tenure charges. That is, the Respondent asserts, these charges are in retaliation for her pending civil suit against the Petitioner for religious discrimination. It is important to note, the Respondent asserts, that the Petitioner had the opportunity to insert an operative provision into the prior settlement agreement, making her resignation contingent upon her forbearance of filing a civil lawsuit. However, the Respondent points out that the Petitioner forgot to include such a provision. As such, the Respondent maintains, that the Petitioner is now estopped from retroactively inserting such a clause by requesting this remedy of allowing tenure charges to prevail against the Respondent.

In addition, the Respondent also rebuts the allegation and argument that she violated the covenant of fair dealing and good faith as the Petitioner alleges. In response to the Petitioner that she has a duty to disclose that she filed a civil lawsuit, the Respondent vehemently disagrees. Instead, the Respondent further asserts that it is the Petitioner who has the duty to be vigilant and current with pertinent information of such a relevant and pending lawsuit, not her. Based upon the foregoing, the Respondent requests that this Motion to Dismiss these tenure charges be granted.

FINDINGS AND DISCUSSION

After a careful review of the record in its entirety and having had an opportunity to weigh and evaluate the positions of the Parties and pertinent case law, this Arbitrator finds that this Motion to Dismiss should be granted for the following reasons.

First, the transcript of the settlement specifically states the following regarding the agreement:

> One [you will] save your license; two [this will] let you retire without any consequence whatsoever; three, [this will] restore your increment and; four, [this agreement will] let you go on and teach anywhere else you want to go, but you're going to be leaving Kearney (see Petitioner's Exhibit II).

This agreement was consummated and submitted by the Respondent's letter of resignation on August 10, 2023, but later became effective on January 1, 2024 from the Kearney School Board of Education (see Petitioner's Exhibits III and IV). The record reflects on October 26, 2023, the School District submitted a Certificate of Service and Final Salary Form to New Jersey, confirming the Respondent's resignation.

Clearly, the substance of this agreement constitutes a quid pro quo transactional arrangement. Here, the Respondent agrees to resign, and the Petitioner willingly gives her in return the usage of her license, monetary relief through her increment and allows her to continue to teach "anywhere else" but not "Kearney." This is a mutual agreement, not a unilateral resignation.

Second, on September 29, 2023, the Respondent filed an amended complaint against the Town of Kearney School District for religious discrimination in violation of the New Jersey law of discrimination. Subsequently, the Petitioner brought tenure charges against the Respondent on November 12, 2023.

The Petitioner now argues that the Respondent failed to mention this pending civil matter during the settlement discussion to the detriment of the Petitioner. Thus, the Petitioner further argues that such actions by the Respondent was in bad faith and violated the implied covenant of fair dealing. However, this Arbitrator disagrees with this assessment.

The prevailing case law supports this Arbitrator's conclusion that the Respondent has no duty to disclose to the Petitioner that she filed a civil lawsuit. The Estate of Fischer, N.J. Super. 2011 WL 2314353 App. Div. 2011 (Respondent's Exhibit B) correctly notes that due to their "adversarial relationship," as opposed to a fiduciary relationship, that the Petitioner is on "notice to conduct [one's] due diligence" of a pertinent pending lawsuit (also see on this issue, United Jersey Bank and Kensey, 306 N.J. Super. 540, 551 (1997).

Third, as to the breach of the Respondent's duty of good faith and fair dealing, the Respondent resigned as agreed to by the quid pro quo arrangement in the valid settlement

agreement (see Restatement (Second) of Contracts §205 (1981). That is, the Respondent did not destroy or injure the right of the Petitioner to receive the fruits of the contract.

Fourth, the real issue is that the Petitioner omitted to include a pertinent provision in its agreement with the Respondent by prohibiting her ability to pursue past or future civil claims. This omission took away the Petitioner's possibly viable claim against the Respondent.

In the Respondent's Certification, she states as follows describing the terms of the settlement agreement:

> 6. At no time was there ever any discussion about me not being able to file a civil lawsuit if I retired. The entire negotiation was limited to the potential tenure charges and how they could be avoided.

In light of the Petitioner's lack of inclusion of such a provision demanding forbearance, the Respondent's analysis prevails. Correspondingly, due to the Petitioner's omission, the Petitioner now seeks to retaliate with these tenure charges after accepting the Respondent's valid resignation.

Fifth, based upon the foregoing, this is a non-justiciable dispute. All of the issues raised are academic or hypothetical because the Respondent has resigned. Moreover, she is no longer teaching anywhere. Thus, this Arbitrator finds that this dispute is moot. The leading case on this issue is: In the Matter of the Tenure Hearing of Louis Melillo, School District of the City of Elizabeth, Union County, OAL DICT NO EDU 11969-13; Agency Rep. No: 363-10/14, State of New Jersey, Office of Administrative Law, June 19, 2014.

In response to the Petitioner's argument that the public exception applies and is an exception to the mootness doctrine, this Arbitrator disagrees. That is, that particular

exception has a very high standard requiring "great public importance," as such is not applicable to our instant case (see Nini v. Mercer County College, 202 N.J. 98, 2010; compare this with the instant case of the Respondent with the dissimilarities of the criminal due process proceedings as exhibited by State v. Bell, 241 N.J. 552 (2020), as the Petitioner argues). Based on the foregoing, the Respondent must prevail.

DECISION

This Motion to Dismiss is granted. Correspondingly, the tenure charges must be dismissed due to its mootness because of a valid settlement agreement and a subsequent resignation of the Respondent, certified by the School District.

AFFIRMATION

I, Dr. Andrée McKissick, do hereby affirm that I am the individual who executed this instrument, which is my Decision for this Motion to Dismiss.

DATE OF AWARD: June 12, 2024

Dr. Andrée McKissick

ARBITRATOR

C:\PERM PANEL\NJ Teacher Tenure Panel\Motion to Dismiss (Markarian v. Kearney School Distr) June 12,2024.docx

229-24E
OAL Dkt. No. 13237-23
Agency Dkt. No. 298-10/23

New Jersey Commissioner of Education

Order on Emergent Relief

N.H., on behalf of minor child, S.A.,

Petitioner,

v.

Board of Education of the Kingsway Regional School District, Gloucester County,

Respondent.

The record of this emergent matter, the sound recording of proceedings at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed.

Following an altercation in March 2023 at Kingsway Regional High School (KRHS), the Kingsway Regional School District Board of Education (Board) imposed a long-term suspension on petitioner's child, S.A. Petitioner appealed. The Board moved to dismiss on the grounds that the petition was untimely, and the ALJ denied the motion. The Board sought interlocutory review, and the Commissioner denied the request. In doing so, the Commissioner noted that, pursuant to *N.J.A.C.* 6A:16-7.3(d), the Board is required to conduct a review of a long-term suspension at each Board meeting following its original vote, until the student is returned to the general education program. *N.H. v. Bd. of Educ. of the Kingsway Regional School District,*

Gloucester Co., Commissioner Decision No. 178-24 (May 3, 2024). Following the Commissioner's decision, petitioner sought emergent relief in the form of S.A.'s immediate return to school without any further conditions or restrictions. Petitioner subsequently added a request to participate in the Naval Junior Reserve Office Training Corps (NJROTC) cadet program at KRHS and to sit for senior portraits on June 20-21, 2024.

In response to the motion for emergent relief, the Board submitted a certification from the district's Superintendent, Dr. James Lavender, explaining that the Board reviewed S.A.'s suspension during its May 16, 2024 meeting and determined that S.A.'s suspension should continue until the conditions imposed for her return had been met; minutes of the Board's executive session indicate that S.A.'s return to school is contingent on the completion of a child study team (CST) evaluation. The Board also indicated that it was satisfied that S.A. was being appropriately educated.

Regarding petitioner's request to have S.A. immediately returned to school, the ALJ concluded that petitioner had failed to meet the standard for emergent relief enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6. Specifically, the ALJ acknowledged that the denial of a student's ability to attend school may constitute irreparable harm, but found that, given the length of the suspension, reentering school during the final two weeks of the school year was not conducive to minimizing harm, particularly when S.A. is doing well in her current academic environment. Regarding petitioner's request to participate in the NJROTC program, the ALJ concluded that petitioner had not demonstrated an immediate need, because all dates listed in the program materials had passed.

Despite his conclusion that petitioner had not demonstrated irreparable harm on the issues of S.A.'s return to school and participation in NJROTC, the ALJ also engaged in some analysis regarding the remaining *Crowe* factors. Regarding S.A.'s underlying claim on her right to return to school, the ALJ indicated that delaying S.A.'s readmittance because of the refusal to undergo a CST evaluation was "questionable" and magnified by the Board's prior non-compliance with the administrative requirements regarding long term-suspensions. *Id.* at 12. The ALJ also noted that the Board's submissions consisted of "conclusory determinations, thinly presented" and lacked specific facts, explanations, or references. *Ibid.* Further, the ALJ stated, "That is not to say that S.A. is unable to establish that she is entitled to return to KRHS or participate in NJROTC. If her request had occurred other than the end of the academic year or, as it relates to NJROTC, dates which were 'of the essence,' this examination [of S.A.'s right to her underlying claim] may be much more thorough and the result may differ." *Id.* at 13.

Regarding petitioner's request to sit for senior portraits on June 20-21, 2024, the ALJ granted petitioner's request for emergent relief. The ALJ found that senior portraits are an important life event and requiring S.A. to wait until make-up dates that might be available in the fall presents an unnecessary risk, such that petitioner had demonstrated irreparable harm. The ALJ further found that even if he accepted the Board's argument regarding the need for a CST evaluation, "in no way would it explain the Board's refusal to allow S.A. to sit for her senior portraits." *Ibid.* The ALJ concluded that petitioner had also demonstrated a right underlying her claim, a likelihood of success on the merits, and that the equities were in her favor.

Upon review, the Commissioner concurs with the ALJ that petitioner has met the requirements for emergent relief regarding her request to sit for senior portraits on June 20-21, for the reasons thoroughly detailed in the ALJ's Order.

The Commissioner disagrees with the ALJ on the issue of S.A.'s return to school and concludes that petitioner has met the requirements for emergent relief. The ALJ's conclusion turned primarily on the fact that there is limited time left in the school year and his concern that returning S.A. to school at this point would do more harm than good. However, case law is clear that a child suffers irreparable harm when she is "deprived of an education for even a brief period of time." *K.C. and S.C., o/b.o minor child, K.C. v. Bd. of Educ. of the Borough of Englewood Cliffs, Bergen Co.*, EDU 01883-11 (Mar 2, 2011), adopted, Commissioner Decision 117E (Mar. 18, 2011). S.A.'s inability to attend school during the remainder of the school year therefore constitutes irreparable harm.

The Commissioner further concludes that that the issue of S.A.'s attendance at school in September is sufficiently immediate to meet the criteria for irreparable harm. As of the time of oral argument on May 28, 2024, no hearing dates had been set. The ALJ requested that counsel provide a list of witnesses and their availability for hearing dates in June and July, and further indicated his commitment to resolve this matter expeditiously. While the Commissioner commends the ALJ's efforts, it is unlikely that this matter will be resolved by the beginning of the 2024-2025 school year in September, given that the ALJ and the Commissioner are each permitted 45 days, plus potential extensions, to issue their decisions. Emergent relief is therefore necessary to ensure that S.A. does not experience the irreparable harm that would result if she were unable to attend school in September.

Turning to the issue of likelihood of success on the merits, the Commissioner notes that matters involving long-term suspensions must address both the merits of the suspension based on the student's conduct as well as the procedures used by the Board in implementing the suspension. Counsel for the Board represented to the ALJ during oral argument that although the Superintendent was originally insisting on a risk assessment as a condition of S.A.'s return to school, he is no longer insisting on a risk assessment because one has been performed. A January 16, 2024 risk/threat assessment performed by Ingrid Parker, M.A., LPC, LBS concludes that S.A. "does not present as a danger to herself or others." Certification of Sara Zuba, Esq. in Support of Petitioner's Motion for Emergent Relief (May 20, 2024), Exhibit B.

However, the Superintendent and Board are still requiring a CST evaluation as a condition of S.A.'s return to school. The question of whether S.A. should undergo a CST evaluation is within the jurisdiction of the Department of Education's Office of Special Education (OSE), not the Commissioner. *N.J.A.C.* 6A:14-2.7. However, it can be appropriate for the Commissioner to exercise jurisdiction, despite the involvement of special education regulations, when a matter contains underlying claims regarding rights and responsibilities under the school laws. *See Long Beach Island Educ. Ass'n v. Bd. of Educ. of the Long Beach Island Consolidated Sch. Dist.*, Commissioner Decision No. 330-09 (decided Oct. 13, 2009).

While petitioner has allegedly refused to consent to a CST evaluation, there are clear procedures in place for a board of education to follow in this type of situation. Pursuant to *N.J.A.C.* 6A:14-2.7(b), a board of education may request a due process hearing when it is unable to obtain the required consent to conduct an evaluation. If the Board is concerned that S.A. should be receiving special education or related services, it has the option of requesting a due

process hearing. There is no indication in the record that it has availed itself of that option, instead apparently choosing to use the disciplinary proceedings to attempt to obtain petitioner's consent. Those efforts have clearly failed, given the passage of 15 months since the original suspension. Accordingly, in the absence of petitioner's consent, if the Board wishes to proceed with a CST evaluation, it must pursue the procedures available to it under *N.J.A.C.* 6A:14-2.7(b) or any other applicable special education statute or regulation.[1]

The Commissioner concludes that the Board's refusal to return S.A. to school based on petitioner's lack of consent to a CST evaluation, when there are clear legal pathways for them to pursue an evaluation even in the absence of consent, is arbitrary, capricious, and unreasonable conduct. Therefore, petitioner has demonstrated a likelihood of success on the merits with regard to the Board's conditions for S.A.'s return to school. Furthermore, the Commissioner concludes that S.A.'s rights not to be the object of arbitrary, capricious, and unreasonable action by the Board and to receive a free and appropriate public education are well-settled, such that petitioner also meets this prong of the standard for emergent relief. *See, e.g., K.C. and S.C. o/b/o minor child K.C. v. Bd. of Educ. of the City of Englewood Cliffs, Bergen Co.*, Commissioner Decision No. 117-11 (Mar. 18, 2011).

Finally, the Commissioner concludes that the equities favor petitioner. Even assuming that all allegations regarding S.A.'s conduct are true, the fact remains that S.A. has now been out of school for over a year, and the harm to S.A. has already been considerable. Moreover, the

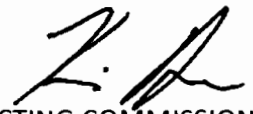
[1] The Commissioner is exercising jurisdiction regarding this issue only to the extent of determining that the Board must pursue a CST evaluation through the appropriate special education procedures rather than as a condition of S.A.'s return to school following her suspension. The Commissioner makes no determination regarding whether a CST evaluation is appropriate and leaves all substantive issues regarding the evaluation and any other areas of special education law to the jurisdiction of OSE.

threat/risk assessment indicates that S.A. is not a danger to herself or others. Therefore, S.A.'s interest in returning to school outweighs the Board's interest in continuing to exclude her.

Accordingly, petitioner's motion for emergent relief is granted. S.A. shall immediately be returned to school, permitted to sit for senior portraits, permitted to participate in any other programs or activities associated with her attendance in school, and entitled to receive all communications regarding school or related programs or activities in the same manner as any other student.

This matter shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.



ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2024
Date of Mailing: June 14, 2024

230-24
OAL Dkt. No. EDU 01780-23
Agency Dkt. No. 46-2/23

New Jersey Commissioner of Education

Final Decision

T.M., on behalf of minor children, J.M. and M.M.,

Petitioner,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

The record of this matter, the proposed Settlement Agreement and Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2024
Date of Mailing: June 18, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 01780-23
AGENCY DKT. NO. 46-2/23

T.M. ON BEHALF OF MINOR CHILDREN J.M. AND M.M.,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF ELIZABETH, UNION COUNTY,
Respondent.

T.M., petitioner, pro se

Brian J. Kane, Esq., for respondent (LaCorte, Bundy, Varady & Kinsella, attorneys)

Record Closed: May 15, 2024 Decided: May 15, 2024

BEFORE **MARGARET M. MONACO**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the

Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have settled this case, and their settlement agreement is attached to this decision.

Having reviewed the terms of their settlement agreement, I have determined that the settlement is voluntarily, consistent with the law, and fully dispositive of all issues in controversy between the parties.

I **ORDER** that the parties comply with the terms of their settlement agreement.

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.

May 15, 2024
DATE

Margaret M. Monaco
MARGARET M. MONACO, ALJ

Date Received at Agency: MAY 15, 2024

Date Mailed to Parties: MAY 15, 2024

jb

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE, (hereinafter referred to as "Agreement"), is made this 15th day of May, 2024, by and between the Tashay McCall (hereinafter, also referred to as "Petitioner"), who currently resides at 9-15 Fabyan Pl, Newark, New Jersey 07108 and the Elizabeth Board of Education (hereinafter, also referred to as the "Board"), with its principal offices located at 500 North Broad Street, Elizabeth, New Jersey 07208.

WHEREAS, Petitioner enrolled her minor children J.M. and M.M., as students in the Elizabeth Public School District for the 2022-2023 school year; and

WHEREAS, the Board determined that the above minor children were ineligible to attend the schools of the Elizabeth Public School District due to domicile outside of Elizabeth; and

WHEREAS, Petitioner commenced an action against the Board appealing its residency determination in a matter entitled T.M. on behalf of minor children, J.M. and M.M. v. City of Elizabeth Board of Education, OAL Docket No. EDU 01780-23, Agency Ref. No.: 46-2/23, (hereinafter referred to as the "Petition"); and

WHEREAS, the Board filed a Counterclaim to the Petition against Petitioner for tuition reimbursement for J.M. and M.M.'s ineligible attendance in the Elizabeth School District; and

WHEREAS, the Petitioner and the Board (hereinafter, also referred to as the "Parties") having reached a negotiated agreement to fully, and finally, settle all claims among them, including those asserted in the Petition and Counterclaim; and

NOW, THEREFORE, in consideration of the mutual promises and undertaking said forth herein, the parties agree as follows:

The foregoing recitals are incorporated herein as if set forth at length.

1. **Consideration.** In settlement of this matter, Petitioner will pay the Board the amount of $2,400.00, which represents the alleged tuition due and owing for the alleged ineligible attendance of minor children J.M. and M.M. in the Elizabeth School District for the 2022-2023 and 2023-2024 school years. Petitioner shall send the above amount in the following payment structure: $200.00 per month from the Petitioner made payable to the Elizabeth Board of Education sent to 31 Parker Rd, Elizabeth NJ 07208 attn: Heather Savage-Ford. All Parties agree payment shall be made monthly starting June 1st and be due every 1st until full repayment. ~~These payments will be made payable to the Elizabeth Board of Education and shall either be sent to counsel for the~~ Respondent: Brian J. Kane, LaCorte, ~~Bundy, Varady & Kinsella 989~~ Bonnel ~~Court, Union, NJ~~ 07083 or directly to the ~~Respondent: Attn: Bud Kennedy, Elizabeth~~ Board of ~~Education, 500 N Broad~~ Street, Elizabeth, ~~NJ 07208.~~ BTK TM

In the event that Petitioner fails to abide by the terms outlined in this agreement, the Petitioner shall be in default of this agreement, and the parties agree that a judgment shall be entered and docketed in the Superior Court of New Jersey in favor of the Respondent for the alleged unpaid tuition in the amount of $2,400.00 less any payments made prior to the date of default.

2. **Attendance of J.M. and M.M. at Elizabeth Public School District.** Petitioner shall unenroll the minor children J.M. and M.M. from the Respondent's school district at the conclusion of the 2023-2024 school year, on June 24, 2024. (See 2023-2024 School Calendar attached hereto as **Exhibit A**). J.M. and M.M.'s final day of school within the Respondent's district shall be June 24, 2024, upon which all necessary transfer paperwork will be completed so that J.M. and M.M. shall begin the 2024-2025 school year outside of the Respondent's district. Petitioner shall not be

permitted to attempt to re-enroll the minor child A.K. within the Respondent's school district. So long as the Petition unenrolls students J.M. and M.M. on June 24, 2024, the Respondent shall not seek a judgment for the alleged tuition calculated above.

3. Waiver and Release of Claims. In settlement of this matter and in consideration of the payments set forth in Paragraph 1 above, Petitioner hereby releases and forever discharges the Board, in its official and personal capacities, and its related or affiliated entities, and its past, present and future officers, directors, attorneys, employees, owners, insurers, and their respective successors and assigns (collectively "Releasees"), jointly and severally, from any and all actions, complaints, causes of action, lawsuits or claims of any kind (collectively "Claims"), known or unknown, asserted or unasserted, which Petitioner, her heirs, agents, executors, successors or assigns ever had, now have or hereafter may have against Releasees arising out of any matter, occurrence, omission, or event existing or occurring prior to Petitioner's execution of this Agreement, including, without limitation: any and all causes of action suits, debts, dues, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, obligations, promises, variances, trespasses, damages, judgments, executions, claims and demands, whether arising in contract or tort, vested or contingent, whether known or unknown, direct or indirect, existing or not existing, by reason of any matter, cause or thing whatsoever, in law or at equity from the beginning of time to the date of the execution of this Agreement.

4. Stipulation. Simultaneous with the execution of this Agreement, Petitioner and counsel for the Board shall execute a Stipulation of Dismissal with Prejudice with regard to the Petition and the Board's Counterclaim in the form attached hereto as **Exhibit B**.

5. Counterparts; Entire Agreement; No Oral Modification. This Agreement may be executed in counterparts, which together shall comprise the entire Agreement. This Agreement

constitutes the entire agreement between the parties and supersedes any and all prior agreements, written or oral, expressed or implied. No other promises, agreements or amendments, or any separate agreement relating to the subject matter of this Agreement shall be binding or shall modify this Agreement unless expressed in writing and signed by all parties hereto.

6. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

7. **No Admission of Liability.** Nothing in this Agreement shall be construed as an admission or concession of liability or wrongdoing by either party to this agreement. Rather, this Agreement is being offered for the sole purpose of settling cooperatively and amicably any and all possible disputes between the parties.

8. **Severability.** Nothing in this Agreement is intended to violate any law or shall be interpreted to violate any law. If any paragraph or part or subpart of any paragraph in this Agreement or the application thereof is construed to be overbroad and/or unenforceable, then the court making such determination shall have the authority to narrow the paragraph or part or subpart of the paragraph as necessary to make it enforceable and the paragraph or part or subpart of the paragraph shall then be enforceable in its/their narrowed form. Moreover, each paragraph or part or subpart of each paragraph in this Agreement is independent of and severable (separate) from each other. In the event that any paragraph or part or subpart of any paragraph in this Agreement is determined to be legally invalid or unenforceable by a court and is not modified by a court to be enforceable, the affected paragraph or part or subpart of such paragraph shall be stricken from the Agreement, and the remaining paragraphs or parts or subparts of such paragraphs of this Agreement shall remain in full, force and effect.

9. **Headings.** The headings contained in this Agreement are for convenience of reference only and are not intended, and shall not be construed, to modify, define, limit, or expand the intent of the parties as expressed in this Agreement, and they shall not affect the meaning or interpretation of this Agreement.

10. **Interpretation.** This Agreement shall be construed without aid of any canon or rule of law requiring construction or interpretation against the party drafting or causing this Agreement or any provision thereof to be drafted.

11. **Contingency.** It is agreed and understood by all Parties hereto that this Agreement is contingent upon each of the Parties fulfilling all of their respective duties, obligations, and/or promises as stated herein.

12. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties, and supersedes any, and all, prior agreements, or understandings between the parties. By executing this Agreement, Petitioner represents and acknowledges, that she does not rely, and has not relied, upon any representation, or statement, not set forth in this Agreement made by Respondent, or their Counsel, with regard to the subject matter, basis, or effect of this Agreement. or otherwise.

13. **Assent to Terms.** The parties have negotiated the terms of this Agreement. Petitioner's signature below indicates that she was given the opportunity to fully review this Agreement, that the Petitioner has read and understood the provisions, and that she has executed it voluntarily with full knowledge of the significance of all provisions. Ms. Tashay McCall hereby acknowledges that she enters into this agreement with a full understanding of her rights and that she was fully informed of the implications of this Agreement, and does so without duress, of her own free will and volition.

STATEMENT BY PETITIONER

The Respondent has advised me, in writing through the Agreement, to carefully read, and fully understand, the provisions of the Agreement, the acceptance, and sufficiency, of which I acknowledge. I have had sufficient time, and opportunity, to consult with Counsel of choice prior to executing the document, and I intend to be legally bound by its terms. I further so execute the Agreement in a knowing, and voluntary, manner with the full knowledge that I am waiving any and all rights, or claims, I may have to later challenge the sufficiency, scope, or terms of the Agreement and have, again, done so after consultation with my Counsel. I understand that I may revoke my signature within seven (7) days following my signing, I understand that my rights under the Agreement are contingent on my signing the Agreement, and not revoking my signature on said document.

IN WITNESS WHEREOF, the signatures and/or seals of the parties or their duly authorized representatives have been set forth on the dates indicated below:

Tashay McCall

TASHAY MCCALL

Dated: 5/15/24

Brian J. Kane. Esq., Counsel for Respondent
Elizabeth Board of Education

Date: 5/15/2024

EXHIBIT A

ELIZABETH PUBLIC SCHOOLS
2023-2024 SCHOOL CALENDAR

Revised March 28, 2024

JULY				
MON	TUE	WED	THU	FRI
~~3~~	~~4~~	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28
31				

AUGUST				
MON	TUE	WED	THU	FRI
	1	2	3	4
7	8	9	10	11
14	15	16	17	18
21	22	23	24	25
28	29	30	31	

SEPTEMBER (18/15)				
MON	TUE	WED	THU	FRI
				~~1~~
~~4~~	5	6	7	8
11	12	13	14	15
18	19	20	21	22
~~25~~	26	27	28	29

OCTOBER (21/21)				
MON	TUE	WED	THU	FRI
2	3	4	5	6
~~9~~	10	11	12	13
16	17	18	19	20
23	24	25	26	27
30	31			

NOVEMBER (17/17)				
MON	TUE	WED	THU	FRI
		1	2	3
6	~~7~~	8	~~9~~	~~10~~
13	14	15	16	17
20	21	~~22~~	~~23~~	~~24~~
27	28	29	30	

DECEMBER (16/16)				
MON	TUE	WED	THU	FRI
				1
~~4~~	5	6	7	8
11	12	13	14	15
18	19	20	21	22
~~25~~	~~26~~	~~27~~	~~28~~	~~29~~

7/3-4/23	Mon, Tue	Independence Day Observance – Schools and District Closed
8/31/23	Thu	Schools Open for 10 Month Administrators, New Student Registration
9/1/23	Fri	Labor Day Weekend – Schools and District Closed
9/4/23	Mon	Labor Day – Schools and District Closed
9/5/23	Tue	Schools Open for Team Members
9/6-7/23	Wed, Thu	Professional Development Days for Team Members
9/8/23	Fri	Schools Open for Students
9/25/23	Mon	Yom Kippur – Schools and District Closed
10/9/23	Mon	Columbus Day Observance – Schools and District Closed
11/7/23	Tue	Schools Closed – Election Day
11/9-10/23	Thu, Fri	NJEA Convention and Veterans Day – Schools & District Closed
11/22/23	Wed	Schools Close at 12:15 p.m. for Thanksgiving Recess
11/23-24/23	Thu, Fri	Thanksgiving Recess – Schools and District Closed
12/4/23	Mon	Schools Close at 12:15 p.m. for Professional Development
12/25-29/23	Mon through Fri	Christmas Recess – Schools and District Closed
1/1/24	Mon	New Year's Day Observance – Schools and District Closed
1/2/24	Tue	School Reopen
1/15/24	Mon	Observance of Dr. Martin Luther King, Jr.'s Birthday – Schools and District Closed
1/19/24	Fri	Schools and District Closed – Snow Day
1/29/24	Mon	Schools Close at 12:15 p.m. for Professional Development
2/8/24	Thu	Schools Close at 12:15 p.m. for Parent Teacher Conferences
2/13/24	Tue	Schools and District Closed – Snow Day
2/19/24	Mon	President's Day – Schools and District Closed
3/11/24	Mon	Schools Close 12:15 p.m. for Professional Development
3/29/24	Fri	Easter Recess – Schools and District Closed
4/1/24	Mon	Easter Recess – Schools and District Closed
4/2-5/24	Tues through Fri	Easter Recess – Schools Closed
4/8/24	Mon	Schools Reopen
4/10/24	Wed	Schools and District Closed for Eid-al-Fitr
5/27/24	Mon	Memorial Day – Schools and District Closed
6/4/24	Tue	Schools Closed – Primary Election Day
6/21/24	Fri	Juneteenth – Schools and District Closed
6/24/24	Mon	Schools Close at 12:15 for Students and Team Members
6/25/24	Tue	Schools Close for 10-Month Administrators

Key

~~X~~	Schools Closed	~~X~~	Schools and District Closed
\	Schools Close at 12:15 p.m.	(xx/xx)	Teachers/Students Total Days Per Month

This calendar provides for 181 team member days, 180 student days, and 2 Professional Development Days.

In the event that schools must close for inclement weather, etc , days will be made up commencing with June 25, 2024 with an additional day added to the calendar for each day missed through June 28, 2024 to fulfill the legal requirement of 180 days of school attendance for the regular school year If additional days are needed beyond June 28, 2024 days will come from Easter Recess commencing with April 5, 2024 and working backward from the end of that week

Administrative offices will remain open until 4 30 p m daily except Fridays during summer hours. On Wed., November 22, 2023 all schools will close at 12:15 p m for Thanksgiving Recess administrative offices will be open regular hours and all 12 month employees and all secretaries, security personnel, and custodians will follow their regular schedules

JANUARY (20/20)				
MON	TUE	WED	THU	FRI
~~1~~	2	3	4	5
8	9	10	11	12
~~15~~	16	17	18	~~19~~
22	23	24	25	26
~~29~~	30	31		

FEBRUARY (19/19)				
MON	TUE	WED	THU	FR
			1	2
5	6	7	~~8~~	9
12	~~13~~	14	15	16
~~19~~	20	21	22	23
26	27	28	29	

MARCH (20/20)				
MON	TUE	WED	THU	FRI
				1
4	5	6	7	8
~~11~~	12	13	14	15
18	19	20	21	22
25	26	27	28	~~29~~

APRIL (16/16)				
MON	TUE	WED	THU	FRI
~~1~~	~~2~~	~~3~~	~~4~~	~~5~~
8	9	~~10~~	11	12
15	16	17	18	19
22	23	24	25	26
29	30			

MAY (22/22)				
MON	TUE	WED	THU	FRI
		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	23	24
~~27~~	28	29	30	31

JUNE (14/14)				
MON	TUE	WED	THU	FRI
3	~~4~~	5	6	7
10	11	12	13	14
17	18	19	20	~~21~~
~~24~~	~~25~~	~~26~~	~~27~~	~~28~~

EXHIBIT B

Brian J. Kane, Esq.
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LA CORTE, BUNDY, VARADY & KINSELLA
989 Bonnel Court
Union, NJ 07083
(908) 810-0500
Attorneys for Defendant Board of Education
of the City of Elizabeth, Union County

T.M. on behalf of minor children, J.M. and M.M., Petitioner, v. Board of Education of the City of Elizabeth, Union County Respondent.

BEFORE THE COMMISSIONER OF EDUCATION
OF THE STATE OF NEW JERSEY

OAL DOCKET NO.: EDU-1780-23
AGENCY DOCKET NO.: 46-2/23

STIPULATION OF DISMISSAL WITH PREJUDICE

The matter in difference in the above-entitled action having been amicably adjusted by and between the Petitioner, T.M. on behalf of minor children J.M. and M.M., and Respondent Board of Education of the City of Elizabeth, Union County, it is hereby stipulated and agreed by the undersigned that the same be and is hereby dismissed with prejudice, without costs.

All parties to this action further agree that this stipulation may be executed in counterparts and that photocopies and/or facsimile copies of this stipulation shall be deemed original signatures for the purposes of this stipulation.

STIPULATED:

Tashay McCall, pro se petitioner
Dated: 05/15/24

LA CORTE, BUNDY, VARADY & KINSELLA

Brian J. Kane, Esq., attorney for Respondent
Dated: 5/15/2024

231-24

New Jersey Commissioner of Education

Final Decision

Raisah Thomas,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

Synopsis

Petitioner challenged the determination of the New Jersey Department of Education, Office of Student Protection (DOE), permanently disqualifying her from employment in schools under the supervision of the Department of Education pursuant to *N.J.S.A.* 18A:6-7.2 after a criminal history background check revealed that in 2009, petitioner pled guilty in United States District Court, Newark, to a misdemeanor crime of "Possession of Stolen Bank Checks" in violation of 18 U.S.C. § 2113(b) and 18 U.S.C. § 2. Petitioner contended that her 2009 plea was to a "low-level misdemeanor" and that this does not meet the standard of being a disqualifying crime. The DOE filed a motion to dismiss, arguing that since petitioner did not challenge the fact that she was convicted of the crime, the only issue for determination is whether that crime was "substantially equivalent" to one of the disqualifying offenses enumerated under *N.J.S.A.* 18A:6-7.1. Petitioner failed to respond to the motion.

The ALJ found, *inter alia*, that: petitioner has failed to appear for hearings related to this case despite proper notice; petitioner was convicted of a theft-related federal misdemeanor in 2010; the statute under which she was convicted, 18 U.S.C. § 2113(b), is "substantially equivalent" to *N.J.S.A.* 2C:20-3; her conviction would have qualified as a third-degree indictable offense under New Jersey law, *N.J.S.A.* 2C:20-2(b)(2)(a); and under *N.J.S.A.* 18A:6-7.1 et seq., a third-degree theft conviction covered by *N.J.S.A.* 2C:20-3 disqualifies petitioner from employment in "a facility, center, school, or school system under the supervision of the Department of Education." The ALJ concluded that the DOE's decision to disqualify petitioner from employment pursuant to *N.J.S.A.* 18A:6-7.1, et seq. was appropriate and that no facts have been presented to demonstrate that it was arbitrary, capricious, or unreasonable. Accordingly, the ALJ granted the respondent's motion to dismiss the petition.

Upon review, the Commissioner concurred with the ALJ that petitioner's criminal history disqualifies her from employment in schools under the supervision of the DOE. Accordingly, the Initial Decision was adopted as the final decision in this matter, and the petition of appeal was dismissed.

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.

231-24
OAL Dkt. No. EDU 00914-23
Agency Dkt. No. 306-11/23

New Jersey Commissioner of Education

Final Decision

Raisah Thomas,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

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 that petitioner is disqualified from employment in schools under the supervision of the Department of Education.

Accordingly, the Initial Decision is adopted as the final decision in this matter. Respondent's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2024
Date of Mailing: June 18, 2024

[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
GRANTING MOTION TO DISMISS
OAL DKT. NO. EDU 00914-23
AGENCY DKT. NO. 306-11/23

RAISAH THOMAS,
Petitioner,
v.
NEW JERSEY DEPARTMENT OF EDUCATION,
OFFICE OF STUDENT PROTECTION,
Respondent.

Raisah Thomas, petitioner, pro se

Kevin F. Milton, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: May 16, 2024 Decided: May 17, 2024

BEFORE **MATTHEW G. MILLER**, ALJ:

STATEMENT OF THE CASE

Petitioner, Raisah Thomas appeals the September 19, 2023, decision of respondent New Jersey Department of Education, Office of Student Protection, to disqualify her, pursuant to N.J.S.A. 18A:6-7.2, "from serving in any position, paid or

unpaid, with any education institution under the supervision of the Department of Education."

PROCEDURAL HISTORY

Raisah Thomas was issued a Certificate of Eligibility with Advanced Standing with a K–6 Elementary School Teacher Endorsement on May 1, 2005. She was issued her standard teaching certificate in 2007 with the same endorsement, which she currently holds. On September 19, 2023, petitioner was notified by the Office of Student Protection (OSP) that based on findings made during a criminal background check conducted pursuant to N.J.S.A. 18A:6-7.2, she was "permanently disqualified from serving in any position, paid or unpaid, with any education institution under the supervision of the Department of Education."

On November 13, 2023, Ms. Thomas emailed a Petition for Appeal to the State Department of Education's Office of Controversies and Disputes. After supplying proof of service on respondent on November 22, 2023, the appeal was transmitted to the Office of Administrative Law (OAL), where it was received on December 19, 2023, for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On December 18, 2023, prior to the matter being forwarded to the OAL, respondent filed a Motion to Dismiss in Lieu of Answer.

An initial conference was scheduled for March 26, 2024, at which time petitioner failed to appear. Nonetheless, a briefing schedule was set, with Ms. Thomas being given until May 6, 2024 to file opposition to the Motion to Dismiss, and respondent until May 16, 2024 to serve a reply brief.

Having given Ms. Thomas more than sufficient time in which to communicate with the OAL and having not heard from her, the record formally closed on May 16, 2024.

INITIAL FINDINGS OF UNDISPUTED FACT

The following **FACTS** of the case are not in dispute:

1. On or about May 1, 2005, Raisah Thomas was issued a Certificate of Eligibility with Advanced Standing Teacher of K–6 Elementary School by the State Board of Examiners. A standard certificate was issued in 2007 and on June 1, 2014, that certificate was renewed. (C-A.)

2. On September 19, 2023, a criminal background investigation, including a fingerprint check, revealed that on November 16, 2009, Ms. Thomas had pled guilty in the United States District Court, Newark, to the misdemeanor offense of "Possession of Stolen Bank Checks" in violation of 18 U.S.C. § 2113(b) & 18 U.S.C. § 2. Ms. Thomas was sent a disqualification letter at that time. (R-A.)

3. The specific allegations against petitioner are detailed in an August 25, 2008, criminal complaint. (R-B.)

4. When she received the disqualification letter, Ms. Thomas was employed as a "Teacher 3" at Northern State Prison in Newark, New Jersey.

5. On March 18, 2010, Ms. Thomas was sentenced to one year of probation, assessed a fee and ordered to pay $1,000 in restitution to the victim. A Judgment of Conviction was entered by the Hon. Joel A. Pisano that day. (R-C.)

6. Ms. Thomas has not received a pardon for the conviction, nor has it been expunged.[1]

[1] In fact, only certain low-level drug offenses are eligible for expungement in the federal system. 18 U.S.C. § 3607(a).

MOTION

The respondent argued that the motion to dismiss is appropriate here since, per N.J.A.C. 6A:3-1.10, even if petitioner's factual allegations are all found to be true, there is no legal basis for her appeal.

More specifically, respondent argues that since Ms. Thomas is not challenging the fact that she was convicted of the crime alleged, the only issue to be decided is a legal one: whether that crime (a violation of 18 U.S.C. § 2113(b) and 18 U.S.C. § 2) is a "substantially equivalent crime" to disqualifying New Jersey criminal statute N.J.S.A. 18A:6-7.1. Respondent posits that petitioner's federal conviction is "substantially equivalent" to theft by unlawful taking, a violation of N.J.S.A. 2C:20-3(a). When the amount in dispute is over $500 but less than $75,000, that is a crime of the third degree,[2] which, per N.J.A.C. 18A:6-7.1(c)(2), is a crime for which conviction would disqualify her from employment in "a facility, center, school, or school system under the supervision of the Department of Education."

Ms. Thomas has not responded to the motion. However, she did present an argument in her initial appeal which will be reviewed below.

APPEAL

In her appeal to the Board, Ms. Thomas wrote:

> I have been a working professional and productive for over 16 years under my Standard Education license without blemish, and to now take that away from [me] would be a major detriment to me as well as my family. I was awarded my Standard teaching license after the said offense in 2007, and to take it back after a 16 year clean slate is the reason why I am contesting this.
>
> In the written communication from the Office of Student Protection the investigator was not specific as to what was the disqualifying offense. It was rather ambiguous. I do not have an extensive criminal history. I have a low degree

[2] N.J.S.A. 2C:20-2(b)(2)(a).

> misdemeanor, that allowed me to continue working and for the State of NJ. To my knowledge, my record does not reflect any violent offenses, nor does my misdemeanor fall into any of the categories of the first or second degree offense listed in N.J.S.A. 18A:6-7.2, N.J.S.A. 18A:6-4.13 or N.J.S.A. 18A:12-1.2. My offense did not deal with child abuse, or drug offenses. I did not serve any jail time. Additionally, under the laws of the state, 10 years or more without any offenses added to my record, should qualify me for some type of clean slate expungement of my record.
>
> [A-A.]

THE CRIMINAL ALLEGATIONS

On August 25, 2008, an FBI agent swore out a criminal complaint against petitioner alleging, in essence, that from November, 2007 through April, 2008, she possessed and used checks stolen during a bank robbery. (R-B.)

The complaint alleged that on October 12, 2007, an armed robbery was committed at a Bank of America branch in Edison, New Jersey. Included in the haul were American Express Travelers Cheques and Gift Cheques. Following the robbery, a cooperating witness informed the FBI that in November, 2007, Ms. Thomas and her husband approached him and offered him $50 to store a pouch with the words "Bank of America" printed on it which contained gift checks. He agreed.

On April 13, 2008, Ms. Thomas retrieved some of the checks and gave two of them to the cooperating witness as compensation for storing them. Then, both the witness and the petitioner went shopping utilizing the checks. The following day, Ms. Thomas allegedly negotiated at least twenty of the checks at a credit union in Rahway.

On April 18, 2008, the FBI executed a search warrant at petitioner's home, at which time she admitted that she knew that the checks were stolen, that she had taken the pouch containing the checks to the witness's home and had asked the witness to store it. The witness turned the bag over to the FBI and it was found to contain American Express Gift Cheques and Traveler's Cheques in excess of $10,000. (R-B.)

CRIMINAL LAWS

Ms. Thomas was initially charged with violations of 18 U.S.C. § 2113(c) and 18 U.S.C. § 2. Ultimately, however, she pled guilty to 18 U.S.C. § 2113(b)[3] and 18 U.S.C. § 2.

Those statutes read as follows:

> **18 U.S.C. § 2113 (bank robbery and incidental crimes)**
>
> (b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding $1,000 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined under this title or imprisoned not more than ten years, or both; or
>
> Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding $1,000 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined under this title or imprisoned not more than one year, or both.
>
> **18 U.S.C. § 2 (principals)**
>
> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Ms. Thomas was sentenced to one year of probation, assessed a $25 fee and ordered to pay $1,000 in restitution to Bank of America. (R-C.)

[3] 18 U.S.C. § 2113(c) merely dictates the same penalties for the "taker" and the "storer".

Respondent argues that the federal statutes above are "substantially equivalent" to N.J.S.A. 2C:20-3(a), which reads:

> N.J.S.A. 2C:20-3. Theft by unlawful taking or disposition
>
> a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

Pursuant to N.J.S.A. 2C:20-2(b)(2)(a), "theft constitutes a crime of the third degree if: (a) The amount involved exceeds $500 but is less than $75,000."

LAW AND ANALYSIS

A motion to dismiss filed per N.J.A.C. 6A:3-1.5(g) is the functional equivalent of a motion to dismiss for failure to state a claim filed in civil court per R. 4:6-2(e). Graves v. State Operated Sch. Dist. of Newark, 2017 N.J. Super. Unpub. LEXIS 2417 (App Div. Sept. 26, 2017). The court stated the standard for the granting of same:

> When reviewing a Rule 4:6-2(e) motion, a court must determine the adequacy of the pleading and decide whether a cause of action is "suggested" by the facts. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). The court must "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)).
>
> [Id. at *8.]

The law cited by the respondent in support of its decision is N.J.S.A. 18A:6-7.1, which reads in pertinent part:

> A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ for pay or

> contract for the paid services of any teaching staff member . . . unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file . . . which would disqualify that individual from being employed or utilized in such capacity or position. . . .
>
> An individual, except as provided in subsection g. of this section, shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or
>
> . . . .
>
> c.
>
> . . . .
>
> (2) A crime as set forth in chapter 39 of Title 2C of the New Jersey Statutes, a third degree crime as set forth in chapter 20 of Title 2C of the New Jersey Statutes, or a crime as listed below:
>
> . . . .
>
> d. For the purposes of this section, a conviction exists if the individual has at any time been convicted under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense.
>
> e. Notwithstanding the provisions of this section, an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record.
>
> . . . .
>
> g. This section shall first apply to criminal history record checks conducted on or after the effective date of P.L. 1998, c. 31 (C.18A:6-7.1c et al.) . . . .

As noted above, respondent argues that, per N.J.S.A. 18A:6-7.1(d), the charges to which Ms. Thomas pled guilty to in 2009 are "substantially equivalent" to New Jersey's

statute covering "[t]heft by unlawful taking or disposition," N.J.S.A. 2C:20-3. In her appeal, Ms. Thomas argues that her 2009 plea was to a "low-level misdemeanor" and that this does not meet the standard of being a disqualifying crime.

First, a little background. As is well established, New Jersey does not follow the classic "misdemeanor—felony" language employed in the federal system and by many states. Rather, New Jersey offenses generally follow the "disorderly persons—indictable" verbiage. For the purposes of simplicity, the terminology is roughly equivalent. However, for legal purposes, it is not.

In the federal system, sentencing classifications are dictated by 18 U.S.C. § 1559. This code provision separates felonies into five classes and misdemeanors into three classes; these are a single class of infractions (the lowest-level offense). For the highest-grade misdemeanor, the maximum prison sentence is, in essence, six to twelve months. Given that the maximum sentence for 18 U.S.C. § 2113(b) is "imprisonment by not more than one year," it is by definition a Class A misdemeanor.

In New Jersey, indictable offenses are separated into four "degrees," with fourth-degree offenses being the least severe. N.J.S.A. 2C:43-1. There are two classifications of disorderly persons offenses, petty disorderly and disorderly, as well as simply "offenses," such as ordinance violations. For "DPs," maximum sentences are dictated by N.J.S.A. 2C:43-8: DPs carry a maximum jail sentence of six months, while the maximum for "PDPs" is thirty days.

However, while the length of the potential penalty is certainly interesting, it has become clear that it is the language of the statutes and how New Jersey treats the crime that is more important in determining how the out-of-jurisdiction offense is viewed.

There is limited case law concerning this issue. However, it was most recently addressed directly in Bazerman v. New Jersey Department of Education, 2023 N.J. Agen. LEXIS 439 (August 29, 2023). There, the petitioner was convicted in New York of "official misconduct," which is a Class A misdemeanor. However, in New Jersey, "official misconduct" is a second-degree indictable crime. The basic allegation was that in his

employment as a police officer, Mr. Bazerman was authorized to purchase equipment related to surveillance and wiretap activities and would then receive reimbursement for same. However, he was unable to account for the equipment for which he had received reimbursement. He was thereafter charged with official misconduct, pled guilty and was barred from future public employment and paid restitution of over $5,000, but did not serve any jail time and the conviction was later expunged.

Respondent argued that the New York official-misconduct offense was substantially equivalent to New Jersey's and because in New Jersey it is a second-degree crime, Bazerman was automatically disqualified. Among other issues, the Commissioner found that the ALJ had "erroneously focused his analysis on the penalties that courts may impose at sentencing for each offense instead of the nearly identical statutory language defining the elements of each offense." Id. at *3.

The Commissioner emphasized the similarities of the statutory language and noted that a plain-language reading is how the similarity issue should be approached. Id. at *6 (citing In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 18 (2020)). The Commissioner also cited to Kelly v. New Jersey State Department of Education, Criminal History Review Unit, Commissioner Decision No. 396-18R (Dec. 18, 2018), https://www.nj.gov/education/legal/commissioner/2018/dec/396-18R.pdf, where the focus "centered around the statutory elements of each crime and not their degree or the penalties associated with them." Id. at *7.

In a somewhat similar case involving an unsuccessful applicant for a security officer position, Bugge v. New Jersey State Police, 2018 N.J. Super. Unpub. LEXIS 2514 (App. Div. Nov. 15, 2018), Bugge had previously pled guilty to a "general violation of civil service law" in New York, a misdemeanor. However, the respondent deemed that violation to be "the equivalent of a fourth-degree crime in New Jersey." Id. at *2.

The ALJ had upheld respondent's denial and that was affirmed in the final agency decision, with the Commissioner noting that the conviction in New York, while a misdemeanor there, was, per N.J.S.A. 11A:10-2, a fourth-degree crime in New Jersey,

which is the substantive equivalent of a felony, not a misdemeanor. Id. at *5; see also Medica v. New Jersey State Police, 2020 N.J. Agen. LEXIS 602 (June 5, 2020).

Here, respondent's disqualification decision was based on N.J.S.A. 18A:6-7.1(c)(2), which covers a wide variety of third-degree theft-related offenses. (N.J.S.A. 2C:20 et seq.)[4] It is argued here that the only difference between third-degree theft by unlawful taking in New Jersey (N.J.S.A. 2C:20-3) and the federal bank-robbery statute (18 U.S.C. § 2113) is that the New Jersey statute is not specifically directed to banks.[5] In the relatively rare New Jersey cases involving the theft of money from banks, the appropriate charges have been found to be second-degree robbery (N.J.S.A. 2C:15-1(a)(2)) and third-degree theft (N.J.S.A. 2C:20-3(a)). See State v. Williams, 244 N.J. 592, 601 (2021); State v. King, 215 N.J. Super. 504, 508 (App. Div. 1987).

I agree with respondent. In comparing the language of the two relevant statutes, the second part of the federal statute is clearly the "substantial equivalent" of New Jersey's theft by unlawful taking statute. Both have essentially identical mens rea requirements and require specific amounts of property/money to be stolen (and there is no question that those minimums have been met).

I further agree with respondent's argument that the passage of time since the offense does not impact the disqualification law's effect. As was detailed in In re Tenure Hearing of John Socrates, 2011 N.J. Agen. LEXIS 591 (June 24, 2011), in 1998, N.J.S.A. 18A:6-7.1 was amended to remove extensive verbiage permitting an individual to demonstrate rehabilitation by clear and convincing evidence in order to maintain employment. That language was replaced with the current language which only provides the individual with the opportunity to challenge the accuracy of the information discovered in the background check. Id. at *3.[6]

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[4] It also covers weapons-related offenses (N.J.S.A. 2C:39 et seq.).

[5] In fact, New Jersey does not have specific bank robbery-related statutes. Rather, these crimes are covered by N.J.S.A. 2C:15-1 et seq. (robbery) and N.J.S.A. 2C:20 et seq. (theft). Most bank robberies are actually covered by federal law due to the involvement of the Federal Deposit Insurance Corporation (FDIC).

[6] 1998 N.J.S.N. 851 (enacted June 30, 1998).

While I am not completely unsympathetic to petitioner's argument that a substantial period of time has elapsed since her conviction, her offense falls directly within the scope of the disqualification statute and the Legislature explicitly removed the rehabilitation "exception" from the plain language of the statute.

Given the above, I **FIND** the following:

a. That Ms. Thomas was convicted of a theft-related federal misdemeanor in 2010.

b. That the statute under which she was convicted, 18 U.S.C. § 2113(b), is "substantially equivalent" to N.J.S.A. 2C:20-3.

c. That given the dollar value of the theft, her conviction would have qualified as a third-degree indictable offense under New Jersey law. See N.J.S.A. 2C:20-2(b)(2)(a).

d. That per N.J.S.A. 18A:6-7.1 et seq., a third-degree theft conviction covered by N.J.S.A. 2C:20-3 disqualifies Ms. Thomas from employment in "a facility, center, school, or school system under the supervision of the Department of Education."

Ultimately, I **CONCLUDE** that the respondent's decision to disqualify petitioner from employment pursuant to the dictates of N.J.S.A. 18A:6-7.1, et seq. was appropriate and that no facts have been presented to demonstrate that it was arbitrary, capricious, or unreasonable.

ORDER

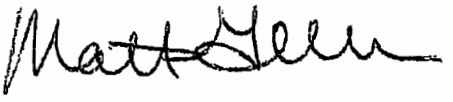
Based on the foregoing, it is hereby **ORDERED** that respondent's Motion to Dismiss be and is hereby **GRANTED** and;

It is **FURTHER ORDERED** that Ms. Thomas's appeal be and is hereby **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 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.



May 17, 2024
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency: May 17, 2024

Date Mailed to Parties: May 17, 2024
sej

APPENDIX

EXHIBITS

For Court:

C-A Petitioner's certificate status

For petitioner:

A-A Appeal (November 13, 2023)

For respondent:

R-A Disqualification letter from DOE/OSP to petitioner (September 19, 2023) with background check

R-B Criminal Complaint with attachments (August 25, 2008)

R-C Judgment of Conviction (March 18, 2010)

232-24
OAL Dkt. No. 12759-23
Agency Dkt. No. 307-11/23

New Jersey Commissioner of Education

Final Decision

Highland Park Board of Education,
Middlesex County,

Petitioner,

v.

Deana Frayne,

Respondent.

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

Respondent Deana Frayne was terminated from her teaching position by the Highland Park Board of Education (Board) in 2015. In 2016, Frayne filed a complaint in Superior Court, alleging in part that the termination had violated her due process rights because she was tenured and the Board had not filed tenure charges. The Hon. Travis L. Francis, A.J.S.C., dismissed the question of tenure and transferred the matter to the Commissioner for a determination as to whether Frayne earned tenure and, if so, to address her related claims. The Commissioner dismissed the matter because Frayne's claims regarding her termination were untimely pursuant to *N.J.A.C.* 6A:3-1.3(i). *Deana Frayne v. Bd. of Educ. of the Borough of Highland Park, Middlesex*

July 13, 2015 that the Board did not consider her to be a tenured employee, and by August 23, 2015, that the Board was terminating her without filing tenure charges. However, Frayne took no action within 90 days, and instead waited nearly a year to file suit in Superior Court. Based on Frayne's failure to timely assert her tenure rights, the ALJ concluded that Frayne was not a tenured teacher when she was terminated.

Initially, the Commissioner notes that, contrary to the argument that Frayne made in Superior Court, it is irrelevant that the May 5, 2014 Board meeting minutes were not a part of the record in the prior matter before the Commissioner. The 90-day limitations period established by *N.J.A.C.* 6A:3-1.3(i) applies to challenges to any action of a board of education, and it applies equally to challenges made by non-tenured and tenured teachers. Any and all claims related to Frayne's termination – including any claim that the Board should have filed tenure charges rather than proceeding with the type of termination used for non-tenured teachers – were required to be filed with the Commissioner within 90 days.

The record is clear that Frayne believed at the time of her termination that she was tenured, even though she allegedly did not have a copy of the meeting minutes. That belief is sufficient for her to have filed a petition of appeal within 90 days of her termination, but she did not do so. Moreover, even if the Commissioner were to accept that Frayne's later "discovery" of the meeting minutes would restart the limitations period, the record is also clear that Frayne was aware of the meeting minutes at least as of March 18, 2022, when discovery in the Superior Court matter concluded. Yet Frayne still failed to take any action before the Commissioner within 90 days of that "discovery."

Any claims related to her termination that Frayne may have, which are within the jurisdiction of the Commissioner, remain untimely. The addition of the meeting minutes to the record does not change the fact that Frayne knew – by July 20, 2015, at the very latest – that she was being terminated without the filing tenure charges by Board. The 90-day limitation period therefore began to run no later than that date and expired on October 19, 2015. The filing of a separate action, in a separate court, a year after her termination cannot absolve Frayne of her obligation to file any claims against the Board that are within the jurisdiction of the Commissioner within 90 days. The timeliness of a complaint under the Superior Court rules, in and of itself, has no bearing upon the timeliness of a petition under the Department of Education's regulations. *A.S., o/b/o minor child, P.P. v. Bd. of Educ. of the Pinelands Regional Sch. Dist., Ocean Cty.*, Commissioner Decision No. 411-09 (December 16, 2009). The purpose of the time limitation is, in part, to serve as a measure of repose through which a board of education can be secure, after the 90 days have elapsed, that its decisions will not be challenged before the Commissioner. *See, e.g., Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 *N.J.* 572, 587 (1993). This requirement cannot be circumvented by the later Superior Court filing. Frayne's failure to timely file any claims related to her tenure with the Commissioner should – on its own – result in summary decision in favor of the Board.

Nonetheless, in the interest of bringing this long-running matter to a close, the Commissioner has determined to address the question of Frayne's tenure on its merits and concludes that Frayne was not tenured at the time of her termination. The record reflects that Frayne was employed by the Board from March 2009 until her termination in June 2015. However, she served as a maternity leave replacement for much of that time, which is not

counted toward the acquisition of tenure. *N.J.S.A.* 18A:16-1.1. Frayne was employed as a full-time tenure-track teacher during the 2012-2013, 2013-2014, and 2014-2015 school years.[1] On June 24 or 25, 2015, the superintendent presented Frayne with a separation agreement and told her that she was not tenured. The Board issued a *Rice*[2] notice to petitioner and, on July 20, 2015, formally rescinded its prior action with respect to Frayne's employment contract and its statement of tenure, and terminated Frayne, effective August 23, 2015.

Pursuant to *N.J.S.A.* 18A:28-5(a), an individual can only achieve tenure if they serve for the requisite period of time, which can be achieved in three different ways. First, tenure may be acquired when the teacher is employed for three consecutive calendar years, or any shorter period fixed by the employing board. *Ibid.* Frayne was not employed in a tenure-track position for three consecutive calendar years, because her tenure-track position that commenced in September 2012 was terminated prior to September 2015. Furthermore, there is no evidence that the Board established, by policy or by contract, a shorter period for its teachers to acquire

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[1] Frayne served as a maternity leave replacement from March 2009 through June 2010. The record is unclear regarding petitioner's status during the 2010-2011 school year. The Board indicated in its motion for summary decision, and the ALJ indicated in the Initial Decision, both that 1) Frayne worked as a regular tenure track teacher during the 2010-2011 school year and 2) Frayne was appointed as a maternity replacement, non-tenure track for the period form October 18, 2010 to June 30, 2011. Both of these statements cannot be true. The allegation that Frayne was a tenure track teacher during the 2010-2011 school year comes only from Frayne's deposition testimony and is not supported by any documentation. However, the record includes Board meeting minutes from August 30, 2010, documenting Frayne's appointment as a maternity leave replacement. Accordingly, the Commissioner concludes that Frayne was a maternity leave replacement during the 2010-2011 school year, and therefore her employment during that time does not count towards the acquisition of tenure. However, even if Frayne was a tenure-track employee during the 2010-2011 school year, the Commissioner's conclusion remains the same, for the reasons stated below.

[2] An employee is entitled to advance notice when a board of education intends to discuss in closed session a personnel matter that could adversely affect the employee. *Rice v. Union County Reg'l High Sch. Bd. of Educ.*, 155 *N.J. Super.* 64, 73 (App. Div. 1977).

tenure. Second, tenure may be acquired when the teacher is employed for three consecutive academic years, together with employment at the beginning of the next succeeding academic year. *Ibid.* Frayne does not meet this requirement, because although she was employed for the three consecutive academic years of 2012-2013, 2013-2014, and 2014-2015, she was not employed at the beginning of the 2015-2016 academic year. Finally, tenure may be acquired when the teacher is employed for the equivalent of more than three academic years within a period of any four consecutive academic years. *Ibid.* Frayne does not meet this requirement, because she was not employed in a tenure-track position during the 2011-2012 school year. Even if the Commissioner accepted that Frayne's employment during the 2010-2011 school year was tenure-eligible, it was not in a period of four consecutive academic years with her later three years of service. The Commissioner therefore concludes that Frayne did not meet the statutory requirements regarding the length of her employment and was not tenured at the time of her termination.

In her Superior Court proceedings, incorporated into the OAL proceedings pursuant to Judge Rivas' Order, Frayne appears to have argued that the Board should be equitably estopped from denying that she had tenure because the May 5, 2014 meeting minutes state that she was approved for tenure. The Commissioner rejects this argument. The doctrine of equitable estoppel is "rarely invoked against a governmental entity." *Middletown Twp. Policeman's Benevolent Ass'n Local No. 124 v. Twp. of Middletown*, 162 *N.J.* 361, 367 (2000) (internal quotations and citations omitted). Additionally, "a governmental entity cannot be estopped from refusing to take an action that it was never authorized to take under the law – even if it had mistakenly agreed to that action." *Meyers v. State Health Benefits Comm'n*, 256 *N.J.* 94, 101

(Dec. 14, 2023). Here, the Board had no authority to declare Frayne tenured prior to her completion of the required period of service as detailed in *N.J.S.A.* 18A:28-5(a). Furthermore, as the Appellate Division noted in Frayne's prior matter, "the Board's conduct during the summer of 2015 . . . was clear that it intended to remove [Frayne] from employment." As such, Frayne had "not shown evidence of detrimental reliance; consequently, her equitable estoppel argument fails." *Frayne, supra*, 2021 *N.J. Super.* Unpub. LEXIS at *9. For these reasons, Frayne cannot be tenured by equitable estoppel.

Accordingly, the Commissioner concludes that Frayne was not tenured at the time of her termination.

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2024
Date of Mailing: June 18, 2024

[3] 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 12759-23
AGENCY DKT. NO. 307-11/23

HIGHLAND PARK BOARD OF EDUCATION,
MIDDLESEX COUNTY,
Petitioner,
v.
DEANA FRAYNE,
Respondent.

Eric L. Harrison, Esq., appearing for petitioner (Methfessel & Werbel, attorneys)

Deana Frayne, respondent pro se, did not appear or participate[1]

Record Closed: April 1, 2024 Decided: May 14, 2024

BEFORE **SUSAN M. SCAROLA**, ALJ (Ret., on recall):

STATEMENT OF THE CASE

On November 16, 2023, the Department of Education, Office of Controversies and Disputes (Department), transmitted this matter to the Office of Administrative Law pursuant to an order of the Hon. Alberto Rivas, J.S.C., "for a determination as to whether

[1] See procedural history.

the respondent [Deana Frayne] was tenured at the time of her termination."[2] The Department also noted that "The Superior Court has requested that Ms. Frayne's Superior Court exhibits be considered. If [the respondent] does not appear, the Highland Park Board of Education (BOE), as petitioner, may present ex parte proofs and receive an initial decision on the merits as provided in N.J.A.C. 6A:1-14.4(d)."[3]

PROCEDURAL HISTORY

Following the receipt of the transmittal at the OAL, on December 8, 2023, the respondent emailed and asked that the matter be withdrawn from the OAL. She was advised by letter dated January 9, 2024, that she could not, as she was not the petitioner.

A pre-hearing telephone conference was scheduled for January 18, 2024. The respondent failed to appear. The petitioner advised that it would be filing a motion for summary decision and did so on February 2, 2024.

The respondent was given until March 4, 2024, to respond to the motion but no response was received at the OAL.

A telephone conference was scheduled for April 1, 2024 to set a date for oral argument. Notice was provided to respondent by regular and certified mail. On April 1, 2024, the petitioner appeared for the conference, but the respondent did not. To date, no responses or exhibits have been received from the respondent.

The following background and procedural history leading to this transmittal is taken from the petitioner's motion for summary decision.[4]

1. On June 20, 2016, respondent filed a civil Complaint against Petitioner, asserting the following claims: a. (1) violation of respondent's due process rights under the New Jersey State Constitution, State statutes, and the New Jersey Civil Rights Act

[2] N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.
[3] Presumably, the Department meant to reference N.J.A.C. 1:1-14.4(d).
[4] Exhibits attached to the motion are noted.

("NJCRA") (Counts One and Two); b. (2) violation of the Conscientious Employee Protection Act ("CEPA") (Count Three); c. (3) breach of contract (Count Four); and d. (4) detrimental reliance (Count Five). (See Harrison Cert., Exhibit A.)

2. Respondent worked as a first-grade teacher for the Highland Park Board of Education (the "Board"). She was terminated due to: (1) excessive absenteeism; (2) poor classroom performance; and (3) unprofessional communication with a parent in the course of a phone conversation in which she berated a parent for complaining about her many absences.

3. In her Complaint, respondent asserts, inter alia, that her due process and contractual rights were violated when the Board summarily terminated her. (Id. at Exhibit A.)

4. On November 18, 2016, Judge Travis Francis of New Jersey Superior Court entered an Order transferring the Complaint to the Commissioner of Education for a determination as to whether respondent earned tenure and, if she was tenured, to adjudicate all due process claims directly relevant to respondent's tenured status; the Order stayed all other claims pending the Commissioner's determination of respondent's tenure status. (See Harrison Cert., Exhibit B.)

5. The Commissioner transmitted the case to the New Jersey Office of Administrative Law, where on June 26, 2018, Hon. Jeff S. Masin, ALJ, issued an initial decision, which was later adopted as a final decision by the Commissioner, finding that: a. respondent knew "at the very latest by July 20, 2015, that the Board terminated her without invoking the process necessary to remove tenure and was treating her as one without tenure protection"; b. respondent failed to file her petition with the Commissioner in a timely manner as it was filed outside the ninety day deadline required by N.J.A.C. 6A:3-1.3(a) and (l); c. "there is no basis here for invoking the limited exceptions to the otherwise strictly enforced limitation"; d. application of the doctrine of equitable estoppel is not warranted; and e. because respondent failed to file her petition with the Commissioner in a timely manner, her tenure claim was dismissed. (See Harrison Cert., Exhibit C.)

6. The respondent appealed the Commissioner's determination that she was time-barred from asserting that she had been tenured. On June 16, 2021, the Appellate Division affirmed the Commissioner's decision. Frayne v. Bd. of Educ. of Highland Park, No. A-0268-18 (App. Div. June 16, 2021), https://www.njcourts.gov/system/files/court-opinions/2021/a0268-18.pdf.

7. The respondent's remaining claims then proceeded in Superior Court.

8. Following the close of discovery, Petitioners filed a motion for summary judgment on April 1, 2022.

9. On May 3, 2022, respondent's former counsel, Ronald J. Wronko, filed a cross-motion for partial summary judgment and an opposition to Defendants' motion for summary judgment.

10. On May 27, 2022, the Superior Court denied both motions and directed that the question of tenure be returned to the Commissioner for an adjudication on the merits, notwithstanding the Commissioner's prior determination that the Respondent was time-barred from seeking relief based on her alleged tenured status. (See Harrison Cert., Exhibit D.)

11. Judge Rivas further stayed the civil matter until the issue of tenure was resolved by the Commissioner, specifically stating as follows: "The sole issue to be presented to the Commissioner is whether [Respondent] was a tenured teacher at the time of her termination." (Ibid.) The Court clarified that "[t]he Commissioner shall not be concerned with what procedure was undertaken to terminate [Respondent], but simply whether her status was that of a tenured or non-tenured teacher when she was terminated in 2015." (Ibid.)

12. In its decision, the Court held that because the Commissioner did not previously have access to the May 5, 2014, Board meeting minutes, the Commissioner never was able to address whether respondent was a tenured teacher at the time of her termination before issuing its June 26, 2018, Order. As such, Judge Rivas found that

notwithstanding the Commissioner's determination that the respondent was time-barred from arguing that she was tenured, the Commissioner nevertheless should render a decision on whether the respondent was tenured at the time of her termination in light of the May 5, 2014, Board meeting minutes. (Ibid.)

13. Once the Commissioner received the matter, the Office of Controversies and Disputes transmitted it to the New Jersey Office of Administrative Law ("OAL") for an administrative law judge ("ALJ") to make an initial decision and recommendation, before rendering a final decision on the issue.

14. On October 7, 2022, against the petitioner's position, respondent "withdrew" the matter from the OAL, in contravention of Judge Rivas' May 27, 2022, Order.

15. Further activity ensued in Superior Court. On May 24, 2023, Judge Rivas entered an order providing the following relief: a. The respondent must either file an appeal of the May 24, 2023, Order or comply with its provisions; b. The stay previously entered by the Court remains in effect; c. The Court will submit the following question to Acting Commissioner of Education Angelica Allen-McMillan[5]: Was Deana Frayne a tenured teacher when she was terminated by the Highland Park Board of Education on or about June 23, 2015?; d. The respondent must file all the documents she believes support her position within the time frame specified by the Commissioner, who must accept and review said documents; e. Because the question set forth above involves an issue as to which documents were not previously presented to the Commissioner, the doctrine of res judicata, collateral estoppel, or issue preclusion will not apply or prevent a determination of the submitted question; and, f. The Superior Court will submit this order and statement of reasons to the Commissioner. (See Harrison Cert., Exhibit F.)

16. On June 30, 2023, respondent filed a letter with the Superior Court requesting a case management conference because counsel for the Board had emailed the director of the Office of Controversies and Disputes within the Department of Education to follow up on whether this Court's May 24, 2023 Order had been received. The Respondent

[5] The present Acting Commissioner is Kevin Dehmer.

accused the Board of "having ex-parte communications with the OAL" even though she was copied on the email to the director of the Office of Controversies and Disputes and "rerouting [the May 24, 2023] Order to the Bureau of Controversies and Disputes."

17. On July 3, 2023, the respondent filed a letter with the Court to share an email the attorney for the petitioner had written to her explaining the judicial process and interaction between the Commissioner, the Office of Controversies and Disputes, and the OAL to prevent further delays in this litigation and in which the respondent once again was implored to consult with an attorney.

18. On July 11, 2023, respondent filed a letter with the Court to advise that she "removed all correspondence from Defendants to Jennifer Simons in the Bureau of Controversies and Disputes," and to request "a Case Management Conference because the Commissioner did not refer this matter to the OAL or get in touch with her" pursuant to the May 24, 2023 Order.

19. On July 11, 2023, the Superior Court issued a memo in response to the parties' most recent correspondence, directing all parties to participate in the OAL proceedings. It also declined to schedule any other case management conferences.

20. On July 12, 2023, despite the pending stay of the matter and Judge Rivas's explicit instructions to participate in all OAL proceedings set forth in his July 11, 2023 memo, the respondent filed a letter with the Superior Court and asked for the record to include a new copy of her fully executed contract "prior to any further action being taken in this case" because the one submitted by her former counsel had been allegedly "doctored."

21. That same day, Judge Rivas entered an order providing the following relief: a. directing the respondent to comply with the requirements of the OAL with respect to scheduling and filing of materials; b. continuing the stay of the Superior Court matter until the OAL determines the question of respondent's tenure status; and, c. advising that if she fails to comply with this Court's order, it may result in dismissal of this matter.

22. On July 14, 2023, the respondent filed a motion for reconsideration of the Court's July 12, 2023 Order.

23. On July 17, 2023, the Court issued another memo in response to respondent's July 14, 2023, motion. Judge Rivas once again explained to the Respondent that the Commissioner, who has primary jurisdiction to determine tenure and due process issues, retains the authority to personally handle the adjudication of the case or refer it for a hearing before the OAL and, in this case, the Commissioner has elected to refer the case to the OAL for a determination. Judge Rivas also advised respondent that if she refuses to abide by the July 12, 2023 Order, she can appeal it with the Appellate Division or the Court will dismiss the Superior Court matter.

24. On August 12, 2023, respondent filed a motion for "judicial notice and sanctions," which petitioners opposed.

25. On September 8, 2023, the Court denied respondent's motion for "judicial notice and sanctions." In response, on September 10, 2023, the respondent requested a statement of reasons for the denial.

26. That same day, respondent withdrew the matter from the OAL, in contravention of Judge Rivas' July 12, 2023 Order.

27. On September 24, 2023, the respondent filed a motion to enter "default judgment." Respondent's motion was ultimately denied.

28. On October 12, 2023, petitioners filed a cross-motion to dismiss the Superior Court Complaint with prejudice for failure to comply with Court orders. On November 6, 2023, Judge Rivas entered an Order denying the motion "until both parties comply with the Order of May 24, 2023."

29. On November 16, 2023, the matter was transmitted to the OAL by the Commissioner "for a determination as to whether the respondent Frayne was tenured at the time of her termination." The transmittal also ordered that the respondent's exhibits

to Superior Court be considered, and that if the respondent does not appear, the petitioner Highland Park Board of Education may present ex parte proofs and receive an Initial Decision on the merits.[6]

To date the respondent has not complied with the Orders of the Superior Court to cooperate in the proceedings at the OAL: she has provided no materials or exhibits to review, nor has she participated in any telephone conferences. Accordingly, I accept the above as **FACT**.

FACTUAL DISCUSSION

The following background and the factual discussion leading to the respondent's termination are taken from the petitioner's motion for summary decision.[7]

1. Respondent Deana Frayne was a teacher for the Highland Park Board of Education (the "Board") at Irving Elementary School from March 2009 until her termination in June 2015. (See Harrison Cert., Exhibit A, ¶ 1 and Exhibit H; Tr. at 11:17–21.)

2. Respondent served as a maternity-leave replacement (non-tenure track) teacher from March 2009 until the end of the 2009–2010 school year. (Id. at Exhibit H; Tr. at 11:24–12:18.)

3. She worked as a full-time regular tenure track teacher during the 2010–2011 school year. (Id. at Exhibit H; Tr. at 12:19–13:4.)

4. On August 30, 2010, the Board appointed respondent as a full-time maternity replacement (non-tenure track) teacher from October 18, 2010, to March 25, 2011. (Id. at Exhibit I.)

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[6] The May 24, 2023, and July 12, 2023, orders of Judge Rivas provide that [the respondent] must comply with the Commissioner and/or the OAL with respect to scheduling and filing of materials in order to have the question of her tenure addressed." The November 6, 2023, order again orders her to comply with the May 24, 2023, order.

[7] Exhibits attached to the motion are again noted.

5. On March 7, 2011, the Board approved respondent as a full-time maternity replacement (non-tenure track) first grade teacher, effective from October 19, 2010, to June 30, 2011. (Id. at Exhibit J.)

6. During the 2011–2012 school year, respondent filled a (non-tenure track) maternity leave position due to budget cuts. (Id. at Exhibit H; Tr. at13:10–18.)

7. Respondent worked as a full-time regular tenure track teacher during the 2012–2013, 2013–2014, and 2014–2015 school years. (Id. at Exhibit H; Tr. at 15:16–16:14.)

8. At the time of respondent's termination, Israel Soto served as the interim superintendent ("Superintendent Soto") and Kelly Wysoczanski ("Principal Wysoczanski") served as the principal of Irving Primary School. (Id. at Exhibit K, nos. 26 and 33.)

9. On May 5, 2014, the Board publicly appointed respondent to continue as a teacher during the 2014–2015 school year, describing her as tenured. (Id. at Exhibit P.)

Facts relating to the June 25, 2015, Meeting with Superintendent Soto—Respondent's Termination and Express Notice that She Was Not Tenured.

10. On June 25, 2015, Superintendent Soto presented respondent with a "separation agreement" in the presence of the union president Kimberly Crane and a union representative. (Id. at Exhibit H; Tr. at 51:23–52:13.)

11. Respondent claimed that Superintendent Soto did not tell her why he was firing her, told her that she had 24 hours to sign the separation agreement, and told her that she was not tenured. (Id. at Exhibit H; Tr. at 52:24–53:3.)

12. Ms. Crane, the president of the respondent's bargaining unit, told [the respondent] that she agreed with Dr. Soto that she was not tenured. Ms. Crane recommended that the respondent sign the agreement. (Id. at Exhibit H; Tr. at 53:8–12.) Ms. Crane also suggested that respondent speak with Nancy Grbelja from the New Jersey Education Association ("NJEA"). (Id. at Exhibit H; Tr. at 53:13–22.)

13. Dr. Soto also mailed respondent a letter on June 25, 2015, to serve as her "sixty (60) days[']notice that [her] employment with the Highland Park Board of Education will be terminated effective August 23, 2015." (Id. at Exhibit L.)

14. The letter stated as a basis for the termination that respondent's "attendance, classroom, performance and overall behavior over the past several years has been exceedingly poor." (Ibid.)

15. The letter also referenced an "incident that had occurred on or about May 12, 2015, wherein [respondent] unilaterally contacted a parent who [she] learned had complained about [her] behavior to [the] school's administration, questioned the parent as to the reason behind their complaint, made the parent feel uncomfortable and inexplicably tape recorded the conversation without notifying the parent of same." (Ibid.)

16. Dr. Soto pointed out that respondent's "conduct violate[d] Board Policy 3281, Inappropriate Staff Conduct, amongst others, as well as the expectations this administration has for the conduct of its staff." (Ibid.)

17. The following day, respondent met with Nancy Grbelja of the NJEA and expressed the view that she had acquired tenure during the 2014–2015 school year and her reappointment on May 15, 2015, for the 2015–2016 school year. (Id. at Exhibit H; Tr. at 54:1–9.)

18. Ms. Grbelja advised the respondent that she could not assist her, as she did not agree that she had acquired tenure. (Id. at Exhibit H; Tr. at 54:3–17.)

19. Ultimately, Superintendent Soto recommended respondent's termination. (Id. at Exhibit M; Tr. at 42:21–23.)

20. On July 13, 2015, the District issued respondent a Rice notice[8] alerting her to the fact that the District would be discussing her employment in executive session during the July 20, 2015, Board meeting. (Id. at Exhibit H; Tr. at 57:6–11; Exhibit N.)

21. Upon learning of the repsondent's contention that she was tenured, Dr. Soto initiated an investigation and determined that the Board's description of her as tenured in its meeting minutes was premature; in fact, she was not tenured. (Id. at Exhibit M; Tr. at 95:1–96:17.)

22. As a result of this investigation, on July 20, 2015, the Board formally rescinded the prior statement of tenure. (Id. at Exhibit O.)

The Board voted 9-0 to terminate the respondent on August 23, 2015.

In addition, no evidence was presented that the respondent appeared at the school in September at the start of the school year, under the belief that she had tenure.

The above is accepted as **FACT**.

LEGAL ANALYSIS AND CONCLUSION

I. Standards for summary decision

Under the Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Such motion "shall be served with briefs and with or without supporting affidavits" and "[t]he decision sought may 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." N.J.A.C. 1:1-12.5(b). When the

[8] Rice v. Union Cty. Reg'l High Sch. Bd. of Educ., 155 N.J. Super. 64 (App. Div.1977).

motion "is made and supported, an adverse party in order to prevail must [do so] by responding affidavit set[ting] forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid.

II. Was the respondent a tenured teacher when she was terminated by the Highland Park Board of Education on or about June 23, 2015?

The Highland Park Board of Education hired respondent to serve as a non-tenure-track first-grade maternity-leave replacement for the 2008–2009 school year. The Board continued respondent's employment in the non-tenure-track role for the 2009–2010, 2010–2011, and 2011–2012 school years. Thereafter, the Board employed respondent as a tenure-track first-grade teacher for the 2012–2013, 2013–2014, and 2014–2015 school years.

N.J.S.A. 18A:28-5(a) provides the requirements for a teacher to obtain tenure:

> The services of all teaching staff members employed prior to the effective date of P.L.2012, c.26 (C.18A:6-117 et al.) in the positions of teacher, . . . and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect and school business administrators shared by two or more school districts, shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:
>
> > (1) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or
> >
> > (2) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

> (3) The equivalent of more than three academic years within a period of any four consecutive academic years.

N.J.S.A. 18A:27-10 provides:

> On or before May 15 in each year, each nontenured teaching staff member continuously employed by a board of education since the preceding September 30 shall receive either:
>
> a. A written offer of a contract for employment from the board of education for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary as may be required by law or policies of the board of education, or
>
> b. A written notice from the chief school administrator that such employment will not be offered.

In the event such contract or notice is not forthcoming by May 15, N.J.S.A. 18A:27-11 provides:

> Should any board of education fail to give to any nontenure teaching staff member either an offer of contract for employment for the next succeeding year or a notice that such employment will not be offered, all within the time and in the manner provided by this act, then said board of education shall be deemed to have offered to that teaching staff member continued employment for the next succeeding school year upon the same terms and conditions but with such increases in salary as may be required by law or policies of the board of education.

Here, although the respondent did receive a contract of renewal by May 15, the Board shortly thereafter determined to take action against her and she became aware of the Board's position that she would not obtain tenure. As the Appellate Division succinctly summarized the facts in its June 16, 2021, decision:

> On May 5, 2015, plaintiff signed a contract with the Board to continue as a tenure track first grade teacher for the 2015–2016 school year. On June 25, 2015, before commencement

> of the 2015–2016 school year, the Board served plaintiff with a letter advising her that her employment would be terminated effective August 23, 2015.
>
> In the letter, the Board asserted plaintiff's attendance, classroom performance, and overall behavior over the past several years had been exceedingly poor. The letter also cited a parent-teacher incident where plaintiff recorded a conversation between her and a parent without that parent's consent. The letter was plaintiff's second written notice of unsatisfactory performance within thirty days.[1]
>
> In addition to the Board's June 25, 2015 letter to plaintiff, the Board also presented plaintiff a proposed "Agreement and Mutual Release," dated June 24, 2015, which offered plaintiff continuing health benefits and sixty days' worth of salary in exchange for her waiving the sixty-day termination notice period, accepting termination, and releasing any potential claims against the Board. The first page of this proposed agreement contained this relevant language:
>
> > WHEREAS Ms. Frayne is not a tenured employee of the Board pursuant to the requirements for acquiring the same as set forth in the "Teacher Effectiveness and Accountability for Children of New Jersey Act."
> >
> > [(emphasis added).]
>
> Plaintiff declined to execute the proposed agreement. Next, on July 13, 2015, the Board served plaintiff a letter advising that, "pursuant to the requirements of N.J.S.A. 10:4-12(b)(8),2 on Monday, July 20, 2015, the Board will discuss a personnel matter which could affect your employment in this school district." The Board met publicly on August 23, 2015, and in a unanimous 9-0 vote, terminated plaintiff's employment.
>
> [1] The June 25, 2015 letter references a May 27, 2015 letter the Board sent to plaintiff. The May 27, 2015 letter advised plaintiff that the Board was considering disciplinary action against plaintiff for reasons including but not limited to "excessive absenteeism."
>
> [Frayne v. Bd. of Educ. of Highland Park, No. A-0268-18 (App. Div. June 16, 2021), https://www.njcourts.gov/system/files/court-opinions/2021/a0268-18.pdf.]

The respondent would have had the expectation that she had acquired tenure by the action of the Board on May 5, 2015, when she signed the contract proffered by the

Board, and that, as a result, she would be considered tenured when that contract went into effect. However, shortly thereafter by letter of May 27 the respondent was put on notice that the Board did not consider her tenured, and that it was contemplating disciplinary proceedings against her. The Board then provided notice of its intentions to terminate the respondent in correspondence to her dated June 25 and July 13, 2015.

Because the respondent was aware of pending adverse action by the Board as soon as June 23, or July 13, 2015, at the latest, any tenure rights she may have acquired by signing her contract had to be asserted by her by the filing of an appeal within ninety days or they would be lost.

N.J.A.C. 6A:3-1.3(i) provides:

> 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 is neither a procedural nicety nor discretionary. The Appellate Division wrote:

> The ninety-day rule has been strictly construed by the courts and consistently applied. See Nissman v Bd. of Educ., 272 N.J. Super. 373, 380–81 (App. Div. 1994); Kaprow v. Bd. of Educ., 131 N.J. 572, 588–89 (1993); Riely v. Bd. of Educ., 173 N.J. Super. 109, 112–14 (App. Div. 1980). This period begins to run when the petitioner "learn[s] from the Local Board the existence of that state of facts that would enable him to file a timely claim." Kaprow, 131 N.J. at 588–89. A petitioner need not receive official and formal notification that he or she may have a valid claim. Id. at 588.
>
> [Frayne v. Bd. of Educ. of Highland Park, No. A-0268-18 (App. Div. June 16, 2021), https://www.njcourts.gov/system/files/court-opinions/2021/a0268-18.pdf.]

The plaintiff in Kaprow argued that his due process rights were violated by the time limitation set forth in the administrative code, but the Court, quoting Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), noted:

> The State may erect reasonable procedural requirements for triggering the right to an adjudication, be they statutes of limitations, or, in an appropriate case, filing fees. * * * What the Fourteenth Amendment does require, however, is "an *opportunity* . . . granted at a meaningful time and in a meaningful manner," Armstrong v. Manzo, 380 U.S. 545, 552 [85 S.Ct. 1187, 1191, 14 L.Ed.2d 62] (1985), "for [a] hearing appropriate to the nature of the case." Mullane v. Central Hanover Trust Co., 339 U.S. 306, 313 [70 S.Ct. 652, 657, 94 L.Ed. 865] (1950).
>
> [Id. at 437, 102 S.Ct. at 1158–59, 71 L.Ed.2d at 279 (some citations omitted).]

> N.J.A.C. 6:24-1.2(c) did not deprive Kaprow of his due-process rights. The ninety-day limitation period afforded Kaprow a *meaningful* opportunity to file his petition. In addition, the ninety-day limitation period represents a *reasonable* procedural requirement. It provides finality in education matters. Furthermore, the limitations period has withstood tangential review from this Court. See North Plainfield Educ. Ass'n v. Board of Educ., 96 N.J. 587, 476 A.2d 1245 (1984).
>
> [Kaprow, 131 N.J. at 588–89.]

Here, the respondent knew that the Board was contemplating disciplinary action against her within days of signing the "contract," and again by June 25, 2015. By July 13, 2015, she definitely knew that the Board did not consider her to be a tenured employee. And by the vote of the Board on August 23, 2015, the respondent knew that the Board had terminated her. Yet, the respondent took no action to protect her status as a "tenured" teacher as required by the code. She filed no appeal to the Commissioner within ninety days of knowing her tenure status was not recognized, nor did she ever file any appeal of the Board's action with the Commissioner. Rather, she waited almost one year and then filed suit in Superior Court. The question of tenure cannot be looked at in a vacuum, or as a snapshot on the day a contract is executed. It is a right that must be asserted in

the face of adverse action such as occurred here, or it is lost. The ninety-day rule is an integral part of the respondent's claim to tenure and was ignored by her.

Applying the law to the facts, I **CONCLUDE** that the respondent was not a tenured teacher when she was terminated by the Highland Park Board of Education on or about June 23, 2015. While she may have "acquired" tenure as a result of executing a contract on May 5, 2015, the respondent's inchoate right of tenure needed to be asserted by her by the filing of an appeal with the Commissioner within ninety days of becoming aware of the Board's adverse action against her, which was known as early as May 27 and definitely by June 25, 2015. She failed to do so, and, as a result, any rights she may have had to tenure were extinguished.

ORDER

I hereby **ORDER** that the respondent was not a tenured teacher when she was terminated by the Highland Park Board of Education on or about June 23, 2015.

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.

May 14, 2024
DATE

Susan Scarola
SUSAN M. SCAROLA, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

SMS/kl

233-24
OAL Dkt. No. EDU 00400-24
Agency Dkt. No. 366-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificate of Ariel LaForest, Board of Trustees of the TEAM Academy Charter School, Essex County.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that Paragraph 9 of the Agreement references actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement. Further, with respect to Paragraph 6 of the Agreement, the Board is reminded that it must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.*, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the

terms of the Agreement. Assuming same, the matter is hereby dismissed, subject to compliance with the terms of the settlement consistent with applicable public records law.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2024
Date of Mailing: June 18, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 00400-24
AGENCY DKT. NO. 366-12/23

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATE OF ARIEL LAFOREST, BOARD OF TRUSTEES OF THE TEAM ACADEMY CHARTER SCHOOL, ESSEX COUNTY.

Thomas O. Johnston, Esq., for petitioner, Team Academy Charter School, Inc.

Arthur Lessler, Esq., for respondent, Ariel LaForest (Lessler & Lessler, attorneys)

Record Closed: May 8, 2024 Decided: May 15, 2024

BEFORE **WILLIAM COURTNEY**, ALJ:

This matter was transmitted to the Office of Administrative Law on August 8, 2022 for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

A hearing was scheduled for June 11, 2024 but was adjourned because the parties advised the undersigned that they agreed to settle the matter. The executed Settlement

Agreement indicating the terms of agreement was forwarded to the OAL on May 8, 2024 and is attached hereto.

I have reviewed the record and the terms of settlement, and I **FIND**:

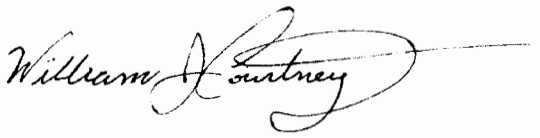
1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures on the attached settlement agreement and the attached Board resolution.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.



May 15, 2024

DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

Mailed to Parties:

db

234-24

New Jersey Commissioner of Education

Final Decision

Natalie Jimenez,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

Synopsis

Petitioner challenged the determination of the New Jersey Department of Education, Office of Student Protection (DOE), to permanently disqualify her from employment in a public school pursuant to *N.J.S.A.* 18A:6-7.1 after a criminal history background check revealed that in January 2003, she was convicted of destruction of property at a value greater than $1,000 under Virginia law, an offense that is substantially equivalent to the disqualifying New Jersey crime of criminal mischief, *N.J.S.A.* 2C:17-3(a)(1). The Department filed a motion to dismiss; petitioner failed to file a response.

The ALJ found, *inter alia*, that: a fingerprint search conducted as part of petitioner's background check revealed that on January 7, 2003, the Virginia Beach Circuit Court convicted petitioner of a felony charge of destruction of property at a value greater than $1,000; she was sentenced to one year of probation and was required to pay restitution and fees under Va. Code Ann. §18.2-137; *N.J.S.A.* 18A:6-7.1(e) provides petitioner the opportunity to challenge her conviction's accuracy or claim an error in the disqualifying criminal record; in this case, petitioner does not dispute the accuracy of her criminal conviction or claim any error in her criminal record, but rather presents arguments in support of mitigation; petitioner asked the DOE to overturn her disqualification from employment because her conviction occurred twenty years ago, she has since transformed her life, and there have not been any other incidents since 2003; however, *N.J.S.A.* 18A:6-7.1 permanently bars from employment with the DOE individuals who have been convicted "under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense" enumerated in *N.J.S.A.* 18A:6-7.1(d). The ALJ concluded that petitioner is permanently barred from employment in New Jersey public schools; accordingly, the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that petitioner's criminal history disqualifies her from working in a public school. Accordingly, the Initial Decision was adopted as the final decision in this matter, and the petition of appeal was dismissed.

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.

234-24
OAL Dkt. No. 02105-24
Agency Dkt. No. 5-1/24

New Jersey Commissioner of Education

Final Decision

Natalie Jimenez,

Petitioner,

v.

New Jersey Department of Education, Office of Student Protection,

Respondent.

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 that petitioner is permanently disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 because she was convicted of destruction of property at a value greater than $1,000 under Virginia law, an offense that is substantially equivalent to the disqualifying New Jersey crime of criminal mischief, *N.J.S.A.* 2C:17-3(a)(1). The Commissioner notes that petitioner has not disputed the accuracy of her criminal record.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2024
Date of Mailing: June 18, 2024

[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 GRANTING MOTION TO DISMISS
OAL DKT. NO. EDU 02105-24
AGENCY DKT. NO. 5-1/24

NATALIE JIMENEZ,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION, OFFICE OF STUDENT PROTECTION,

Respondent.

Natalie Jimenez, petitioner, appearing pro se

David L. Kalisky, Deputy Attorney General, for respondent, New Jersey Department of Education, Board of Examiners (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: April 11, 2024 Decided: May 13, 2024

BEFORE **MAMTA PATEL,** ALJ:

STATEMENT OF THE CASE

Petitioner, Natalie Jimenez, applied for an administrative assistant position with the Southampton Township School District, but a background check revealed that Jimenez was convicted of a crime in Virginia, which is substantially equivalent to the crime of criminal mischief in New Jersey. Is Jimenez precluded from employment? Yes. N.J.S.A. 18A:6-7.1 disqualifies from employment with a school district an individual who has been convicted of, among other crimes, criminal mischief.

PROCEDURAL HISTORY

On December 8, 2023, the Department of Education (DOE) sent Jimenez a letter stating that she was "permanently disqualified" from employment with any educational institution under the supervision of the DOE, such as the Southampton school district. (R-1B.) The letter further stated that Jimenez could file an appeal challenging the "accuracy" of her criminal conviction. Ibid. On December 22, 2023, Jimenez filed a Pro Se Petition of Appeal with supporting documentation challenging her disqualification with the DOE. (P-1.) On February 6, 2024, the DOE filed a Motion to Dismiss in Lieu of Answer. (R-1.) On February 14, 2024, the DOE transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On March 12, 2024, I held a telephone conference with the parties, during which Jimenez acknowledged receipt of the DOE's Motion to Dismiss and indicated her intent to submit a response. Jimenez was given until April 1, 2024, to submit her response, and DOE was given until April 11, 2024, to submit a reply. To date, Jimenez has not filed a response to the DOE's Motion to Dismiss.

On April 11, 2024, I closed the record, and the information provided as of that date was considered for this decision.

FINDINGS OF FACT

Based upon the evidence before me, I **FIND** the following as **FACT**:

1. Jimenez applied for an administrative assistant position with the Southampton school district, a public school in New Jersey. (R-1A.)

2. By statute, any person applying for employment with or to volunteer at a public school in New Jersey must submit to a background check. N.J.S.A. 18A:6-7.1.

3. On or about December 6, 2023, Jimenez submitted her fingerprints as part of the background check. (R-1A.)

4. The DOE ran a fingerprint search through the New Jersey State Police and the Federal Bureau of Investigation under N.J.S.A. 18A:6-7.2. (R-1A; R-1B.)

5. The fingerprint search revealed that on January 7, 2003, the Virginia Beach Circuit Court convicted Jimenez of a felony charge of destruction of property at a value greater than $1,000, sentenced her to one year of probation, and required restitution and fees under Va. Code Ann. §18.2-137. (R-1C.)

6. On December 8, 2023, the Office of Student Protection notified Jimenez by letter that she was "permanently disqualified from serving in any position, paid or unpaid, with any educational institution under the supervision of the Department of Education . . . ." (R-1B.)

7. The December 8, 2023, letter also advised Jimenez that she had fourteen days from the date of the notice to "challenge the accuracy" of her criminal-history record. The letter further instructed her to "submit

documentation from the respective courts to support [her] claim of an error in the criminal record." (R-1B.)

8. On December 22, 2023, following N.J.A.C. 6A:3-1 to -1.17, Jimenez filed a petition of appeal, which included a personal statement and several reference letters from friends, employers, and not-for-profit organizations. (P-1.)

9. In her personal statement, Jimenez states that when she was twenty-one years old and living in Virginia Beach, while under the influence of alcohol and in a moment of frustration with her neighbors, she keyed their cars and slashed their tires. Jimenez states that she regrets her actions and has since learned better coping skills. She is employed and attaining her bachelor's degree in social work and psychology, a current member of the National Society of Leadership and Success, and on the dean's list and honor roll multiple times. Jimenez also advises that she is a devout Christian, wife, and mother of five children. (P-1.)

10. Jimenez does not challenge the criminal history report.

CONCLUSIONS OF LAW

Motion-to-Dismiss Standard

In deciding a motion to dismiss for failure to state a claim, the legal standard to be applied is whether the moving party is entitled to relief as a matter of law because the basis of a cause of action cannot be gleaned from the complaint even after an in depth and liberal search. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746(1989).

Jimenez's Disqualification from Employment

N.J.S.A. 18A:6-7.1(e) provides Jimenez the opportunity to challenge her conviction's accuracy or claim an error in the disqualifying criminal record. Here, Jimenez does not dispute the accuracy of her criminal conviction or claim an error with her criminal record, but rather presents arguments in support of mitigation. (P-1.) Jimenez seeks the DOE to overturn her disqualification from employment because her conviction occurred twenty years ago, she has since transformed her life, and there have not been any other incidents since 2003. (P-1.)

Although Jimenez's conviction occurred in 2003, the Act specifically states that "a conviction exists if the individual has at **any time been convicted**." N.J.S.A. 18A:6-7.1(d) (emphasis added).

N.J.S.A. 18A:6-7.1 permanently bars from employment with the DOE an individual who has been convicted "under the laws of this State or under any similar statutes of the United States or **any other state for a substantially equivalent crime or other offense**" the crimes enumerated in the statute. N.J.S.A. 18A:6-7.1(d) (emphasis added).

In 2003, Jimenez was convicted under Va. Code Ann. §18.2-137, Injuring, etc., any property, monument, etc., which states in relevant part:

> B. If any person who is not the owner of [any property, real or personal, not his own] intentionally [breaks down, destroys, defaces, damages], he is guilty of (ii) a Class 6 felony if the value of or damage to the property, memorial or monument is $1,000 or more.

N.J.S.A. 18A:6-7.1.1 provides:

> A facility, center, school, or school system under the supervision of the Department of Education and board of education, which cares for, or is involved in the education of children under the age of 18 shall not employ for pay or contract for the paid services of any teaching staff member

> . . . unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or the State Bureau of Identification, which would disqualify that individual from being employed or utilized in such a capacity or position . . . .
>
> An individual, except as provided in subsection g. of this section, **shall be permanently disqualified from employment** or service under this act **if the individual's criminal history record check reveals a record of conviction** for any crime of the first or second degree; or
>
> . . . .
>
> c. (2) A crime as set forth in chapter 39 of Title 2C of the New Jersey Statutes, a third-degree crime as set forth in chapter 20 of Title 2C of the New Jersey Statutes, **or a crime as listed below**:
>
> . . . .
>
> Criminal mischief N.J.S.2C:17-3[.]
>
> [N.J.S.A. 18A:6-7.1 (emphasis added).]

New Jersey law does not distinguish crimes as either felonies or misdemeanors but rather by degree, i.e., first through fourth; thus, New Jersey defines criminal mischief as:

> a. Offense defined. A person is guilty of criminal mischief if he:
>
> (1) Purposely or knowingly damages tangible property of another or damages tangible property of another recklessly or negligently . . . .
>
> b. Grading.
>
> . . . .
>
> (2) Criminal mischief is a crime of the fourth degree if the actor causes pecuniary loss in excess of $500.00 but less than $2000.00.

[N.J.S.A. 2C:17-3.]

Accordingly, I **CONCLUDE** that the substantial equivalent of Va. Code Ann. §18.2-137 is N.J.S.A. 2C:17-3(a)(1), criminal mischief that caused damage greater than $1,000, N.J.S.A. 2C:17-3(b)(2), which disqualifies Jimenez from employment.[1]

Since N.J.S.A. 18A:6-7.1 does not provide for consideration of any mitigating factors I further **CONCLUDE** that Jimenez is disqualified from employment with Southampton.

ORDER

For the reasons set forth above, I **ORDER** that Jiminez is **DISQUALIFIED** from employment from Southampton, DOE's Motion to Dismiss is **GRANTED,** and Jimenez's Petition of Appeal 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 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.

[1] The DOE's Motion to Dismiss cites to "[a] crime involving the use of force or the threat of force to or upon a person or property[.]" N.J.S.A. 18A:6-7.1(c)(1). However, as discussed above, I believe Jimenez's Virginia conviction is most comparable to a violation of criminal mischief under applicable New Jersey law.

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.

May 13, 2024
DATE

MAMTA PATEL, ALJ

Date Received at Agency: May 13, 2024

Date Mailed to Parties: May 13, 2024

MP/dw

EXHIBITS

For petitioner:

P-1, Letter of Appeal with supporting documentation

For respondent:

R-1A through R-1C, Motion to Dismiss with attached exhibits

235-24R
State Board of Examiners Dkt. No. 1920-110
OAL Dkt. No. EDE-1212-2020
Agency Dkt. No. 10-12/22A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of
Theresa Guerriere, State Board of Examiners,
New Jersey Department of Education.

Order of Revocation by the State Board of Examiners, December 9, 2022

For the Respondent-Appellant, Oded Weinstock, Esq.

For the Petitioner-Respondent, State Board of Examiners, Sadia Ahsanuddin, Deputy Attorney General (Matthew J. Platkin, Attorney General of New Jersey)

This matter is remanded to the State Board of Examiners for further proceedings consistent with the Appellate Division's decision in *I/M/O the Certificates of Theresa Guerriere, State Board of Examiners, N.J. Dep't of Education*, 2024 *N.J. Super. Unpub.* LEXIS 1189 (App. Div. June 13, 2024).

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 17, 2024
Date of Mailing: June 18, 2024

236-24

New Jersey Commissioner of Education

Final Decision

Robert Walden,

Petitioner,

v.

Board of Education of the Township of North Bergen, Hudson County, and New Jersey Department of Education, Hudson County Office of Education,

Respondents.

Synopsis

Petitioner, a homeowner and taxpayer in North Bergen, objected to the continued placement of trailers on Green Acres parkland to provide accommodations for preschool students in the Township of North Bergen. Petitioner is an active user of Braddock Park, a portion of which has been used since 2001 to house the North Bergen Preschool Program in trailers. Since petitioner moved to North Bergen in or about 2013, he has filed complaints with the Township, Hudson County, the North Bergen Board of Education (BOE), the NJ Department of Education (NJDOE), and the NJ Department of Environmental Protection (NJDEP), all related to the preschool program's use of allegedly unsafe trailers in the park. Petitioner seeks, *inter alia*, to have NJDOE rescind its approval of the use of the temporary classroom units and requests that NJDOE officials meet with the BOE to expedite movement of the preschool program to North Bergen's elementary schools as called for in the District's long-range plan. The respondents filed motions for summary decision, arguing that the matter was filed out of time and failed to state a claim upon which relief may be granted by the Commissioner. These motions were denied, and the Administrative Law Judge (ALJ) requested that the parties submit legal arguments on the jurisdiction and standing of the Office of Administrative Law (OAL) to address the issues raised in the petition.

The ALJ found, *inter alia*, that: the OAL is without jurisdiction to address this matter at this time, especially in the absence of action by the NJDEP; petitioner lacks standing to commence this action against the NJDOE; the matter is not ripe for resolution without the determination of the NJDEP on the application for diversion of the Green Acres parkland; the New Jersey Constitution requires this matter to proceed in Superior Court; the Commissioner of Education does not have jurisdiction to hear this matter because, though a board of education is involved, the controversy does not arise solely under the school laws; the primary issue here is the diversion of Green Acre parkland; because this issue does not implicate the NJDOE's special expertise, the matter must be dismissed so that it may be decided in the appropriate forum. Accordingly, the ALJ dismissed the petition for lack of jurisdiction.

Upon review, the Commissioner adopted the Initial Decision of the OAL with modification to note that the petitioner in this matter has failed to state a claim upon which relief may be granted by the Commissioner. Accordingly, the Initial Decision of the OAL was adopted and the petition was dismissed.

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.

236-24
OAL Dkt. No. EDU 03856-23
Agency Dkt. No. 5-1/23

New Jersey Commissioner of Education

Final Decision

Robert Walden,

Petitioner,

v.

Board of Education of the Township
North Bergen, Hudson County, and
New Jersey Department of Education,
Hudson County Office of Education,

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 adopts the Initial Decision as the final decision in this matter, as modified. The Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner lacks sufficient interest in the outcome of this matter to establish standing as he will not be affected by it in a direct and meaningful way. *Cantatore v. Bd. of Educ. of Carlstadt-East Rutherford Reg'l High Sch. Dist., Bergen Cnty.*, OAL Dkt. No. 05498-22, Initial Decision at 7-9, *adopted*, Commissioner Decision No. 153-23 (May 25, 2023).

The Commissioner further finds and concludes that, even assuming petitioner had established standing, the four specific remedies he seeks in his petition are not available to him under the school laws and regulations upon which he relies. While the Commissioner has

jurisdiction to hear disputes arising under school laws and regulations, in this instance petitioner has failed to state a claim upon which relief may be granted by the Commissioner. *See Cardillo v. Bd. of Educ. of Paterson, Passaic Cnty.*, Commissioner Decision No. 192-24 (May 15, 2024) (holding that a petition must be dismissed for failure to state a claim "if it has failed to articulate a legal basis entitling [petitioner] to relief").

Accordingly, the petition of appeal is hereby dismissed for the reasons stated herein.[1]

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2024
Date of Mailing: June 26, 2024

[1] As it is unnecessary to do so, the Commissioner declines to adopt the ALJ's conclusions that the New Jersey Constitution and judicial efficiency require this matter to proceed, if at all, in the Superior Court, and that the matter is not ripe for resolution.

[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
DISMISSING PETITION FOR
LACK OF STANDING AND
JURISDICTION
OAL DKT. NO. EDU 03856-23
AGENCY DKT. NO. 5-1/23

ROBERT WALDEN,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF NORTH BERGEN, HUDSON COUNTY, AND NEW JERSEY DEPARTMENT OF EDUCATION, HUDSON COUNTY OFFICE OF EDUCATION
Respondents.

Renée Steinhagen, Esq., for petitioner (New Jersey Appleseed Public Interest Law Center of New Jersey, attorneys)

Kevin Hanly, Esq., for respondent Board of Education of the Township of North Bergen, Hudson County (Kevin Hanly, Esq., attorney)

Amna T. Toor, Deputy Attorney General, for respondent New Jersey Department of Education (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: March 25, 2024 Decided: May 29, 2024

BEFORE **JOSEPH A. ASCIONE,** ALJ (Ret., on recall):

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter involves petitioner Robert Walden's objection to the continued placement of trailers on Green Acres parkland to provide accommodations for preschool students in the Township of North Bergen. Petitioner is a homeowner, taxpayer, and voter in North Bergen. (Walden Cert. at ¶¶ 1, 20.) He is an active user of Braddock Park, a portion of which has been diverted to house the North Bergen Preschool Program in trailers. (Id. at ¶ 2.) The placement of the trailers dates back to 2001. Petitioner moved to North Bergen in or about 2013. Petitioner has filed several complaints with the Township, Hudson County, the North Bergen BOE, the State DOE, and the Department of Environmental Protection, about the preschool program's use of allegedly unsafe trailers in the park. (Id. at ¶ 7.) He has written several editorials about the alleged unsafe nature of the trailers, some of which were published. (Id. at ¶ 10.) He alleged in his certification, "Around 2021, I organized a group of local residents into the 'Save Braddock Park—Safe Schools' committee, an unincorporated member organization, dedicating [sic] to advocating for the removal of the trailers from Braddock Park and the proper integration of the preschool program into the Township's elementary schools and/or in a new facility." (Id. at ¶ 11.) Petitioner also runs a Facebook page for this group. (Id. at ¶ 13.)

Petitioner's reliefs sought are as follows:

> 1. Petitioner requests that the NJ DOE rescind its current approval and not grant further approvals to North Bergen to operate its old and unsafe Preschool [Temporary Classroom Units] based on the violation of N.J.A.C. 6A:26-3.13(g).
>
> 2. Petitioner requests that officials of NJ DOE meet with [the North Bergen] BOE to find a way to place all of North Bergen's preschoolers into the District's elementary schools

> as North Bergen stated it would do, in its 2018 Long Range Facilities Plan. . . .
>
> 3. Petitioner requests NJ DOE to discipline . . . an employee of the NJ DOE Hudson County.
>
> 4. Petitioner requests NJ DOE to discipline . . . an employee of the North Bergen BOE.

Petitioner seeks a factual finding that North Bergen cannot house a temporary educational facility for more than five years. Petitioner's primary objection is the diversion of parkland, specifically Braddock Park, for the use of temporary educational facilities for prekindergarten students. The New Jersey Department of Environmental Protection is not a party to this matter. Petitioner is not an employee of the North Bergen Board of Education, nor does he have a student attending pre-kindergarten at the complained-of facilities, nor is he a parent or guardian of any student in the North Bergen school district.

On May 2, 2023, this matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Specifically, the forwarding document states, "Petitioner challenges Respondent's [sic] actions regarding the use of temporary classroom units."

Motions were originally filed by respondents for summary disposition based upon the action being out of time and failure to advance a cause of action. Those motions were denied in a letter order of August 29, 2023. The matter was assigned to the undersigned on November 14, 2023. Upon review of the petition, motions, and prior order, on January 5, 2024, the undersigned requested that the parties submit legal arguments on the jurisdiction and standing of the Office of Administrative Law to address the issues raised in this petition. Those submissions were made by February 29, 2024.

FACTS

The parties submitted their positions. The following facts are not disputed among the parties. Accordingly, I **FIND AS FACT** the following:

1. The initial trailers were installed sometime in 2001 on lands leased to the North Bergen Board of Education from the County of Hudson, known as Bruin Stadium, in Braddock Park.

2. Mr. Walden, the petitioner, is a resident of North Bergen, New Jersey. When he moved to North Bergen in 2013, the trailers were already in place.

3. The petitioner is not a parent or guardian of any child attending school in North Bergen.

4. The petitioner is not an employee of the North Bergen Board of Education.

5. The petitioner is not attending the complained-of facilities himself.

6. The petitioner alleges his damages to be his use and enjoyment of Braddock Park.

7. The petitioner alleges that his damages are the potential injuries to which the students who attend the facilities may be subject.

8. The petitioner seeks to have the Commissioner of Education discipline the superintendents of the North Bergen Board of Education and the Hudson County Board of Education for violations of N.J.A.C. 6A:26-3.13(g) and N.J.A.C. 6A:26-8.1.

9. North Bergen and the Hudson County Board of Education have a pending application for a diversion of Green Acres parkland for the continued use of the trailer facilities.

10. Whether the diversion is granted or not, the New Jersey Department of Environmental Protection is an interested party in the resolution of this matter.

11. The petitioner has not distinguished himself from being a mere intermeddler or merely an interloper in the deliberative processes of the North Bergen and Hudson County boards of education.

LEGAL DISCUSSION

"To exercise jurisdiction over a dispute, an administrative agency must have specific legislative authority." Dolan v. Centuolo, Nos. A-2470-10T4, A-2710-10T4, at *11 (App. Div. July 9, 2012), https://njlaw.rutgers.edu/collections/courts/appellate/a2710-10.opn.html (citing Archway Programs, Inc. v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 426 (App. Div. 2002)). Pursuant to N.J.S.A. 18A:6-9, the Commissioner of Education

> 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.
>
> [Emphasis added.]

"Our courts have long recognized the sweep of the Commissioner's reviewing powers . . . ." Bd. of Educ. of E. Brunswick v. Twp. Council of E. Brunswick, 48 N.J. 94, 101 (1966). However, "the sweep of the Department's interest and the Commissioner's jurisdiction does not extend to all matters involving boards of education." Archway, 352 N.J. Super. at 424–25. "Where the controversy does not arise under the school laws, it is outside the Commissioner's jurisdiction even though it may pertain to school personnel." E. Brunswick, 48 N.J. at 102.

Although the matter involves a municipal and a county board of education, the dispute also involves the diversion of Green Acres parkland. The pending application for a diversion by the respondents makes the matter not ripe for a separate resolution.

Petitioner argues that the Commissioner has jurisdiction over the matter because "[t]he within dispute is a case in controversy arising under the school laws, (N.J.S.A. 18A:6-9 et seq.)." Pet'r's Br. at 8. However, petitioner ignores the provisions of N.J.A.C. 6A:26-8.1(v), which contemplate that temporary facilities may continue for more than an initial term and extensions. Petitioner also fails to address the absence of the New Jersey Department of Environmental Protection in this matter. The denial of the application for diversion or its granting has a significant bearing on the respondents' future actions. That issue does not implicate the Department of Education's special expertise. It is for this reason that the matter should be decided in Superior Court, where it was originally filed.

The jurisdictional concept of standing requires that "a particular litigant must have sufficient interest in the subject of the litigation so that a genuine clash between opposing viewpoints will be presented." U.K. & G.K. ex rel. D.K. v. Clifton Bd. of Educ., 1992 N.J. AGEN LEXIS 5134, *8–9 (Oct. 14, 1992) (citing Kenwood v. Montclair Bd. of Educ., EDU 8858-81, initial decision (Apr. 23, 1982), adopted, Comm'r (June 14, 1982)), aff'd, Comm'r (Nov. 20, 1992). To establish standing, a litigant must show 1) that he has "a sufficient stake in the outcome of the proceedings," and 2) that his position is "truly adverse to the opposing party." Id. at *10 (citing Home Builders League of So. Jersey v. Berlin Twp., 81 N.J. 127, 132 (1979)). New Jersey courts and administrative agencies have been generous when recognizing standing and have liberally allowed individuals even with only "tangential interest to assert a claim." Id. at 9. Nevertheless, courts have declined to entertain proceedings brought by parties "'who are mere intermeddlers' or 'merely interlopers or strangers to the dispute.'" Ibid. (citing Crescent Park Tenants Ass'n v. Reality Equities Corp., 58 N.J. 98, 107 (1971)).

Restrictions on standing also apply to those who initiate administrative proceedings before the Commissioner. For such proceedings, the Commissioner has clarified through regulation as well as case law that only an "interested person," one who "will be substantially, specifically, and directly affected by the outcome of [the] controversy," may initiate such proceedings. N.J.A.C. 6A:3-1.2; Bedminster Educ. Ass'n v. Bedminster Twp. Bd. of Educ., EDU 6720-05, final decision (June 16, 2006),

https://njlaw.rutgers.edu/collections/oal/final/edu6720-05.pdf; U.K. & G.K., 1992 N.J. AGEN LEXIS 5134 at *10–11.[1] Consequently, petitioners must show that they will "be affected by the outcome in a direct and meaningful way" before they may proceed in a contested case. U.K. & G.K., 1992 N.J. AGEN LEXIS 5134 at *11; see also Kenwood.

Petitioners have lacked standing when challenging the disciplinary action imposed on a student whom the petitioner did not have custody of (but was a student who harmed the child of the petitioner), U.K. & G.K.; the quality of education received by students in a school the petitioner's child no longer attended, Lobis v. Maple Shade Bd. of Educ., EDU 3630-79, initial decision (June 11, 1980), adopted, Comm'r (Aug. 11, 1980), aff'd, St. Bd. (Nov. 5, 1980); a high school attendance policy after the petitioner's child graduated, G.G. v. New Providence Bd. of Educ., 1975 S.L.D. 502; or when the petitioner had no children in the district public schools, Kenwood. However, petitioners have been determined "interested" when challenging the validity of board actions in the hiring of a superintendent in a district where they pay taxes and where their children attend the public schools, Salette v. Randolph Twp. Bd. of Educ., EDU 2126-83, initial decision (Nov. 28, 1983), adopted, Comm'r (Jan. 1, 1984).

Taxpayers do have standing to bring suit in several instances. See Loigman v. Twp. Comm. of Middletown, 297 N.J. Super. 287, 296 (App. Div. 1997) (discussing instances where a taxpayer does have standing). However, a taxpayer does not have standing to compel expenditures of public funds, as such would "cripple the government's ability to function properly." Ibid. A "taxpayer lacks standing for what on the state or county government level would be the equivalent of an executive branch responsibility." Id. at 298.

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[1] The term "interested person" is defined at N.J.A.C. 6A:3-1.2 but is not used in N.J.A.C. 6A:3-1.3 with regard to who may initiate a contested case. However, the term is used in N.J.A.C. 6A:3-2.1 with regard to who may petition for a declaratory ruling. Although the term appears in N.J.A.C. 6A:3-2.1 and not N.J.A.C. 6A:3-1.2, the term has been applied to determine whether a person has standing in a dispute and controversy under the education laws as far back as 1979. See Ricciardelli v. Kittrels, EDU 1894-79, initial decision (Sept. 26, 1979), adopted, Comm'r (Nov. 16. 1979) (ruling that non-taxpayer with no child in district schools had no standing to bring dispute over validity and legality of board's action because it did not meet definition of "interested person"). This application has been continued until the present day, as revealed in the cases cited throughout this discussion. See also McKenna & MacMurren v. Bd. of Educ. of the Andover Reg'l High Sch. Dist., 2011 N.J. AGEN LEXIS 648, n.7.

Here, petitioner has failed to demonstrate that he will be "substantially, specifically, and directly affected by the outcome of [this] controversy." See N.J.A.C. 6A:3-1.2. He does not have children in this preschool program. He is not specifically affected by the trailers being present in Braddock Park, as all parkgoers and taxpayers are affected by their presence. The only interest petitioner has demonstrated in the instant case is that this is a social issue he cares about and that he is a taxpayer in North Bergen. This is not enough to amount to standing.

It is commendable that petitioner is attempting to obtain "remedial action on behalf of the North Bergen public, including its predominantly low-income, minority pre-school children." Pet'r's Br. at n.1. However, "the ability of taxpayers to challenge governmental action is not unlimited. Taxpayers may not assert the constitutional rights of another. . . . There must be a substantial likelihood the plaintiff will experience some harm if the court returns an unfavorable decision." Loigman, 297 N.J. Super. at 295. Without the threat of some harm that is specific to petitioner, rather than harm that faces the entirety of the North Bergen public, petitioner has no stake in the outcome of the proceedings. As such, petitioner cannot initiate the proceeding in the instant matter, as he is not an interested party.

Petitioner argues that respondent has violated several provisions, including N.J.A.C. 7:36-25.2[2] (an environmental regulation under the Green Acres Program), as well as N.J.A.C. 6A:26-8.1[3] and N.J.A.C. 6A:26-3.13(g),[4] sections of the Educational Facilities and Construction Financing Act (EFCFA).

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[2] "[A] local government unit shall not divert to a use other than recreation and conservation purposes or dispose of any funded or unfunded parkland unless the local government unit obtains prior approval from the Commissioner and the State House Commission in accordance with N.J.A.C. 7:36-26. The diversion or disposal of funded or unfunded parkland by a local government unit without the approval of the Commissioner and the State House Commission is void and of no legal effect." N.J.A.C. 7:36-25.2(a). This allegation will not be further considered, as respondents North Bergen Board of Education and NJ Department of Education do not have any relation to or authority around environmental issues."

[3] This provision outlines that temporary classroom units (TCUs) must be annually inspected. It also outlines what conditions must be met for these TCUs to be used. N.J.A.C. 6A:26-8.1.

[4] "A temporary facility may be approved by the Division for a term of two years, with three annual renewals if the school district, or the Development Authority on behalf of the school district, demonstrates satisfactory progress toward the provision of permanent facilities. No such approval shall remain in effect or be eligible for renewal unless the executive county superintendent determines in consultation with the Division and upon inspection of the temporary facility that:

1. The temporary facility meets the educational—adequacy and temporary—facility standards

The EFCFA was "adopted to ensure that the educational facilities in the State are safe, healthy, and educationally adequate to support the delivery of the thorough and efficient education to which all students are entitled." N.J.A.C. 6A:26-1.1. It is important to note that "powers expressly granted to an administrative agency should be liberally construed so that the agency can fulfill the Legislature's purpose, and that an agency's express authority is augmented by such incidental authority as may be reasonably necessary or appropriate to effectuate the expressly delegated authority." Bd. of Educ. of Upper Freehold Reg'l Sch. Dist. v. State Health Benefits Com'n, 314 N.J. Super. 486, 492 (App. Div. 1998) (quoting In re Solid Waste Utility Customer Lists, 106 N.J. 508, 516 (1987) (citations omitted)).

Respondents argue that the OAL does not have jurisdiction over the instant case.

The Office of Administrative Law (OAL) acquires jurisdiction over a matter under the EFCFA "only after it has been determined to be a contested case by an agency head and has been filed with the [OAL] or as otherwise authorized by law." N.J.A.C. 1:1-3.2(a). The case has been transmitted to the OAL, so at issue is only whether this case is a "contested case."

A contested case refers to "an adversary proceeding . . . in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing." N.J.A.C. 1:1-2.1; see also N.J.A.C. 6A:3-1.2. Contested cases "are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people." N.J.A.C. 1:1-2.1. To

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as specified in this chapter;
2. The school district or approved private school for the disabled demonstrates through the LRFP or other plan, in the case of the approved private school for the disabled, that students housed in the temporary facility will be housed in permanent school facilities; and
3. The temporary facility meets N.J.A.C. 5:23 requirements for a certificate of occupancy for "E" (educational) group use."

[N.J.A.C. 6A:26-3.13(g).]

determine if a dispute is a contested case, three questions must be answered affirmatively. "First, is a hearing required by statute or constitutional provision; second, will the hearing result in an adjudication concerning rights, duties, obligations, privileges, benefits or other legal relations; and third, does the hearing involve specific parties rather than a large segment of the public?" Upper Freehold Reg'l Sch. Dist., 314 N.J. Super. at 494 (citation omitted).

The answer to the first question is unclear, but likely in the negative. Under N.J.A.C. 6A:3-1.11, "[u]pon the filing of the petition and answer(s) in a contested case, where the Commissioner does not determine to dismiss the matter . . . , the Commissioner may either retain the matter for hearing directly and individually . . . or transmit the matter for hearing before the OAL." Thus, a hearing is required if certain requirements are met, including if the case is a contested case. However, to determine if a case is a contested case, one of the determinative questions is whether a hearing is required. This is a circular analysis.

The answer to the second question is clearly in the affirmative. Respondent North Bergen Board of Education is currently using trailers, "temporary classroom units" (TCUs) to house their preschool program. See Resp't's Br. at 2. A hearing leading to the determination as to whether respondent has violated N.J.A.C. 6A:26-3.13(g) by using TCUs will impact the duties and obligations of respondent to provide permanent classrooms.

The answer to the third question is in the negative. Respondent North Bergen and Board of Education and Hudson County are specific parties, and their rights and obligations would be determined by the outcome of this proceeding. However, petitioner states in his brief that he is seeking "remedial action on behalf of the North Bergen public, including its predominantly low-income, minority pre-school children." Pet'r's. Br. at n.1. Compelling respondent Board of Education to act would not confer benefits onto petitioner, but rather the North Bergen public at large. This is not a specific party.

As one of these questions was not answered in the affirmative, the OAL does not have jurisdiction over this matter.

The absence of a decision by the New Jersey Department of Environmental Protection on the respondents' application for a diversion makes the matter not ripe for action at this time. The New Jersey Department of Environmental Protection is an indispensable party to the within action to resolve all of the issues raised by the petitioner.

Petitioner argues that the New Jersey Constitution, article VI, section 5 paragraph 4, provides, "Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court . . . ." Yet, petitioner filed a complaint with the Department of Education, arguing that exhaustion of administrative remedies will be required. Petitioner fails to recognize the limited jurisdiction of the Office of Administrative Law; it is up to a Superior Court judge to direct the resolution of this matter, allowing for the New Jersey Department of Environmental Protection to conclude its determination and then direct any necessary fact finding by the Department of Education if necessary.

The initial placement of the facilities may have proceeded without applying for a diversion under the Green Acres program. The diversion application has been made and is pending with the Department of Environmental Protection. If the diversion is granted, permanent facilities can be built at the present location. If the Department of Environmental Protection denies the diversion, then the Township of North Bergen will be compelled to relocate the temporary facilities. The actions of the petitioner are expenses the taxpayers of North Bergen and the County, with no foreseeable resolution pending the resolution of the Department of Environmental Protection. There is no question that a citizen cannot compel the discipline of civil service employees. This tribunal sees no wrongdoing.

CONCLUSION

I **CONCLUDE** that the Office of Administrative Law is without jurisdiction to address this matter at this time, especially in the absence of action by the New Jersey Department of Environmental Protection.

I **CONCLUDE** that the petitioner lacks standing to commence this action with the Department of Education.

I **CONCLUDE** that the matter is not ripe for resolution without the determination of the New Jersey Department of Environmental Protection on the application for a diversion of the Green Acres parkland.

I **CONCLUDE** that the New Jersey Constitution requires that this action proceed in the Superior Court.

I **CONCLUDE** that in the interest of judicial efficiency this matter should be prosecuted, if at all, in the Superior Court.

I **CONCLUDE** that the Commissioner does not have jurisdiction to hear this dispute. Although the matter involves a board of education, the controversy does not arise only under the school laws. Rather, the primary issue is the diversion of Green Acres parkland. Because this does not implicate the Department of Education's special expertise, the matter must be dismissed so that it may be decided in the appropriate forum.

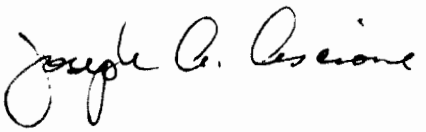
ORDER

Based upon the foregoing, it is **ORDERED** that the petition be **DISMISSED** for lack of jurisdiction.

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.



May 29, 2024
DATE

JOSEPH A. ASCIONE, ALJ (Ret., on recall)

Date Received at Agency: May 29, 2024

Date Mailed to Parties: May 29, 2024

/jaa/cc/mph

APPENDIX

LIST OF EXHIBITS

For Petitioner:

P-1 Petitioner's Letter Brief, dated 2/29/2024

P-2 Certification of Counsel with exhibits A-F, dated 2/29/2024

P-3 Certification of Robert Walden with exhibits A-B, dated 2/29/2024

For Respondents:

RNB-1 Certification of George Solter with exhibits1-2, dated 2/27/2024

RNB-2 Memorandum of Law, dated 2/28/2024

R-NJDOE-1 New Jersey Department of Education Letter Brief, dated 3/1/2024

237-24
OAL Dkt. No. EDU 03380-23
Agency Dkt. No. 85-3/23

New Jersey Commissioner of Education

Final Decision

Mellk Cridge, LLC,

Petitioners,

v.

Board of Education of the Township of Woodbridge, Middlesex County,

Respondent.

The record of this matter, the proposed Release and Settlement Agreement (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 1 of the Agreement references actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2024
Date of Mailing: June 26, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION
APPROVING SETTLEMENT
OAL DKT. NO. EDU 03380-2023
AGENCY DKT. NO. 85-3/23

MELLK CRIDGE, LLC,
Petitioners,
v.
WOODBRIDGE TOWNSHIP
BOARD OF EDUCATION,
MIDDLESEX COUNTY
Respondent.

Arnold M. Mellk, Esq., petitioner (Mellk Cridge, LLC, attorney)

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

Record Closed: May 23, 2024 Decided: May 24, 2024

BEFORE **JUDITH LIEBERMAN**, ALJ:

This matter was transmitted to the Office of Administrative Law on April 21, 2023, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The parties have agreed to a settlement and have prepared a Release and Settlement Agreement indicating the terms thereof, which is attached and fully incorporated herein. This Release and Settlement Agreement resolves all disputes.

I have reviewed the record and the terms of settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by petitioner's signature on the attached Release and Settlement Agreement and the attached resolution of respondent Board of Education.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

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May 24, 2024
DATE

Judith Lieberman
JUDITH LIEBERMAN, ALJ

Date Received at Agency: 5/24/2024

Date Mailed to Parties: 5/24/2024

JL/mg
Attachment

RELEASE AND SETTLEMENT AGREEMENT

WHEREAS, MELLK CRIDGE LLC, having an address at 211 Blackwell Road, Pennington, NJ ("Releasor") is a New Jersey Law firm; and

WHEREAS, Yguence Jean-Baptiste ("Mr. Baptiste") was a School Bus Driver employed by the Woodbridge Township School District Board of Education, Atlantic County, New Jersey (hereinafter the "Board"); and

WHEREAS, Mr. Baptiste was charged with the motor vehicle offense of Careless Driving in the matter of *State v. Yguence Jean-Baptiste*, Ticket No. 58 979, which ticket issued from the Woodbridge Township Municipal Court (the "Complaint"); and

WHEREAS, The Releasor appeared and defended Mr. Baptiste in connection with the Complaint; and

WHEREAS, the Complaint against Mr. Baptiste was ultimately dismissed; and;

WHEREAS, Releasor has demanded that the Board pay to Releasor the costs and fees associated with Mr. Baptiste 's defense pursuant to N.J.S.A. 18A:16-6.1; and has filed a Petition with the Commissioner of Education captioned MELLK CRIDGE LLC v. Woodbridge Township School District Board of Education, Department of Education Agency Docket No. 251-9/22; OAL Dkt. No. EDU 09083-22 314-11/23 (the "Petition") in furtherance of said claim; and,

WHEREAS, in order to avoid expense, expenditure of time, and the uncertainty of litigation, and without admitting any liability whatsoever, both Releasor and the Board wish to fully and finally settle all claims that Releasor may have against the Board, including its predecessors, successors, assigns, and its former and current members, officers, directors, representatives, employees, agents, insurers, and indemnitors, individually, collectively and in their official and individual capacities (hereinafter referred to collectively as the "Releasees") arising from this matter;

NOW, THEREFORE, in consideration of the promises and mutual agreements, conditions and covenants contained in this document, and for other good and valuable consideration, the sufficiency of which both parties acknowledge, the Board, and Releasor agree as follows:

1: Upon its receipt of this Agreement, fully executed by Releasor, The Board shall issue payment to Releasor, by way of check payable to MELLK CRIDGE LLC, in the

amount of Three Thousand Six Hundred and Twenty-Seven Dollars and Thirty-Six Cents ($3,627.36).

2: Upon receipt of the payment set forth in paragraph 1 above, Releasor, on its behalf and on behalf of its behalf of its partners, shareholders, members, officers, directors, employees, representatives, administrators, successors, successors in interest, and assigns, hereby, freely and unconditionally, waives, releases and forever discharges Releasees from all possible claims, complaints, liabilities, promises, obligations, demands, agreements, damages, debts, dues, sums of money, covenants, and lawsuits, whether presently known or unknown, which may have arisen from the beginning of time through the date of Releasor's signature on this Agreement with respect to the aforesaid costs and fees associated with the defense of Mr. Baptiste in connection with the Complaint. Upon receipt of the payment set forth in paragraph 1 above, Releasor shall further file a Stipulation of Dismissal with Prejudice as to the Petition with the Commissioner of Education and/or State of New Jersey, Office of Administrative Law, and/or take the action necessary to effectuate the dismissal of same.

3: The signatory below hereby declares and represents that that he is duly authorized and empowered to make this Release; that he has never been declared incompetent by any court or administrative agency; that no representation respecting the nature and extent of any injuries, disabilities, damages, legal liability or financial responsibility made by any representative, attorney, agent or employee of Releasees has induced Releasor to make this settlement; that in determining the sum it has accepted, Releasor has taken into account not only the ascertained injuries, but also unknown and/or unanticipated injuries, disabilities, losses and damages to which it recognizes and agrees this Release shall also apply.

4: It is understood that the parties hereby released admit no liability of any sort, for injury, loss or damage of any kind, incident, act, casualty or event. It is further recognized and understood that this Release constitutes the good faith compromise of disputed claims, and is made in good faith to terminate any further controversy respecting all claims for damages that Releasor may have heretofore asserted or might hereafter assert because of any incidents, acts, casualties, or events, described or alluded to hereinabove.

5: Releasor also covenants and agrees that:

a: This Release may be pleaded as a defense to any action or other proceeding which may be brought or instituted against Releasees in breach hereof.

b: This release will serve to discharge all claims made or claims which could have been made by or on behalf of Mr. Baptiste with respect to the

costs and fees which are the subject matter of this Release. Releasor represents that to the best of its knowledge, information, and belief, Mr. Baptiste did not receive legal services from anyone other than Releasor in connection with the defense of the Complaint, and has no claim for any legal fees, other than those sought by Releasor, in connection with the defense of the Complaint. Releasor will hold harmless and indemnify Releasees from and for any and all actions, causes of action, damages and costs, including reasonable attorney's fees, incurred in defense of or in settlement of all actions, causes of action, suit or suits, or demands, third-party or otherwise, which may be brought or made against said Releasees arising out of the matters discharged and released hereby.

6: Releasor agrees and understands that Releasor is solely responsible for any and all tax obligations resulting from payments made pursuant to this Release, if any, including, but not limited to, all reporting and payment obligations which may arise from the payment of the settlement consideration. Releasor further agrees that it will indemnify Releasees from any liability resulting or arising from non-payment of any such tax obligations.

7: This Release contains the entire agreement between the parties hereto, and the terms of this Release and Settlement Agreement are contractual and not a mere recital.

RELEASOR FURTHER STATES that the undersigned has carefully read the foregoing Release and Settlement Agreement and knows the contents hereof, and signs the same as his own voluntary free act.

SIGNED AND DATED this 24th day of April, 2024

MELLK CRIDGE LLC

By: Arnold M. Mellk, Esq.
Managing Partner

WITNESSETH:

Edward A. Cridge, Esq.
NJ Attorney Identification Number 026462006

The **Finance and Insurance Committee**, on recommendation of the Superintendent of Schools and the Business Administrator/Board Secretary, presented the following:

14. That the Board of Education approve the Settlement Agreement in the matter entitled Mellk Cridge, LLC v. Woodbridge Township Board of Education, Agency Reference Claim No. 22GL00719S, and resolve the dispute in the amount of $3,500.00.

* *

I, Brian Wolferman, Business Administrator and Secretary of the Board of Education, Township of Woodbridge, hereby certify that the foregoing is a true and exact copy of the Resolution approved at the Board of Education meeting held April 25, 2024.

Brian Wolferman
Business Administrator/Board Secretary

nl

May 1, 2024

238-24
State Board of Examiners Dkt. No. 1617-209
Agency Dkt. No. 4-2/24A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Application for Certification After Revocation of Karen A. Bobb, State Board of Examiners, New Jersey Department of Education.

Order Denying Certification After Revocation, dated January 19, 2024

Respondent-Appellant, appearing pro se

For the Petitioner-Respondent State Board of Examiners, Sadia Ahsannudin, Deputy Attorney General (Matthew J. Platkin, Attorney General of New Jersey)

The Commissioner has reviewed the record and submissions filed in connection with Karen A. Bobb's appeal of the Order of the State Board of Examiners (Board), dated January 19, 2024, denying her application for certification after revocation.

In denying Bobb's application, the Board concluded that she had not provided evidence demonstrating rehabilitation for the unbecoming conduct which led to the revocation of her substitute credential in 2018. It determined that documentation substantiating expungement of her criminal conviction alone was insufficient to demonstrate rehabilitation pursuant to *N.J.A.C.* 6A:9B-4.9(b), and that nothing had changed other than the passage of time.[1]

[1] Although the Board's order repeatedly references a prior "conviction for child abuse" which led to the revocation of Bobb's substitute credential and her permanent disqualification from public school employment pursuant to *N.J.S.A.* 18A:6-7.1, the record contains no evidence of said conviction. *See In the Matter of the Certificates of Daniel L. DeJesus, State Board of Examiners*, Commissioner Decision No. 58-24 (January 22, 2024), at 7 ("A guilty plea taken

On appeal, Bobb asserts that she does not abuse children and that her decision to leave her minor son at home unsupervised was not made lightly. She describes the circumstances surrounding the incident, which included difficulty registering her son for school. She further asserts that she completed all court mandated parent training programs and weekly probation meetings, and that her son was returned to her custody. In response, the Board contends that Bobb has presented new information to the Commissioner relevant to rehabilitation that she did not provide to the Board. Therefore, the Board argues that Bobb's statements regarding rehabilitation should not be considered because they are outside the record. Moreover, the Board emphasizes that Bobb has not presented it with any objective evidence of rehabilitation.

"[A] decision by the Board denying an application for a certificate is not entitled to the arbitrary, capricious or unreasonable standard of review that is afforded to appeals filed under *N.J.A.C.* 6A:4, challenging a decision of the Board revoking or suspending a certificate." *Jaroslaw Nimczyk v. New Jersey Department of Education, State Board of Examiners*, Commissioner Decision No. 98-22 (May 16, 2022), at 2. Instead, "the appropriate standard of review . . . is whether the decision is consistent with the applicable statutory and regulatory provisions." *Id.* at 2-3. The Board cannot issue a new certificate or credential to an applicant whose certificate or credential was revoked unless the applicant satisfies the requirements set forth at

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in connection with admission to the PTI [pretrial intervention] program does not automatically result in the entry of a judgment of conviction."). The Board's Order to Show Cause, issued November 1, 2017, indicates that Bobb received an Order of Postponement on October 20, 2017, in connection with the underlying criminal matter and was admitted into the PTI program for a period of 24 months. As a reminder, a guilty plea entered as a condition of admission to PTI "has no force or effect, unless PTI is violated. It is neither a judgment of conviction nor an adjudication." *State v. Lavrik*, 472 *N.J. Super.* 192, 216 (App. Div. 2022). The Expungement Order provided to the Board by appellant, filed in Hudson County Superior Court in February 2021, expunged all records related to "Arrest/custody on the charge of violating *N.J.S.A.* 9:6-1 on October 14, 2016" and all records concerning subsequent criminal proceedings regarding the charge.

N.J.A.C. 6A:9B-4.9. *N.J.A.C.* 6A:9B-4.9(b)(3) requires that an applicant supply "evidence demonstrating rehabilitation for the unbecoming conduct, incompetence, or other cause for the revocation." The applicant bears the burden of demonstrating, by a preponderance of evidence, that the Board improperly denied the application for certification after revocation. *Harriman v. New Jersey Department of Education, State Board of Examiners*, OAL Dkt. No. EDU 02542-21 (January 29, 2024), *adopted*, Commissioner Decision No. 129-24 (March 11, 2024).

Upon review, the Commissioner finds that Bobb failed to demonstrate, by a preponderance of evidence, that the Board improperly denied her application for certification after revocation. The record before the Board did not contain sufficient evidence demonstrating rehabilitation for the unbecoming conduct—i.e., leaving her minor son at home unsupervised—which resulted in the revocation of her certificate. Although Bobb references evidence of rehabilitation in her submission to the Commissioner that could potentially satisfy the requirements of *N.J.A.C.* 6A:9B-4.9, including completion of all court mandated parent training programs and weekly probation meetings, she failed to provide the Board with documentation to support these claims. Thus, the Board's decision to deny Bobb's application for certification after revocation—based upon the record it had before it as of January 19, 2024—is consistent with applicable regulatory provisions.

Accordingly, the Commissioner is constrained to dismiss this matter without prejudice. Bobb may reapply to the Board for certification after revocation pursuant to *N.J.A.C.* 6A:9B-4.9 and submit objective evidence of rehabilitation for the Board's consideration, including but not limited to documentation regarding successful completion of court mandated parent training programs, completion of the PTI program, attendance at weekly probation meetings, and

compliance with all conditions imposed by the court. As the Board previously suggested to Bobb, she may also wish to include a letter or statement accompanying any documentation she provides which further addresses her rehabilitation efforts.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2024
Date of Mailing: June 26, 2024

[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.

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE APPLICATION FOR	:	STATE BOARD OF EXAMINERS
CERTIFICATION AFTER	:	DECISION
REVOCATION	:	DOCKET NO. 1617-209
OF	:	
KAREN A. BOBB	:	
_____	:	

On September 21, 2018, the State Board of Examiners (Board) voted to revoke Karen A. Bobb's teaching certificate as a result of her conviction for Child Abuse and resulting disqualification from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 to -7.3. Bobb previously held a substitute credential.

Bobb is now seeking certification after revocation pursuant to *N.J.A.C.* 6A:9B-4.9. In support of her application, Bobb sent a few emails to the Board and submitted a Final Order of Expungement, dated February 23, 2021.

On October 17, 2023, Bobb communicated that she wanted to re-apply for her substitute credential. The Board provided Bobb with a copy of *N.J.A.C.* 6A:9B-4.9, the regulation governing the filing of an application for certification after revocation. Further, the Board stated that an application to the Board should include detailed reasons why the Board should grant a request to apply for a new certificate. On October 19, 2023, Bobb wrote that she would like the opportunity to apply for a new substitute certificate and that all matters relating to her previous conviction were satisfied with the help of her attorney. She attached the Final Order of Expungement to her correspondence. On October 20, 2023, The Board acknowledged receipt of the expungement information, advised Bobb that the matter would be presented to the State Board of Examiners for review at an upcoming meeting, and suggested Bobb may want to submit a letter or statement to the Board to accompany the documentation she provided. On November 21, 2023, Bobb stated

that the matter that caused her revocation had been satisfied accordingly. She also indicated that her participation in the PTI program was sufficient for the offense.

N.J.A.C. 6A:9B-4.9, which governs applications for certification after revocation, provides:

> (a) A certificate that has been revoked for any of the grounds set forth in this chapter shall not be reinstated. An individual who has had a certificate revoked may file an application for a new certificate with the Board of Examiners.
>
> (b) The Board of Examiners shall not issue a new certificate to a candidate whose certificate(s) has been revoked unless the following conditions are met:
>
> 1. The candidate shall satisfy all criteria for the issuance of the certificate that are in effect at the time of the application for the new certificate;
>
> 2. At least four years shall have passed since the effective date of the revocation of the previous certificate(s);
>
> 3. The candidate provided evidence demonstrating rehabilitation for the unbecoming conduct, incompetence, or other cause for the revocation;
>
> 4. If the revocation was due to the conviction of a crime that is not disqualifying under N.J.S.A. 18A:6-7.1 et seq., the candidate has submitted evidence that he or she has been fully rehabilitated in accordance with N.J.S.A. 2A:168A-2 and that issuing a certificate to the candidate would not be detrimental to the public welfare;
>
> 5. The candidate shall have complied with all conditions imposed by the revocation order; and
>
> 6. If the revocation arose from a criminal matter involving the candidate, the candidate provided evidence that he or she has satisfied any condition imposed by the court, probation, plea bargain agreement or any other entity.
>
> (c) Notwithstanding the provisions of (b) above, the Board of Examiners shall not issue a new certificate to any candidate who is:

> 1. Ordered to forfeit certification as part of a settlement in a tenure or criminal proceeding;
>
> 2. Barred from teaching again in the State of New Jersey by order of a court of competent jurisdiction;
>
> 3. Ordered to forfeit certification as part of a plea bargain;
>
> 4. Ordered to forfeit certification as a condition for entrance into a pre-trial intervention program as set forth in Rule 3.28 of the New Jersey Court Rules;
>
> 5. Ordered to forfeit certification pursuant to a sentence imposed in a criminal proceeding;
>
> 6. Barred from teaching for any reason; or
>
> 7. Relinquishing his or her certificate pursuant to N.J.A.C. 6A:9B-4.10.
>
> [*N.J.A.C.* 6A:9B-4.9.]

Of relevance to Bobb's current application is subsection (b)3, which provides that the Board shall not issue a certificate to an individual after revocation when that candidate has not provided evidence demonstrating rehabilitation for the unbecoming conduct, incompetence, or other cause for the revocation. Nothing in the record before us convinces the Board that Bobb has met her burden of proving rehabilitation. Pursuant to *N.J.A.C.* 6A:9B-4.9, Bobb must provide information to this tribunal as to the circumstances leading to the revocation of her prior certificate and demonstrate rehabilitation that warrants the issuance of a new one.

After a thorough review of Bobb's submission, the Board determines that she has not adequately demonstrated rehabilitation. Bob has provided documentation substantiating the expungement of her criminal conviction. However, that evidence alone is insufficient to demonstrate the necessary rehabilitation as expungement cannot adequately mitigate her deplorable conduct many years ago. Bobb has not provided any objective indicia of rehabilitation

regarding her guilty plea to child abuse resulting in disqualification from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 to -7.3.

Clearly, Bobb cannot lay claim to being a role model for students. Importantly, the egregiousness of a conviction for child abuse cannot be overlooked or easily excused, especially when no evidence of rehabilitation has been demonstrated. Nothing has changed since the incident other than the passage of time. The Board revoked Bobb's certificate based on the finding of unbecoming conduct relating to a conviction of child abuse and resulting disqualification from public school employment. She was not fit to teach in New Jersey when her certificate was revoked in 2018 and she has not proven otherwise now. Absent a demonstration of compliance with the requirements set forth in *N.J.A.C.* 6A:9B-4.9(b), the Board finds no basis upon which to overturn that determination.

Accordingly, for the foregoing reasons, on December 8th, 2023, the Board voted to deny Karen A. Bobb's application for certification after revocation. On this 19th day of January 2024 the Board voted to adopt its formal written decision and it is therefore ORDERED that the application of Karen A. Bobb for certification after revocation is denied.

Rani Singh, Secretary
State Board of Examiners

RS/LF
Date of Mailing:
via certified and regular mail

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-9.

239-24

New Jersey Commissioner of Education

Final Decision

Robert Curcio,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

Synopsis

Petitioner, a former employee of the respondent Board, filed a petition requesting that the South Orange-Maplewood Board of Education provide him with full indemnification in a lawsuit filed against him in Superior Court. The Board has retained an attorney, who filed an answer to the lawsuit on the Board's and petitioner's behalf, but there have yet to be any other proceedings in the Superior Court case. The Board filed a motion to dismiss the petition, which was opposed by the petitioner.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case and the matter is ripe for summary decision; petitioner was employed by the Board from August 1974 to August 2003, and served as the Director of Athletics and Student Activities from January 1984 until his retirement from the District; in 2023, a lawsuit was filed in Superior Court alleging that between 1982 and 1986, two former students were sexually abused by a track coach who worked under the supervision of the petitioner when he served as Director of Athletics for the school district; the lawsuit alleges that petitioner negligently supervised the track coach, thereby enabling the abusive conduct to occur; *N.J.S.A.* 18A:16-6 addresses indemnification for school employees, holding that a board of education must defray all costs for any civil action brought against an employee for any act or omission arising out of the performance of the duties of the employee's position; here, it is not yet possible to know whether petitioner was acting within the scope of his duties as more than 40 years have elapsed since the alleged incidents occurred, and there has been no discovery or hearing to date; the Board has already provided petitioner with a defense in this matter, and he has suffered no harm, and is not likely to suffer any harm in the future as long as the Board maintains the status quo. The ALJ concluded that petitioner's request for full indemnification is not yet ripe for determination, and the Board is entitled to summary decision as a matter of law. Accordingly, the Board's motion to dismiss was granted without prejudice, and the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion, and adopted the Initial Decision as the final decision in this matter.

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.

239-24
OAL Dkt. No. EDU 04142-24
Agency Dkt. No. 40-2/24

New Jersey Commissioner of Education

Final Decision

Robert Curcio,

Petitioner,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that the issue of petitioner's entitlement to indemnification is not ripe for review, because the facts have yet to be developed and it is not possible at this stage in the proceedings to determine whether petitioner was acting within the scope of his employment. While *Azzaro v. Bd. of Educ. of the City of Trenton*, 477 *N.J. Super.* 427 (App. Div. 2023), requires an employee to provide notice to the board of education that he is seeking indemnification within a reasonable time after the initiation of an action against him, it does not require that the Commissioner decide the question of entitlement to indemnification prior to the conclusion of the action filed against the employee.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2024
Date of Mailing: June 26, 2024

[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 04142-24

AGENCY DKT. NO. 40-2/24

ROBERT CURCIO,

Petitioner,

v.

SOUTH ORANGE MAPLEWOOD BOARD OF EDUCATION,

Respondent.

Vito Gagliardi, Esq., for petitioner (Porzio, Bromberg & Newman, P.C., attorneys)

Patrick Carrigg, Esq., for respondent (Lenox Law Firm, attorneys)

Record Closed: May 14, 2024 Decided: May 22, 2024

BEFORE **ANDREA PERRY VILLANI**, ALJ:

STATEMENT OF THE CASE

Robert Curcio, former school employee, asks the South Orange Maplewood Board of Education (Board) to indemnify him in a lawsuit. The Board retained an attorney and filed an answer on his behalf, but there have been no other proceedings in the case. Is Curcio's request for full indemnification ripe for determination? No. A case is not ripe when there's no hardship to the parties and the issues are not yet fit for judicial review. K. Hovnanian Cos. of N. Cent. Jersey, Inc. v. N.J. Dep't of Envtl. Prot., 379 N.J. Super. 1, 9 (App. Div. 2005).

PROCEDURAL HISTORY

On February 26, 2024, Curcio filed a petition of appeal with the Commissioner of the New Jersey Department of Education seeking an order requiring the Board to indemnify him under N.J.S.A. 18A:16-6.

On March 20, 2024, the Board filed a Motion to Dismiss.

On March 22, 2024, the Department of Education transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On March 28, 2024, Curcio filed Opposition to the Motion to Dismiss, and on April 10, 2024, the Board filed a Reply to Curcio's Opposition.

On April 15, 2024, I held a prehearing telephone conference. Counsel agreed that no material facts are in dispute, and that I should render a decision as a matter of law.

On May 14, 2024, counsel submitted a Joint Statement of Material Facts, and I closed the record.

FINDINGS OF FACTS

Counsel submitted a Joint Statement of Material Facts as follows and, as such, I **FIND** as **FACT**:

1. Respondent South Orange Maplewood Board of Education (Board) is established under the laws of the State of New Jersey and is the governing body of the South Orange Maplewood School District.

2. The Board supervises, controls, and regulates each of the public schools located within the District, including Columbia High School (CHS).

3. Curcio was the former Director of Athletics and Student Activities at the District.

4. Curcio was employed by the Board from August 1974 to August 2003.

5. Curcio served as the Director of Athletics and Student Activities from January 1984 until his retirement from the District.

6. On July 24, 2023, an individual identified only as "Jane Doe" filed suit against the District, the former principal of CHS, and a former CHS teacher and track coach named Leonard Klepack (Defendant Klepack) in the Superior Court of New Jersey, Mercer County, Law Division, Civil Part under docket number MER-L-1412-23 (Superior Court Action). (J-1.)

7. In the Superior Court Action, Jane Doe alleged that Defendant Klepack abused her from 1982 to 1986 while he was her track coach. (J-1.)

8. On November 6, 2023, a First Amended Complaint was filed in the Superior Court Action with leave of the Superior Court. (J-2.)

9. The First Amended Complaint added a second plaintiff (Plaintiff Two) to the Superior Court Action and re-designated Jane Doe as "Plaintiff One." (J-2.)

10. The First Amended Complaint also named Curcio as a defendant in the Superior Court Action. (J-2.)

11. The First Amended Complaint alleges that Curcio "negligently supervised Defendant Klepack and lacked or failed to comply with rules, policies, guidelines or regulations which enabled Defendant Klepack to sexually abuse Plaintiff One." (J-2.)

12. The First Amended Complaint further alleges that Curcio "failed to supervise Defendant Klepack in school and when he took Plaintiff Two to track meets and competitions alone" and "exercised no oversight or supervision of Defendant Klepack and failed to request or require permission or authorization by Plaintiff Two's parents to allow Plaintiff Two to travel to track meets alone with Defendant Klepack." (J-2.)

13. The First Amended Complaint also alleges that Curcio "lacked or failed to comply with policies, rules, guidelines or regulations when Defendant Klepack took Plaintiff Two to multiple track events and sexually abused her in motels and hotels." (J-2.)

14. The First Amended Complaint in the Superior Court Action alleges that Curcio negligently supervised Defendant Klepack. (J-2.)

15. On December 4, 2023, Curcio's counsel wrote to counsel for the Board demanding that the Board provide Curcio with full indemnity pursuant to N.J.S.A. 18A:16-6. (J-3.)

16. On December 11, 2023, the New Jersey Schools Insurance Group (NJSIG) issued a coverage and reservation of rights letter and agreed to provide the District and Curcio with a defense in the Superior Court Action. (J-4.)

17. The NJSIG letter disclaimed coverage for any claims by Plaintiff One occurring prior to July 1, 1985 because the policies it issued only covered the period from July 1, 1985 to July 1, 1988. (J-4.)

18. Furthermore, the NJSIG letter disclaimed coverage for any claims by Plaintiff Two occurring after July 1, 1988 for the same reason. (J-4.)

19. On December 19, 2023, the District's insurance carrier, Chubb, issued a Coverage and Reservation of Rights letter and agreed to provide the District and Curcio with a defense in the Superior Court Action. (J-5.)

20. Chubb expressly disclaimed coverage of any claims asserted by Plaintiff Two because her alleged injuries occurred outside the policy's coverage period. (J-5.)

21. Chubb also determined that "the 1986-1987 INA Policy would likewise not apply to Plaintiff Two's claims of negligent supervision against Curcio." (J-5.)

22. Chubb further determined that, notwithstanding its decision to provide a defense to Curcio, it "may nevertheless owe no indemnification to Curcio under the 1986-1987 INA Policy." (J-5.)

23. On December 28, 2023, the undersigned counsel for Curcio again wrote to counsel for the Board demanding that the Board provide full indemnity, pursuant to N.J.S.A. 18A:16-6, irrespective of whether insurance coverage was available (J-6). Neither the Board nor any attorney acting on its behalf responded to this letter or the prior letter.

24. On January 9, 2024, the law firm of Anderson & Shah, LLC filed an Answer to the First Amended Complaint on behalf of the District and Curcio in the Superior Court Action. (J-7.)

CONCLUSIONS OF LAW

Summary decision may 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 the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). Even where a hearing is required by statute, a court or agency may dispense with the hearing and render summary decision if no dispute as to any material fact exists. See Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 120 (App. Div. 1995) (quoting In re Farmers' Mut. Fire Assurance Ass'n of N.J., 256 N.J. Super. 607, 618 (App. Div. 1992) ("[a]n evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts")).

In this case, summary decision is appropriate because no genuine issue of material fact exists. Indeed, the parties agree on the most important fact: the Board is already providing Curcio with a defense in the lawsuit filed against him. This key fact establishes that there has been no harm to Curcio in the case thus far. Therefore, the question of whether Curcio is entitled to "full indemnity," including a "commitment [by the Board] to defend him in the future" (J-8, p.4, emphasis added), is not yet ripe for determination, and the Board is entitled to summary decision as a matter of law.

The ripeness doctrine is rooted in prudential limitations on the exercise of judicial authority. Murphy v. New Milford Zoning Comm'n, 402 F.3d 342, 347 (2d Cir. 2005). The general inquiry is whether the court would benefit from deferring initial review until the claims presented for resolution have arisen in "a more concrete and final form." Ibid. The doctrine's "basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." Ibid. A case's ripeness depends on two factors: (1) the fitness of issues for judicial review and (2) the hardship to the parties if judicial review is withheld at this time. K. Hovnanian Cos. of N. Cent. Jersey, Inc. v. N.J. Dep't of Envtl. Prot., 379 N.J. Super. 1, 9 (App. Div. 2005) (quoting 966 Video, Inc. v. Mayor & Tp. Comm. of Hazlet Tp., 299 N.J. Super. 501, 515-16 (Law Div. 1995)).

Most importantly, Curcio's request for full indemnification is not yet ripe for review because the Board has already provided him with a defense in the lawsuit filed against him and, consequently, he has suffered no hardship under factor two of the ripeness test. As set forth above, it is undisputed that: the Board retained an attorney through their insurance carriers; the attorney filed an answer to the complaint on Curcio's behalf; and the Board's attorney continues to represent Curcio. Curcio has suffered no harm, and he is likely to suffer no harm in the future as long as the Board maintains the status quo.

Curcio's claim for full indemnification also fails factor one of the ripeness test because it is not fit for judicial review at this time. In determining whether an issue is fit for judicial review, we consider whether review would require additional factual development. 966 Video, Inc., 299 N.J. Super. at 516. In this situation, proper judicial review requires additional factual development around one very important question: whether Curcio was acting within the scope of his employment when he committed the

acts alleged in the complaint. Indeed, New Jersey law is clear that this is the crucial determination that must be made on an indemnification claim.

N.J.S.A. 18A:16-6 is the statute that addresses indemnification for school employees. N.J.S.A. 18A:16-6 holds, in pertinent part, that a board of education must defray all costs for any civil action that has been brought against a board employee for any act or omission arising out of the performance of the duties of such employment. The New Jersey Supreme Court has further stated that "[t]he only question to be answered when a school board employee seeks civil indemnification under N.J.S.A. 18A:16–6 is whether the employee was acting within the scope of his or her employment duties." L.A. v. Bd. of Educ. of Trenton, 221 N.J. 192, 205-6 (2015).

In this case, we do not yet know whether Curcio was acting within the scope of his employment during the incidents alleged in the complaint. The plaintiffs added Curcio to their lawsuit a mere six months ago. There have been no court proceedings. There has been no discovery. The alleged incidents occurred about forty years ago, back in the 1980s. As a result, few facts are known at this time, but more will likely emerge in discovery. It is possible that those facts will reveal Curcio was not acting within the scope of his employment and is not entitled to indemnification.

Also, it is not possible to gather and have a hearing on those facts at the present time. Many of the relevant facts are known only to the plaintiffs in the Superior Court Action. For instance, of particular importance to the plaintiffs' case against Curcio will be the observations of witnesses (e.g. school staff, coaches, other students, etc.) who have first-hand knowledge of Curcio's relationship and interactions with Defendant Klepack. While the Board may have some knowledge of who those potential witnesses are, the plaintiffs in the lawsuit are in the best position to identify who was present at the alleged incidents. But, again, we do not have the plaintiffs' evidence as there has not been any discovery or court proceedings in the Superior Court Action. As such, it would be highly impractical, if not impossible, to have a hearing at this time.

The most recent reported decision on the issue of indemnification for a school employee supports the notion that a hearing at this early stage of litigation would be premature. See Azzaro v. Bd. of Educ. of City of Trenton, 477 N.J. Super. 427 (App. Div.

2023). In Azzaro, the Appellate Division held that an employee must provide a school board with reasonable notice after the initiation of a proceeding that she is seeking indemnification. Id. at 2. However, that does not mean that a school board must fully indemnify an employee immediately at the start of the proceeding. Azzaro further held that, even though N.J.S.A. 18A:16-6 suggests a board's obligation to provide a defense arises when the action is instituted, "a board may initially deny defense costs" and "will 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 10, 16-17 (emphasis added).

Likewise, in this case, it should later be determined – when more facts are available – if Curcio was, in fact, working within the scope of his employment. It should also be emphasized that, although Azzaro contemplates, "a board may initially deny defense costs," the Board in this case has *not* denied Curcio defense costs. Thus, he has suffered no harm. For all of the foregoing reasons, I **CONCLUDE** that Curcio's request for full indemnification is not yet ripe for determination, and the Board is entitled to summary decision as a matter of law.

ORDER

Given my Findings of Fact and Conclusions of Law, I **ORDER** that the Board's Motion to Dismiss is **GRANTED**, and that the petitioner's petition of appeal is **DISMISSED, WITHOUT PREJUDICE**, subject to petitioner's right to re-file when the issue of indemnification is ripe for adjudication.

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 is authorized by law to make a final decision in this case. 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 under 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.

May 22, 2024

DATE

ANDREA PERRY VILLANI, ALJ

Date Received at Agency May 22, 2024

Date Mailed to Parties: May 22, 2024
sej

APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

None

EXHIBITS

Joint

J-1 July 24, 2023 Complaint

J-2 November 6, 2023 First Amended Complaint

J-3 Curcio's December 4, 2023 Letter

J-4 NJSIG's December 11, 2023 Letter

J-5 Chubb's December 19, 2023 Letter

J-6 Curcio's December 28, 2023 Letter

J-7 January 9, 2024 Answer to First Amended Complaint

J-8 Curcio's February 26, 2024 Verified Petition of Appeal

J-9 Board's March 20, 2024 Motion to Dismiss, Curcio's March 28, 2024 Opposition, and Board's April 10, 2024 Reply

For Petitioner:

None

For Respondent:

None

240-24
OAL Dkt. No. EDU 04131-24
Agency Dkt. No. 76-3/24

New Jersey Commissioner of Education

Final Decision

A.G., on behalf of minor child, L.G.,

Petitioner,

v.

Board of Education of the Township of West Milford, Passaic County,

Respondent.

The record of this matter, the proposed Settlement Agreement and Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2024
Date of Mailing: June 26, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 04131-24
AGENCY REF. NO. 76-3/24

A.G. ON BEHALF OF L.G.,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWNSHIP OF WEST MILFORD, PASSAIC COUNTY,

Respondent.

A.G., parent of **L.G.**, petitioner, pro se

Andrew Brown, Esq., for respondent (Scarinci Hollenbeck, attorneys)

Record Closed: May 16, 2024 Decided: May 16, 2024

BEFORE **WILLIAM COURTNEY,** ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the

Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties, however, have settled this case without the need for a hearing. Their settlement agreement and board resolution is attached to this decision.

Having reviewed the terms of their settlement agreement, I have determined that the settlement is voluntarily, consistent with the law, and fully dispositive of all issues in controversy between the parties.

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.

William A Courtney

May 16, 2024
DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency: MAY 17, 2024

Date Mailed to Parties: MAY 17, 2024

db

SETTLEMENT AGREEMENT AND RELEASE

BETWEEN

THE WEST MILFORD BOARD OF EDUCATION

AND

A.G. ON BEHALF OF L.G.

Whereas, A.G. is the parent of L.G. who is a student at West Milford High School ("WMHS") and is subject to all of the rules and regulations applicable to students of the West Milford Board of Education ("BOE"); and

Whereas, on or about December 14, 2023, L.G. was accused of vaping in a restroom at WMHS; and

Whereas, pursuant to Board Policies 5530 and 5533, N.J.S.A. 18A:40A-1 et seq. and N.J.A.C. 6A:16-4.1 et seq., L.G. was suspended from school and required to undergo a medical examination, including a drug screen; and

Whereas, A.G. submitted a doctor's note ("Note") stating only that L.G. was able to return to school, and

Whereas, that Note failed to meet the requirements of the policies, statutes, and/or codes, cited above, and

Whereas, the Board offered numerous opportunities for A.G. to comply with the medical examination requirement pursuant to those policies, statutes, and/or codes,

Whereas, L.G. was kept out of school beginning on February 26, 2024, by the Board based on A.G.'s failure to comply, and

Whereas, L.G. was as a result placed on home instruction pursuant to N.J.A.C. 6A:16-10.2; and

Whereas, A.G. filed an emergent application with the Commissioner of Education, docketed as EDU 04131-2024; for emergent relief seeking L.G.'s immediate return to school; and

Whereas, the Parties held a hearing before the Honorable Willam Courtney, ALJ, on April 1, 2024; and

Whereas, during the hearing the Board and A.G. reached a voluntary agreement resolving all matters;

Now, therefore, be it resolved that the Board and A.G. agree as follows:

1. L.G. shall return to WMHS on April 8, 2024, with the same rights, obligations, and privileges as any other student.

2. The Interim Superintendent agrees to discuss the possibility of L.G. trying out for and/or joining WMHS's baseball team with WMHS Athletic Director and Head Baseball Coach, with the decision ultimately resting with the WMHS Athletic Director and Head Baseball Coach.

3. For a period of one year from the date of this Agreement, should L.G. be found in possession of any vaping device and/or substance listed in N.J.S.A. 2C:35-2, A.G. agrees to consent to L.G.'s medical examination and drug test as set forth in the Board policies.

4. This Agreement shall not be construed to mean that L.G. admits to having used or been under the influence of any substance listed in N.J.S.A. 2C:35-2.

5. A.G. agrees to withdraw with prejudice all matters related to docket EDU 04131-2024.

6. This Agreement shall not be construed to mean the Board's policies are inconsistent with the law or violative of L.G.'s rights, nor shall this Agreement be construed to mean the Board acquiesces to A.G.'s failure to consent to L.G.'s medical examination.

7. A.G. waives any other claims he may have arising out of the issues identified in the above referenced matters currently before the Commissioner of Education.

8. This Agreement does not establish any sort of precedent and may not be relied upon in any future matters involving these issues.

For the Board:

Date: 4/4/2024

A.G. o/b/o L.G.:

Date: 4/3/2024

WEST MILFORD TOWNSHIP BOARD OF EDUCATION
Office of the Business Administrator/Board Secretary

EXTRACT FROM THE MINUTES OF A MEETING OF THE BOARD OF EDUCATION OF THE TOWNSHIP OF WEST MILFORD, PASSAIC COUNTY, NEW JERSEY, AS RECORDED IN THE OFFICIAL MINUTE BOOK

The Board of Education of the Township of West Milford in the County of Passaic, New Jersey, convened in public session on Thursday, April 4, 2024, at 7:15 p.m., in the West Milford High School Upper Media Center.

The following members of the Board of Education were present: Mrs. Racano, Mrs. Marquard, Mrs. Dwyer, Mrs. Jurgensen, Mrs. Romeo, Mrs. Van Dyk, and Mrs. Lockwood.

The following members of the Board of Education were absent: Mr. Cytowicz and Mr. Lippe.

Motion by Mrs. Dwyer, seconded by Mrs. Van Dyk, to approve the following agenda item:

The recommendation of the Interim Superintendent to approve the following Resolution:

RESOLVED, that the Board of Education accepts the Settlement Agreement between the West Milford Township Board of Education and the parent of student ID #70431; and

BE IT FURTHER RESOLVED, that the Board President and the Board Secretary is authorized to sign the agreement on behalf of the Board.

ROLL CALL:

TRUSTEE	VOTE	TRUSTEE	VOTE	TRUSTEE	VOTE
Mrs. Dwyer	Yes	Mrs. Racano	Yes	Mrs. Van Dyk	Yes
Mr. Cytowicz	Absent	Mrs. Romeo	No	Mrs. Marquard	Yes
Mrs. Jurgensen	No	Mr. Lippe	Absent	Mrs. Lockwood	Yes

The **MOTION PASSED.**

STATE OF NEW JERSEY)
)ss
COUNTY OF PASSAIC)

I, William Scholts, Business Administrator/Board Secretary, of the Township of West Milford, in the County of Passaic, State of New Jersey, hereby certify that the foregoing extract from the minutes of the meeting of the Board of Education of said district duly called and held on April 4, 2024, has been compared by me with the original minutes as officially recorded in my office in the minute book of said West Milford Township Board of Education and is a true, complete copy thereof and of the whole of said original minutes so far as the same relate to the subject matter referred to in said extract. I witness I have hereunto set my hand and affixed the corporate seal of said Board of Education this 9th day of April, 2024.

Board Seal

William Scholts
Board Secretary/Business Administrator

241-24

STATE OF NEW JERSEY
COMMISSIONER OF EDUCATION

In the Matter of the Tenure Hearing of

BEN SHOER

and

NEW JERSEY DEPARTMENT OF CHILDREN AND FAMILIES

Agency Docket No.: 241-7/24

AWARD OF ARBITRATOR

The undersigned Arbitrator, having been appointed by the Commissioner of Education of the State of New Jersey pursuant to the TeachNJ Act and having been duly sworn, and having duly considered the proofs and allegations offered by the parties, AWARDS as follows:

The undersigned was duly designated as Impartial Arbitrator for the purpose of adjudicating the tenure charges filed by the New Jersey Department of Children and Families against Respondent Ben Shoer pursuant to the TEACHNJ Act, NJSA 18A: 6-16, as amended by P.L. 2012, c. 26. These charges alleged that Respondent repeatedly engaged in inefficient teaching and engaged in conduct unbecoming a tenured teaching staff member and other

cause requiring his dismissal. The Department of Children and Families introduced documentary evidence setting forth in detail the basis for the charges in the instant case. The Respondent disputed the validity of the tenure charges. Shortly before the first of two hearings scheduled in December 2024 the parties entered into a Settlement Agreement resolving their dispute.

The terms and conditions of this voluntary resolution were reduced to a Settlement Agreement and Release that was executed by Respondent and an authorized representative of the New Jersey Department of Children and Families on December 2, 2024.

The Settlement Agreement and Release was submitted to the Arbitrator for examination and approval. After duly considering the nature of the tenure charges, the Respondent's record of service to the Department of Children and Families, and the advantages and factors cited by the parties as the basis underlying their voluntary settlement, I hereby find the terms and conditions contained in the Settlement Agreement and Release between the Department of Children and Families and Ben Shoer dated December 2, 2024 each of whom has been advised by independent legal counsel, to be reasonable, consistent with the terms and intent of the TEACHNJ statute and applicable regulations, and in the best interest of both the parties and the public.

The Settlement Agreement and Release resolved all issues and allegations of inefficiency and misconduct, including the charge of conduct unbecoming a public school employee. Consequently, I accept the settlement as proposed by the parties in the Settlement Agreement and Release executed

by the parties, and hereby issue this Award of Arbitrator incorporating the terms of the Settlement Agreement and Release, effective December 2, 2024.

Princeton, New Jersey
December 5, 2024

Daniel F. Brent, Arbitrator

State of New Jersey
County of Mercer

On this 5th day of December 2024 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Jessica V. Zakhari

JESSICA V. ZAKHARI
COMM # 50220656
NOTARY PUBLIC
EXP. 04/04/2029
NEW JERSEY

252-24
State Board of Examiners Dkt. No. 1920-179
Agency Dkt. No. 5-2/24A

New Jersey Commissioner of Education

Final Decision

In the Matter of the Certificates of
Sharonda Allen, State Board of Examiners,
New Jersey Department of Education.

Order of Suspension by the State Board of Examiners, January 19, 2024

For the Respondent-Appellant, Sanford R. Oxfeld, Oxfeld Cohen, P.C.

For the Petitioner-Respondent State Board of Examiners, David L. Kalisky, Deputy Attorney General (Matthew J. Platkin, Attorney General of New Jersey)

The Commissioner has reviewed the record and papers filed in connection with appellant Sharonda Allen's appeal of the Order of the State Board of Examiners (Board), dated January 19, 2024, suspending her Teacher of Elementary School Certificate of Eligibility, Teacher of Elementary School Certificate, Teacher of Social Studies Certificate, and Supervisor Certificate, for one year. Appellant was a tenured special education teacher at the East Orange Board of Education. East Orange certified tenure charges against appellant and, following an arbitration, the Arbitrator sustained Count Eight, determined that appellant was guilty of insubordination and unbecoming conduct, and recommended that she be terminated from her teaching position.

In Count Eight, East Orange alleged that Allen jeopardized the safety of a student, S.B., by disclosing the student's full name to another student with the intent to have the student harassed, intimidated, or bullied, as retaliation for her suspension. The Arbitrator found that it was undisputed that appellant disclosed S.B.'s full name to another student. The Arbitrator also found that, following

the disclosure, S.B.'s mother feared for S.B.'s safety and requested that the student be transferred to another school. The Arbitrator further found that appellant intended to intimidate S.B. and defied directives not to discuss the matter involving S.B. with parents or students. The Arbitrator rejected appellant's claim that it was necessary for her to disclose S.B.'s full name so that students could report the fact that S.B. lied about a 2018 incident which resulted in appellant's suspension and transfer as incredible. Ultimately, the Arbitrator concluded that appellant should be terminated from her teaching position and found that she had not expressed any remorse for her actions.

Subsequently, the matter was referred to the Board to determine whether appellant's conduct warranted action against her certificates. The Board concluded that the doctrine of collateral estoppel required it to accept the facts found in the tenure hearing by the Arbitrator and that those facts provided just cause to suspend appellant's certificates. In weighing whether to revoke or suspend appellant's certificates, the Board determined that appellant's conduct indicated a serious lapse in judgment. However, the Board acknowledged that the incident was an isolated event. The Board also considered mitigating evidence presented by appellant, including successes during her fifteen-year teaching career, awards and honors she received, and her continued dedication to the community. Accordingly, the Board found that revocation was not appropriate and instead ordered that appellant's certificates be suspended for one year.

On appeal, appellant argues that the Board's decision was arbitrary, capricious, and not supported by sufficient credible evidence and that the imposition of a one-year suspension of her certificates was therefore excessive under the circumstances. Appellant claims primarily that the Board did not give appropriate weight to certifications she submitted to provide "additional context" regarding the unbecoming conduct. While she concedes that she made a mistake, she emphasizes that no harm resulted from the unbecoming conduct, and that it did not result in a harassment,

intimidation, or bullying (HIB) investigation by the district or a report to the Department of Children and Families' Institutional Abuse Investigation Unit (IAIU).

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute his judgment for that of the Board so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. The Commissioner's role in reviewing appeals is constrained by *N.J.A.C.* 6A:4-4.1(a), which specifies that "the Commissioner shall ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated that the State Board of Examiners . . . acted in a manner that was arbitrary, capricious, or contrary to law." *See Morison v. Willingboro Bd. of Educ.*, 478 *N.J. Super.* 229, 238 (App. Div. 2024) (citing *N.J.A.C.* 6A:4-4.1(a)).

After a comprehensive review of the record, the Commissioner finds that the record contains sufficient credible evidence to support the Board's determination that appellant engaged in unbecoming conduct and that a one-year suspension is the appropriate penalty. As the Board correctly concluded, the doctrine of collateral estoppel precludes appellant from relitigating the issue of unbecoming conduct, as appellant—who was represented by counsel—had a full and fair opportunity to contest this finding during the tenure proceeding. Moreover, appellant unsuccessfully challenged the Arbitrator's decision in the Appellate Division, and that court concluded that there was sufficient credible evidence in the record to support the Arbitrator's factual findings pertaining to Count Eight. *Allen v. E. Orange Bd. of Educ.*, 2022 *N.J. Super. Unpub. LEXIS* 174 at *12-13 (App. Div. Feb. 4, 2022), *certif. denied*, 252 *N.J.* 371 (2022). The Commissioner finds no basis to dispute the Arbitrator's findings, particularly when the Appellate Division has affirmed such findings. Furthermore, the Board's Order reflects that it fully considered appellant's certifications and her claims that the unbecoming conduct did not result in HIB or IAIU investigations. Appellant has not

provided any legal authority to support her contention that the Board somehow erred by not giving the certifications more weight in its analysis.

Regarding her suspension, appellant contends that the penalty for her unbecoming conduct should be limited to the loss of her employment with the district and should not affect her ability to teach elsewhere. However, the Appellate Division has affirmed the Board's ability to revoke or suspend certificates pursuant to a separate regulatory action even after arbitrated tenure proceedings result in the imposition of sanctions or penalties. *Morison*, 478 *N.J. Super.* at 245-51. Appellant also argues that her conduct was much less serious than that of other teachers whose certificates were suspended and contends that there is no justification for a one-year suspension of her certificates. But her reliance on *In the Matter of the Certificates of Vincent Ajayi*, Agency Dkt. No. 1617-121, State Board of Examiners Order of Suspension (March 1, 2018) and *In the Matter of the Certificates of Darnell Coleman*, Agency Dkt. No. 1011-178, State Board of Examiners Order of Suspension (May 16, 2013) is misplaced.

In both *Ajayi* and *Coleman*, the respondents committed unbecoming conduct by engaging in physical altercations with students. The Board suspended Ajayi's certificates for 18 months and suspended Coleman's certificates for two years. Neither *Ajayi* nor *Coleman* support appellant's contention that a one-year suspension of her certificates—under entirely different factual circumstances—was arbitrary, capricious, or unreasonable. A physical altercation is not a prerequisite to a suspension of one's certificates, and the fact that appellant did not engage in a physical altercation with a student does not require the Commissioner to conclude that a one-year suspension of her certificates is unreasonable. Moreover, the Board has previously suspended certificates in matters involving teachers who exercised poor judgment by engaging in inappropriate discussions with students. *See, e.g., In re Certificates of Zantow*, Agency Dkt. No. 0607-126, State Bd.

of Exam'rs Order of Suspension at 5 (July 28, 2008) (imposing one-year suspension of certificates); *In re Certificates of Skerbetz*, Agency Dkt. No. 0405-315 State Bd. of Exam'rs Order of Suspension at 5-6 (February 22, 2007) (imposing one-year suspension of certificates).

Finally, appellant suggests that if a penalty is warranted, a more appropriate consequence would be a censure or reprimand. This contention is likewise unavailing, as the Board's regulations expressly permit revocation or suspension of certificates; they do not empower the Board to issue censures or reprimands. *See N.J.A.C.* 6A:9B-4.4; *Morison*, 478 *N.J. Super.* at 237. There is nothing in the record to suggest that the Board's decision to suspend appellant's certificates for one year was arbitrary, capricious, or unreasonable.

Accordingly, the decision of the State Board of Examiners suspending appellant's certificates for one year is affirmed.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 1, 2024
Date of Mailing: July 3, 2024

[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.

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF	:	STATE BOARD OF EXAMINERS
SHARONDA ALLEN	:	ORDER OF SUSPENSION
_____	:	DOCKET NO: 1920-179

At its meeting of May 14, 2020, the State Board of Examiners (Board) reviewed a decision forwarded by the Commissioner of Education (Commissioner) that had dismissed Sharonda Allen from her tenured position as a special education teacher with the East Orange Board of Education (East Orange). *In the Matter of the Tenure Hearing of Sharonda Allen*, Dkt. No. 140-6/19 (Arbitrator's Decision, December 27, 2019). Allen currently holds a Teacher of Elementary School Certificate of Eligibility, issued in April 2001; a Teacher Elementary School certificate, issued in October 2002; a Teacher of Social Studies certificate, issued in December 2003; and a Supervisor certificate, issued in April 2014.

East Orange certified tenure charges against Allen alleging unbecoming conduct and other just cause. *Ibid.* East Orange alleged, in counts one through seven, that Allen failed to perform required duties and responsibilities, displayed unprofessional and inappropriate behavior in her interactions with students, and insubordinate behavior in her interactions with supervisors. *Ibid.* In count eight, East Orange alleged that Allen jeopardized the safety of a student, S.B., by releasing the name of that student with the intent to have him harassed, intimidated, or bullied. *Ibid.* The Arbitrator concluded that East Orange had proven that Allen was guilty of unbecoming conduct. *Ibid.*

In his decision, dated December 27, 2019 (which is incorporated herein by reference), the Arbitrator found that East Orange had proven the allegations in count eight of the tenure charges and dismissed Allen from her tenured employment. *Id.* at p. 36. There was no dispute that Allen had clearly identified the full name of student S.B. to a separate student, P.S. *Id.* at p. 32. Allen's communication was purportedly sent via a social media private messaging platform and then student P.S. more widely disseminated S.B.'s full name, resulting in fear for S.B.'s safety and S.B.'s mother requesting a transfer for S.B. *Ibid.*

The Arbitrator determined that Allen's claim and testimony, that disclosure of S.B.'s name was necessary so that students could report the fact that S.B. lied about a separate December 5, 2018 incident which resulted in Allen's suspension and transfer, was incredible. *Id.* at p. 33. Allen was intimately involved in the December 5, 2018 incident and she should have grieved her two-week suspension and "not provide a post-hoc rationalization for disclosing S.B.'s name in th[e tenure] proceeding." *Ibid.* Although Allen argued that there was no evidence that she intended to harass, intimidate or bully S.B., there was testimony that students approached S.B. after his name was released and S.B. was subsequently transferred to a different school. *Id.* at p. 33-34. The Arbitrator found that Allen "intended to put undue pressure on S.B., a ninth grade student[,] and the have S.B. intimidated." *Id.* at p. 34.

The Arbitrator concluded, based on aspects of the record that were "extraordinarily troubling," that termination was necessary. *Id.* at p. 35. One of the aspects highlighted by the arbitrator was that Allen did not express any remorse for her actions. *Ibid.* Allen filed suit, with the New Jersey Superior Court, seeking to vacate the arbitration result. The trial court dismissed her complaint. *Sharonda Allen v. East rand Board of Education, Essex County*, Dkt. No. C-

000052-20. On appeal, the New Jersey Superior Court, Appellate Division, in a decision dated February 4, 2022, affirmed the award of termination. *Sharonda Allen v. East Orange Board of Education, Essex County*, Dkt. No. A-3995-19 (App. Div. February 4, 2022), *cert. denied* (December 6, 2022). In so doing, the court noted that the "record shows that [Allen] demonstrated conduct which would permit a factfinder to conclude that she was unfit to perform the duties of a schoolteacher." *Id.* at p. 16.

Upon review of the above information, the Board voted at its meeting of May 14, 2020 to issue Allen an Order to Show Cause as to why her certificates should not be revoked. The Board sent Allen the Order to Show Cause by regular and certified mail on July 1, 2020. The Order to Show Cause provided that Allen must file an Answer within 30 days. On July 20, 2020, Allen requested the Order to Show Cause be held in abeyance pending the outcome of an appeal of the Arbitration Decision. The Board granted Allen's request on July 29, 2020. Allen filed an Answer to the Order to Show Cause on February 15, 2023.

In her Answer, Allen admitted that tenure charges had been brought against her, that the Arbitrator concluded that Allen should be terminated, and that she was dismissed from her employment based on the one count of the tenure charges that the Arbitrator sustained. (Answer, ¶¶ 2, 6, 7). Allen stated that the Arbitrator's Decision dismissed seven of the eight counts contained in the tenure charges. (Answer, ¶ 4). Allen denied that she engaged in unbecoming conduct and argued she was not given the opportunity to defend against certain allegations during the tenure hearing. (Answer, ¶¶ 6, 7). Allen also denied there was just cause to revoke her certificates. (Answer, ¶ 8).

Thereafter, pursuant to *N.J.A.C.* 6A:9B-4.6(e), on March 27, 2023, the Board sent Allen a hearing notice by regular and certified mail. The notice explained that it appeared that no material facts were in dispute. Thus, Allen was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder, as well as arguments with regard to the appropriate sanction in the event that the Board found just cause to take action against his certificate. Allen was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Allen filed a response on June 16, 2023.

In that response, Allen claimed that the conduct for which she was found guilty of by the arbitrator, releasing S.B.'s name to student P.S. with the intent to have S.B. harassed, intimidated, or bullied, does not warrant revocation or suspension of her certificates. (Hearing Response, p. 2, 12). She acknowledges that she cannot challenge the arbitrator's factual findings in this forum. *Id.* at 12. She states she "deeply regrets releasing S.B.'s name to another student in the midst of her employment issues with [East Orange]." *Id.* at 2. She offers two certifications, one by herself and one by student P.S., to provide an explanation and to add context to the situation. *Ibid.* Student P.S. certifies that he had no malintent towards S.B. and was only trying to help Allen regain her position at the high school. *Ibid.* Allen certified that she had been unfairly transferred away from her students at the high school and was desperate to find a way back. *Id.* at 2-3. She claims that there is no evidence that releasing S.B.'s name resulted in any harm to anyone, including S.B. *Id.* at 3. She reiterates that she made a mistake and regrets her mistake in judgment. *Ibid.* She recognizes that the proper action would have been to decline student P.S.'s request and handle it through more appropriate channels. *Id.* at 23. She states she was never criminally charged, nor

was she ever the subject of a harassment, intimidation, and bullying ("HIB") complaint or an Institutional Abuse Investigation Unit ("IAIU") investigation. *Ibid.* She claims that, based on the totality of the circumstances, there is no just cause to take action against her certificates. *Id.* at 15.

As to mitigation, Allen claims she has already suffered the loss of her tenured employment and the effects that accompany that significant penalty. *Id.* at 2. She claims that her conduct here relates only to her employment with East Orange and does not reflect on her fitness to function as a teacher in general. *Id.* at 17. Further, Allen offers the successes in her teaching career; her continued commitment to, and involvement in, the community; and her receipt of various awards and honors. *Id.* at 3-5. For example, Allen notes that subsequent to her termination from East Orange, she established Operation Grow, Inc., an organization serving thousands of people each year that assists with fulfillment of community service graduation requirements of students, as well as college and career preparation and workforce development and readiness. *Id.* at 10-11. She also states she is the co-chair of the New Jersey Chapter of Climate Reality and involved in numerous local civic activities. *Id.* at 11. Allen asked that the Board find no just cause exists to take action against her certificates based on the totality of the circumstances. *Id.* at 24. She also asked to appear before the Board.

The threshold issue before the Board in this matter is whether Allen's conduct constitutes conduct unbecoming a certificate holder. At its meeting of December 8, 2023, the Board considered the allegations in the Order to Show Cause as well as Allen's Answer and Hearing Response. The Board determined that collateral estoppel applied as to the facts found in the tenure hearing and therefore no material facts related to Allen's offense were in dispute. *See In the Matter of the Certificates of Richard Barnes-Bey*, Dkt. No. 1314-194 (Bd. Of Examiners September 17,

2015) (Collateral estoppel applies to facts established in a prior tenure hearing for Board revocation proceedings). Thus, the Board determined that summary decision was appropriate in this matter. *N.J.A.C.* 6A:9B-4.6(h).

The Board must now determine whether Allen's conduct, as set forth in the Order to Show Cause, represents just cause to act against his certificate pursuant to *N.J.A.C.* 6A:9B-4.4. The Board finds that it does.

The Board may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C.* 6A:9B-4.4. "Teachers... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). Allen's conduct in jeopardizing the safety of a student by releasing the student's name to another student with the intent to have the student harassed, intimidated, bullied or worse, as retaliation for an employment decision made by East Orange is behavior that indicates a serious lapse in judgment warranting action on her certificates. However, because it was an isolated event, and given the mitigating evidence presented by Allen, namely her successes in her fifteen-year teaching career, the awards and honors she received, and her continued dedication to the education community, the Board believes that only suspension is warranted here. The Board therefore concludes that the appropriate response to Allen's conduct is a one-year suspension of her certificates.

Accordingly, on December 8, 2023, the Board voted to suspend Sharonda Allen's Teacher of Elementary School Certificate of Eligibility, Teacher Elementary School certificate, Teacher of Social Studies certificate, and Supervisor certificate, for a period of one year, effective immediately. On this 19th day of January 2024, the Board voted to adopt its formal written decision and it is therefore ORDERED that the suspension of Sharonda Allen's certificates be effective immediately. It is further ORDERED that Allen return her certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Rani Singh, Secretary
State Board of Examiners

RS/LF
Date of Mailing:
Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.

253-24
OAL Dkt. No. 04631-24
Agency Dkt. No. 49-3/24

New Jersey Commissioner of Education

Final Decision

L.C., on behalf of minor child, D.C.,

Petitioner,

v.

Board of Education of the Black Horse Pike, Regional School District, Camden County,

Respondent.

The record of this matter, and the Initial Decision of the Office of Administrative Law (OAL), have been reviewed and considered. In this case, the petitioner filed a Pro Se Residency Appeal, requesting that her son, D.C., be allowed to finish high school at Black Horse Pike Regional High School. On April 4, 2024, the Board of Education (Board) for Black Horse Pike Regional School District (District) filed an Answer and Counterclaim requesting tuition costs. The Board alleged that L.C. and her son were residing in Maple Shade, which is not a sending area of the District. Thereafter, the matter was transmitted to the Office of Administrative Law (OAL) as a contested case.

The Administrative Law Judge (ALJ) found that petitioner failed to appear for both telephone conferences scheduled in this matter despite having received appropriate notice of same. Accordingly, the ALJ determined that petitioner had abandoned her appeal and returned the file to the Office of Controversies and Disputes pursuant to *N.J.A.C.* 1:1-14.4(a). Further, the

ALJ noted that the respondent Board had elected to waive its right to assess tuition against L.C. and accepted the dismissal of petitioner's residency appeal as the appropriate relief in this case.

Upon review, the Commissioner concurs with the ALJ's determination that petitioner abandoned her appeal by failing to participate in the hearings scheduled in this matter; further, petitioner failed to sustain her burden of establishing that she was domiciled within the Black Horse Pike Regional School District when she sought to enroll her son in respondent's high school.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 1, 2024
Date of Mailing: July 3, 2024

[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

DISMISSAL

OAL DKT. NO. EDU 04631-2024

AGENCY DKT. NO. 49-3/24

L.C. ON BEHALF OF MINOR CHILD, D.C.,

Petitioner,

v.

BLACK HORSE PIKE REGIONAL SCHOOL DISTRICT, BOARD OF EDUCATION, CAMDEN COUNTY,

Respondent.

L.C., on behalf of minor child, **D.C**, petitioner, pro se

Daniel H. Long, Esq., for respondent (Wade, Long, Wood & Long, LLC., attorneys)

Record Closed: May 22, 2024 Decided: May 23, 2024

BEFORE **KATHLEEN M. CALEMMO,** ALJ:

In accordance with N.J.A.C. 1:1-3.3(b) and 1:1-14.4(a) this tribunal is directing the Clerk to return the case to the transmitting agency for the reasons stated below:

On February 29, 2024, L.C., on behalf of her son, D.C, filed a Pro Se Residency Appeal requesting that D.C. be allowed to finish high school at Black Horse Pike Regional High School. On April 4, 2024, the Board of Education (Board) for Black Horse Pike Regional School District (District) filed an Answer and Counterclaim requesting tuition costs. The Board alleged that L.C. and her son were residing in Maple Shade, which is not a sending area of the District.

The Department of Education, Office of Controversies and Disputes, transmitted the appeal to the Office of Administrative Law (OAL) to be heard as a contested case.

On April 18, 2024, the case was assigned to me. I held the initial telephone conference on May 7, 2024. Only Daniel H. Long, Esq, appeared on behalf of the Board. I scheduled a second telephone conference for May 22, 2024. The notice to the parties contained the following language: "**If you do not participate in the telephone conference, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.**" On May 22, 2024, only Mr. Long, on behalf of the Board, appeared for the telephone conference.

I have had no contact from L.C. since the matter was transmitted.

In the Answer and Counterclaim, the Board was seeking tuition and costs. At the telephone conference on May 22, 2024, Mr. Long represented that if this appeal was dismissed, the Board would waive its request for tuition from petitioner.

LEGAL ANALYSIS

Pursuant to N.J.A.C. 1:1-14.4:

(a) If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

(b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

(c) If the judge receives an explanation:

1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or

2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter and, at his or her discretion, order any of the following:

i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

> (d) If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

I **CONCLUDE** that L.C. was provided with appropriate notices of scheduled proceedings, namely telephonic prehearing status conferences for May 7, 2024, and May 22, 2024.

I **CONCLUDE** that L.C. has abandoned this appeal by her failure to participate. A plain reading of N.J.A.C. 1:1-14.4(a), therefore, requires that the matter now be returned to the transmitting agency for appropriate disposition. See also N.J.A.C. 1:1-3.3(b).

The petitioner's abandonment of her appeal did not extinguish respondent's claim for tuition and costs. N.J.S.A. 18A:38-1(b)(1) provides that when the evidence does not support the claim of the resident, the resident shall be assessed tuition. In this matter, respondent elected to waive its right to assess tuition against L.C. and accept the dismissal of petitioner's residency appeal as the appropriate relief.

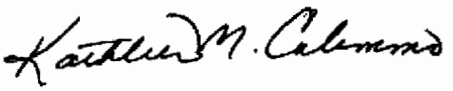
ORDER

Based on the foregoing, I **ORDER** that the clerk return the case to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c), dismissing the residency appeal.

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.



May 23, 2024
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/tat

254-24
OAL Dkt. No. 04633-24
Agency Dkt. No. 50-3/24

New Jersey Commissioner of Education

Final Decision

D.F.,

Petitioner,

v.

Board of Education of the Black Horse Pike, Regional School District, Camden County,

Respondent.

The record of this matter, and the Initial Decision of the Office of Administrative Law (OAL), have been reviewed and considered. In this case, the petitioner filed a Pro Se Residency Appeal, requesting that she be allowed to finish high school at Black Horse Pike Regional High School. On April 2, 2024, the Board of Education (Board) for Black Horse Pike Regional School District (District) filed an Answer and Counterclaim requesting tuition costs. The Board alleged that D.F. was residing in Maple Shade, which is not a sending area of the District. Thereafter, the matter was transmitted to the Office of Administrative Law (OAL) as a contested case.

The Administrative Law Judge (ALJ) found that petitioner failed to appear for both telephone conferences scheduled in this matter despite having received appropriate notice of same. Accordingly, the ALJ determined that petitioner had abandoned her appeal and returned the file to the Office of Controversies and Disputes pursuant to *N.J.A.C.* 1:1-14.4(a). Further, the

ALJ noted that the respondent Board had elected to waive its right to assess tuition against D.F. and accepted the dismissal of petitioner's residency appeal as the appropriate relief in this case.

Upon review, the Commissioner concurs with the ALJ's determination that petitioner abandoned her appeal by failing to participate in the hearings scheduled in this matter; further, petitioner failed to sustain her burden of establishing that she was domiciled within the Black Horse Pike Regional School District when she sought to finish high school in the District.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 1, 2024
Date of Mailing: July 3, 2024

[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

DISMISSAL

OAL DKT. NO. EDU 04633-2024

AGENCY DKT. NO. 5003/24

D.F.,

Petitioner,

v.

BLACK HORSE PIKE REGIONAL SCHOOL DISTRICT, BOARD OF EDUCATION, CAMDEN COUNTY,

Respondent.

D.F., petitioner pro se

Daniel H. Long, Esq., for respondent (Wade, Long, Wood & Long, LLC., attorneys)

Record Closed: May 22, 2024 Decided: May 23, 2024

BEFORE **KATHLEEN M. CALEMMO,** ALJ:

In accordance with N.J.A.C. 1:1-3.3(b) and 1:1-14.4(a) this tribunal is directing the Clerk to return the case to the transmitting agency for the reasons stated below:

On February 29, 2024, D.F. filed a Pro Se Residency Appeal requesting that she be allowed to finish high school at Black Horse Pike Regional High School. On April 2, 2024, the Board of Education (Board) for Black Horse Pike Regional School District (District) filed an Answer and Counterclaim requesting tuition costs. The Board alleged that D.F. was residing in Maple Shade, which is not a sending area of the District.

The Department of Education, Office of Controversies and Disputes, transmitted the appeal to the Office of Administrative Law (OAL) to be heard as a contested case.

On April 18, 2024, the case was assigned to me. I held the initial telephone conference on May 7, 2024. Only Daniel H. Long, Esq, appeared on behalf of the Board. I scheduled a second telephone conference for May 22, 2024. The notice to the parties contained the following language: "**If you do not participate in the telephone conference, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.**" On May 22, 2024, only Mr. Long, on behalf of the Board, appeared for the telephone conference.

I have had no contact from D.F. since the matter was transmitted.

In the Answer and Counterclaim, the Board was seeking tuition and costs. At the telephone conference on May 22, 2024, Mr. Long represented that if this appeal was dismissed, the Board would waive its request for tuition from petitioner.

LEGAL ANALYSIS

Pursuant to N.J.A.C. 1:1-14.4:

(a) If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

(b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

(c) If the judge receives an explanation:

1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or

2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter and, at his or her discretion, order any of the following:

   i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

   ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

   iii. Such other case-related action as the judge deems appropriate.

> (d) If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

I **CONCLUDE** that D.F. was provided with appropriate notices of scheduled proceedings, namely telephonic prehearing status conferences for May 7, 2024, and May 22, 2024.

I **CONCLUDE** that D.F. has abandoned this appeal by her failure to participate. A plain reading of N.J.A.C. 1:1-14.4(a), therefore, requires that the matter now be returned to the transmitting agency for appropriate disposition. See also N.J.A.C. 1:1-3.3(b).

The petitioner's abandonment of her appeal did not extinguish respondent's claim for tuition and costs. N.J.S.A. 18A:38-1(b)(1) provides that when the evidence does not support the claim of the resident, the resident shall be assessed tuition. In this matter, respondent elected to waive its right to assess tuition against D.F. and accept the dismissal of petitioner's residency appeal as the appropriate relief.

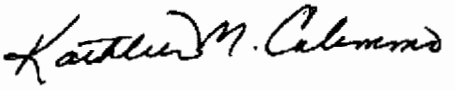
ORDER

Based on the foregoing, I **ORDER** that the clerk return the case to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c), dismissing the residency appeal.

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.



May 23, 2024
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/tat

255-24E
OAL Dkt. No. EDU 06654-24
Agency Dkt. No. 146-5/24

New Jersey Commissioner of Education

Order on Emergent Relief

Regina Robinson,

Petitioner,

v.

Board of Education of the City of Jersey City, Hudson County,

Respondent.

The record of this emergent matter, the sound recording of the hearing at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. Furthermore, as the parties advised the Administrative Law Judge that no other issues remain once the emergent relief matter is resolved, the petition of appeal is hereby dismissed.

IT IS SO ORDERED. [1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 1, 2024
Date of Mailing: July 3, 2024

[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

ORDER ON MOTION
FOR EMERGENT RELIEF
OAL DKT. NO. EDU 06654-24
AGENCY DKT. 146-5/24

REGINA ROBINSON,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, HUDSON COUNTY,
Respondent.

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

Adam S. Herman, Esq., for respondent (Adams, Lattiboudere, Croot, & Herman, LLC, attorneys)

Record Closed: May 29, 2024 Decided: May 30, 2024

BEFORE **DANIEL J. BROWN**, ALJ:

FACTUAL DISCUSSION AND PROCEDURAL HISTORY

Petitioner has been the tenured Business Administrator of the Jersey City Public School District. On June 30, 2022, petitioner filed a civil complaint in the New Jersey Superior Court against respondent (the Board). That complaint alleges discrimination

based upon petitioner's race and sex, hostile work environment and retaliation for the exercise of protected rights and whistle-blower activity under docket number HUD-L-2155-22. On April 25, 2024, written tenure charges and a written statement under oath in support of those charges were filed with the secretary of the Board and served upon petitioner. The tenure charges include forty-two counts and are based upon two independent audits for the fiscal year ending June 30, 2022. The tenure charges allege that petitioner is guilty of unbecoming conduct, misconduct, neglect, and other just cause. On May 10, 2024, petitioner filed a statement of position with supporting evidence to the Board Secretary. On May 14, 2024, the Board certified the tenure charges to the New Jersey Commissioner of Education and suspended petitioner without pay for 120 days in accordance with the New Jersey Tenure Employees Hearing Law ("TEHL").

On May 16, 2024, petitioner filed a petition of appeal and motion for emergent relief against the Board with the Commissioner of Education. Specifically, petitioner maintains that the tenure charges and suspension without pay for 120 days should be held in abeyance pending the resolution of the Superior Court case pending in Hudson County and the appeal of the tenure charges pending against petitioner.

On May 17, 2024, the Department of Education, Office of Controversies and Disputes, transmitted this case to the Office of Administrative Law (OAL) for hearing as to the resolution of petitioner's motion for emergency relief. On May 20, 2024, the matter was assigned to me.

On May 21, 2024, I conducted a telephone status conference. Petitioner moved for an adjournment of the hearing date scheduled for May 25, 2024, with respondent's consent. That adjournment request was granted. The hearing date was rescheduled to May 28, 2024. On May 21, 2024, I received the Board's submission.

In the Board's response, the Board highlights that petitioner cannot meet the standard for emergent relief and that the Board acted with statutory authority under TEHL in the filing of tenure charges against petitioner.

On May 28, 2024, oral argument was conducted. Petitioner requested that the record remain open to allow for further written submissions until May 29, 2024. That request was granted. Petitioner submitted a supplemental response on May 28, 2024. On May 29, 2024, the record was closed.

LEGAL ANALYSIS AND CONCLUSION

Under N.J.S.A. 18A:6-9, the Commissioner's jurisdiction is defined, and is limited to "controversies and disputes arising under the school laws." In Dunellen Bd. of Educ. v. Dunellen Ed. Assoc., 64 N.J. 17, 23 (1973), the New Jersey Supreme Court concluded that "the Legislature enacted provisions entrusting school supervision and management to local school boards . . . subject to the supervisory control [of] . . . the State Commissioner of Education."

The regulations governing such disputes before the Commissioner of Education provide that "[w]here the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may "[t]ransmit the motion to the OAL for immediate hearing on the motion." N.J.A.C. 6A:3-1.6(c)(3).

N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief and instructs that:

> A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982):
>
> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
> 2. The legal right underlying petitioner's claim is settled;

> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.
>
> [N.J.A.C. 6A:3-1.6(b).]

Indeed, the moving party must demonstrate each element "clearly and convincingly." Waste Management of N.J. v. Union County Utilities Authority, 399 N.J. Super. 508, 520 (App. Div. 2008). Emergent relief is designed "to 'prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.'" Crowe, 90 N.J. at 132 (citation omitted).

Irreparable harm

Harm is generally considered irreparable if monetary damages cannot adequately redress it. Id. at 132-33. In other words, irreparable harm is described as "'substantial injury to a material degree coupled with the inadequacy of money damages.'" Judice's Sunshine Pontiac, Inc. v. General Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976) (citation omitted). A claimant must demonstrate more than a risk of irreparable harm. Continental Group, Inc. v. Amoco Chemicals Corp., 614 F. 2d 351, 359 (D.N.J. 1980). The requisite for injunctive relief requires a "'clear showing of immediate irreparable injury,'" or a "'presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by common law.'" Ibid.
(citation omitted).

Petitioner submits that irreparable harm is clear. Specifically, petitioner maintains that the Board's action of suspending her without pay for 120 days will prevent her from being able to properly prosecute her pending civil case or defend herself against the tenure charges brought against her by the Board.

In response, the Board argues that N.J.S.A.18A:6-14, part of the Tenure Employees Hearing Laws, N.J.S.A.18A:6-10 – 18.1, allows for a suspension with or

without pay after the Board has issued tenure charges. As the Board suspended petitioner for 120 days without pay after it deliberated in executive session and determined there was probable cause to certify the tenure charges to the New Jersey Department of Education, it complied with the TEHL.

In this case, the pending tenure charges, and petitioner's suspension without pay will not cause irreparable harm to petitioner. Pursuant to N.J.S.A. 18A:6-14, the time-period that petitioner will be without pay is limited to 120 days unless the tenure charges are sustained by the arbitrator. If the tenure charges are dismissed, at any stage of the process, petitioner shall be reinstated immediately with full pay from the first day of her suspension, thereby making petitioner financially whole. Additionally, as petitioner is claiming harm only in the form of the loss of her salary, the harm is not irreparable as it can be redressed adequately by monetary damages. Crowe, 90 N.J. at 132-133). Moreover, the harm that is complained of by petitioner is neither substantial nor immediate. Petitioner can only speculate that the loss of her salary for 120 days will prevent her from prosecuting her civil case and disputing the tenure charges.

Settled Legal Right

Emergent relief "should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133 (citing Citizens Coach Co. v. Camden H. R. Co., 29 N.J.Eq. 299, 304-305 (E & A 1878)).

Each school district is obligated to provide a thorough and efficient education system to all children residing in its school district. N.J. Const. art. VIII, § 4, ¶ 1; N.J.S.A. 18A:33-1. To carry out this policy, local boards of education have discretionary authority under N.J.S.A. 18A:11-1C. The boards adopt rules for the management of the district's public schools and act in a manner to ensure the lawful and proper conduct of the district's public schools. Yet, statutory requirements also apply to actions by a school district or a board of education.

Under N.J.S.A. 18A:6-11, if a tenure charge is filed with the school board, the board reviews it and the accompanying statement of supporting evidence, and any written

statement submitted by the employee. The board then determines whether probable cause exists for the charge, and that the charge, if credited, sufficiently warrants a dismissal or reduction in pay. After the board certifies its probable cause determination, the Board forwards its determination to the Commissioner of Education. Once tenure charges are filed, the employee is entitled to a copy of the charges and supporting statement of evidence and a copy of the board's determination of probable cause. Ibid. After certification of the charge, the board may suspend the employee with or without pay under N.J.S.A. 18A:6-14.

Here, the question of whether petitioner is entitled to a stay of the pending tenure charges and the suspension without pay is unsettled. However, the question of petitioner has been afforded procedural protections under the TEHL is settled. The Board has complied with and acted under the authority of the TEHL in the filing of the tenure charges and suspending petitioner without pay for 120 days. At this point, a stay of tenure charges and the suspension without pay is neither necessary, appropriate, nor reasonable. The next appropriate step is for the Commissioner to determine whether the charges are sufficient to warrant petitioner's termination, after providing petitioner an opportunity to file a written response to the charges. N.J.S.A. 18A:6-16. If the Commissioner disagrees with the Board's determination, he should dismiss the charges. However, if the Commissioner determines that the charges are sufficient to warrant petitioner's dismissal, the matter should be transmitted immediately to an arbitrator for further proceedings. Ibid.

Likelihood of Success on the Merits

Under the third emergent relief standard, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, supra, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115-16 (E. & A. 1930)). This requirement if often implicitly tied to whether the right to the underlying claim is settled.

A presumption of lawfulness and good faith applies to a board of education's actions. In challenges to board actions, the challenger bears the burden of proving that such acts were unlawful, arbitrary, capricious, or unreasonable. Schuster v. Bd. of Educ.

Montgomery Twp., 96 N.J.A.R.2d (EDU) 670, 676 (citing Schnick v. Westwood Ed. of Educ., 60 N.J. Super. 448 (App. Div. 1960), and Quinlan v. Bd. of Educ. of North Bergen Twp., 73 N.J. Super. 40 (App. Div. 1962).

The "arbitrary, capricious and unreasonable" standard of review imposes a heavy burden on challengers of board actions, and "means having no rational basis." Piccoli v. Ed. of Educ. of Ramapo Indian Hills Regional School District, OAL DKT. EDU 1839-98 (January 22, 1999) (citing Bayshore Sewage Co. v. Dent. of Envir. Protection, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff'd 131 N.J. Super. 37 (App. Div. 1974).

Here, petitioner fails to meet this burden. Petitioner has not shown the procedural safeguards of the Tenured Employee Hearing Law have not been followed. Petitioner has not demonstrated that the Board did not have the authority to file tenure charges or suspend petitioner without pay for 120 days. Petitioner has not shown that the Board's actions had no rational basis. In fact, it is demonstrably clear that the Board's actions had a rational basis. The Board's filing of tenure charges came after the competition of two independent audits. Petitioner's tenure charges and her continued suspension without pay were based upon facts of which petitioner is aware. Petitioner has been served with the charges by the Board and has filed a written response with the Board. Petitioner has been provided with a certification from the superintendent of the Jersey City School district which summarizes the events that led to the filing of tenure charges by the Board. Petitioner alleges that the charges filed by the Board were not based on the results of two independent audits but were retaliatory in nature. Petitioner has provided no evidence to support this allegation. This allegation does not warrant a stay of the tenure charges or the suspension in pay. Petitioner is free to present evidence to an arbitrator, if the matter is transmitted to an arbitrator, that the tenure charges are retaliatory or otherwise insufficient.

Balancing of the Equities

Lastly, petitioner fails to meet the fourth emergent relief standard, which involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J.Eq. 506, 515

(Ch.1941), mod. on other grounds, 132 N.J.Eq. 613 (E. & A. 1942)). To satisfy this standard, petitioner must demonstrate that she will suffer more significant harm than the Board if this tribunal does not grant the requested relief. If emergent relief is denied, petitioner will continue to serve a suspension without pay that is limited to a maximum of 120 days. Petitioner will be free to raise relevant defenses to the merits of the tenure charges before an arbitrator if the matter is transferred to an arbitrator. Any suspension may carry the risk of rumors or speculation concerning the suspended employee, but a suspension without pay is permitted by the Tenured Employee Hearing Law and is limited by that statute to a maximum of 120 days.

However, if emergent relief is granted, the Board will be forced to stay tenure charges that allege that petitioner failed to perform her duties as the District's School Business Administrator and that are based on the findings of 2 independent financial audits. Similarly, it would immediately restore petitioner to paid status pending the resolution of two separate and unrelated cases. Thus, the equities favor the Board.

Based on the above discussion, I **CONCLUDE** that petitioner's request is neither reasonable nor appropriate. I **CONCLUDE** that petitioner has failed to establish the existence of irreparable harm, that petitioner's request for emergent relief does not rely upon settled law, that petitioner is not likely to prevail on the merits, and that the equities do not favor petitioner. Thus, I **CONCLUDE** that petitioner's request for emergent relief does not meet requirements under N.J.A.C. 6A:3-1.6 and must be **DENIED**.

ORDER

Therefore, I **ORDER** that petitioner's request for emergency relief be and is hereby **DENIED**. The parties have advised me that no other issues remain once the emergent relief matter is resolved.

This order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

May 30, 2024
DATE

Daniel J. Brown
DANIEL J. BROWN, ALJ

Date Mailed to Parties: May 30, 2024

dr

256-24E
OAL Dkt. No. EDU 07255-24
Agency Dkt. No. 158-5/24

New Jersey Commissioner of Education

Order on Emergent Relief

L.M., on behalf of minor child, J.M.,

Petitioner,

v.

Board of Education of the Town of Hackettstown, Warren County,

Respondent.

The record of this emergent matter, the sound recording of the hearing at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. This matter shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 1, 2024
Date of Mailing: July 3, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
EMERGENCY RELIEF
OAL DKT. NO. EDU-07255-24
AGENCY DKT. NO. 158/5-24

L.M. ON BEHALF OF R.M.,

Petitioner,

v.

HACKETTSTOWN BOARD OF EDUCATION,

Respondent.

L.M., petitioner, pro se

Caitlin W. Lundquist, Esq., for respondent (Busch Law Group, LLC, attorneys)

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE

Petitioning parent challenges a decision by school officials with Hackettstown High School that son J.M. should be assessed an out of school five-day suspension by the Hackettstown High School Assistant Principal as a result of an alleged bias incident which happened during JM's chemistry lab. The in class conversation that gave rise to the alleged incident had nothing to do with the subject matter of the class both students were in.

Not fully before me yet but still pending a hearing before the District Board of Education scheduled for June 12th is an appeal of a related determination that JM's conduct also gave rise to a harassment, bullying and intimidation (HIB) incident against the other student who complained of bias against her. Since both penalties are related, I am retaining jurisdiction.

PROCEDURAL HISTORY

On or about May 24, 2024, petitioner filed a Petition and Motion for emergent relief, seeking to overturn a decision by the Assistant Principal of Hackettstown High School, suspending JM from attending school for five days as a result of an alleged bias incident which occurred during a chemistry lab on May 13, 2024. She also seeks to overturn a determination by the school that as a result of his comment, JM also committed a HIB (harassment, intimidation and bullying) violation against AA, a fellow student who is African American.

Prior to the filing, J.M. served the five-day suspension which went into effect immediately following the alleged incident without giving J.M. or his parents the right to pursue an appeal before higher ranking school personnel. The District's position relying on the school Code of Conduct is that for any suspension less than ten days, there is no requirement or mechanism for an internal appeal prior to serving the penalty.

The Department of Education transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. Jurisdiction is conferred under N.J.S.A. 18A:6-9. The case was filed at the Office of Administrative Law (OAL) on May 24, 2024.

Following an informal conference on May 30th, oral argument was initially heard on June 3rd, 2024.

FACTUAL DISCUSSION

The Petition of Appeal alleges, inter alia, that an incident occurred in school on May 13, 2024, wherein, according to school officials, JM allegedly made an inappropriate remark to a fellow student during chemistry lab. The conversation between the two students had nothing to do with the subject matter of the class, and the teacher of the class did not hear the alleged remark and/or the entire conversation. Though the District deemed the term "chicken bone" a remark of a racist nature, little or nothing is referenced in the District's report issued against J.M. concerning on alleged ongoing pattern of disruptive and disrespectful in class conduct by the other student, A.A. who was offended by JM's remark.

The report issued by the school limits the remark to the use of the work "chicken bone" but says nothing about the entire conversation precipitated by the other student A.A. concerning her strong beliefs that the monetary system in this country was essentially useless and should be done away with which led J.M. to question what should be used in its place, suggesting a series of alternate non-monetary objects including "chicken bones." A critical part of what led L.M. to file this application is the fact that there is no mention of the context in which the words were used, nor is there any statement from the teacher in the classroom, who it is undisputed did not hear the conversation or the remarks. The District admits in imposing the discipline against J.M., it relied solely on A.A. and some of the other students in the class, at least one of whom apparently admitted he either did not hear the remark or did not recall it.

The word "chicken bone" which may have been heard out of context is what led A.A. to complain that she was the victim of a bias incident, and led the school to suspend J.M. and initiate a HIB (harassment, intimidation and bullying) charge against J.M. (LM on behalf of J.M. has an appeal of that finding before the District Board of Education of June 12th, although the HIB finding was also transmitted to the Office of Administrative Law as part of this emergent proceeding, so though I am not sure if the matter is ripe yet until the Board hears the case on June 12th, I am retaining jurisdiction of the Bias suspension and the HIB part of the case as well.).

My jurisdiction at this early stage of the case is limited to whether or not petitioner has met her burden on J.M.'s behalf that emergent relief under the four prong criteria of Crowe v. DeGioia, 90 N.J.126 (1982).

In support of her request for relief, essentially seeking to remove both the bias suspension and the HIB determination from J.M.'s record, L.M. has submitted a detailed eight-page Statement of Facts surrounding the entire incident, as well as several other items including screenshots of emails and other communications, including JM's statement and the police report.

Respondent denies most of the petitioner's factual statements and relies on the Certification of Kyle Sosnovik, the principal of Hackettstown High School. Also submitted was the school's Code of Conduct and HIB policy.

LEGAL STANDARD

Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party. N.J.A.C. 1:1-12.6(a). With respect to school laws in particular, the Commissioner has jurisdiction to hear and determine all controversies and disputes arising under school laws, except higher education, or under the rules of the State board or of the Commissioner. N.J.S.A. 18A:6-9. Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case. N.J.S.A. 6A:3-1.6(a). A motion for a stay or emergent relief must be accompanied by a letter memorandum or brief which must address the following standards to be met for granting such relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying petitioner's claim is settled;

3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and

4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

N.J.S.A. 6A:3-1.6(b)

DISCUSSION AND CONCLUSIONS OF LAW

In petitioner's initial emergent basis statement, petitioner contends that emergent relief is required because:

> J.M. will suffer irreparable harm if the requested relief is not granted based on the attached documents. He will have this suspension and HIB determination on his record as he continues through high school and applies for jobs, awards and ultimately college admission. He is also suffering from the fact that all trust and accountability in the school administration and teachers is now nonexistent, and the suspension and related actions have caused significant damage to his reputation with fellow students as well. In today's social media age, the alleged incident and related penalty has circulated throughout the Hackettstown school community.
>
> Respondent's opposition to the emergent application states essentially that petitioner has not met the criteria for emergent relief, including but not limited to the argument that at this stage there is no irreparable harm, and the equities do not balance in petitioner's favor at this stage of the proceedings. Respondent further states that even if there is some merit to petitioner's contentions, since there are so many facts in dispute, the matter cannot be decided without a full plenary hearing on the merits.

While having a bias complaint and a related HIB determination on a high school student's record is certainly understandable concern that conceivably gives rise to irreparable harm if upheld, I **CONCLUDE** that petitioners have failed to establish the immediate nature of said irreparable harm warranting emergent relief, since J.M. is not yet applying to another private high school or college, or for school awards or jobs that might be impacted by having this on his high school record, nor is it interfering with his graduation which is still some time away. There is ample time at a full plenary hearing to determine whether the actions of school officials were inappropriate and excessive under the circumstances.

In order to prevail on an application for emergent relief, a petitioner must meet all four conjunctive prongs set forth in Crowe. Since, petitioners have failed to establish irreparable harm, as well as the likelihood of success on the merits. I **FURTHER CONCLUDE** that while I have concerns about whether school officials may have "rushed to judgment" without completing a more thorough investigation, or considering lesser means of discipline if any discipline needed to be imposed, in addition to petitioner's stated concern there may be bias against her family due to a history between them and the district prior to this alleged incident, the application for emergent relief should be **DENIED**, since balancing the equities of the parties at this early juncture is at "equipoise" until a full plenary hearing is conducted and I am unable to determine at this stage which side would prevail on the merits without a full plenary hearing including sworn testimony.

ORDER

It is hereby **ORDERED** that the petitioners' application for emergent relief is **DENIED**, at this time, but **I RETAIN JURISDICTION** subject to a full plenary hearing over the entire matter, including the HIB determination, once that part of the case has been acted upon by either the District Board of Education, the Commissioner of Education or both entities.

This Order on application for emergency relief may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be

issued without undue delay but no later than forty-five days following the entry of this order. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

June 5, 2024
DATE

ANDREW M. BARON, ALJ

Date Received at Agency June 5, 2024

Date E-Mailed to Parties: June 5, 2024

lr

257-24
OAL Dkt. No. EDU 07247-24
Agency Dkt. No. 167-5/24

New Jersey Commissioner of Education

Final Decision

K.F.-M., on behalf of minor child, P.F.,

Petitioner,

v.

Board of Education of the Township of Branchburg, Somerset County,

Respondent.

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 that this matter should be dismissed because petitioner indicated that no issues remain to be addressed following the resolution of her motion for emergent relief.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 1, 2024
Date of Mailing: July 3, 2024

[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 DENYING EMERGENT RELIEF
OAL DKT. NO. EDU 07247-24
AGENCY DKT. NO. 167-5/24

K.F.M., ON BEHALF OF MINOR CHILD P.F.,

Petitioner,

v.

THE BOARD OF EDUCATION OF THE TOWNSHIP OF BRANCHBURG,

Respondent.

K.F.M., ***o/b/o*** **P.F.**, petitioner, pro se

David B. Rubin, Esquire, for respondent

Record Closed: June 3, 2024 Decided: June 4, 2024

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

Petitioner, K.F.M., on behalf of P.F., moves for emergent relief, appealing that P.F. be permitted to attend the 8th grade school dance on June 8, 2024, and walk for

graduation on June 18, 2024. Respondent, the Township of Branchburg Board of Education, declines and presents safety concerns.

PROCEDURAL HISTORY

Petitioner filed a verified petition and request for emergent relief with the Commissioner of the Department of Education, Office of Controversies and Disputes (DOE). On May 29, 2024, DOE transmitted this matter to the Office of Administrative Law (OAL), where it was filed as a contested case seeking emergent relief. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing was held on June 3, 2024, and the record closed that day.

The request for emergent relief is now ripe for adjudication.

FACTUAL DISCUSSION AND FINDINGS

Petitioner articulated that on October 11, 2023, Mr. Tylin, P.F.'s math teacher, placed a trashcan to her face in front of the class and addressed her in front of her peers as a spoiled brat and spoiled Jersey girl and told her how she is not in the hood. Despite his apology and being told he was joking, this incident set an unfortunate tone for further inappropriate behavior.

On November 29–30, 2023, during health class, students were asked to close their computers. P.F.'s computer was open, as she was logging off. Ms. McGirl, who is the health teacher, walked over to P.F. and slammed the computer shut with P.F.'s hands inside. While her hands were still inside, Ms. McGirl snatched the computer away. Ms. McGirl then physically yanked P.F. by the arm to pull her from her chair to leave the class. P.F. turned and told her "If you touch me that way again, I will punch you in the face." She walked to the office to explain what transpired and was sent to the nurse to have her hands and arm checked. K.F.M. received a call from the school notifying her that P.F. was in the nurse's office being checked, as her hands were smashed, and she was forcibly yanked from her chair by her teacher. When asked if K.F.M. could speak to the teacher, she was told that she could not for the teachers' safety. K.F.M. didn't quite

understand that response because P.F. had never been hostile or aggressive in speech or action. Shortly after, she received a phone call from the vice principal, Mr. Derflinger, stating that they had to write an HIB against P.F. because her remarks were threatening to the teacher, and she also received a in school suspension. For this incident, K.F.M. did file a police report in Branchburg, as it was an assault, to document the event. This was not the first time Ms. McGirl has shown aggression towards P.F. and even K.F.M. in conversation.

P.F. was not removed from the class but was isolated by Ms. McGirl during class time. She would pull any students who would sit next to or talk to P.F. Because of the number of reoccurring incidents with Branchburg Central Middle and because a few of the other African American parents were having similar issues with staff and even some students calling the children "n*****s," referring to them as "monkeys," and making it a point to tell them they won't have the same opportunities, K.F.M. began to pay closer attention to the discipline and reasoning when presented with problems that were concerning P.F. Her first encounter with acting principal Steffner was on January 11, 2024.

January 11, 2024, Ms. Steffner, school principal, informed K.F.M. that P.F. was on the list for retention, adding to the growing concerns about her academic standing, which was alarming because after reading both the student handbook and the code of conduct, P.F. didn't meet any of the qualifications. K.F.M. and P.F.'s grandmother met with Ms. Steffner, where she said P.F. wasn't on a retention list and then in front of the superintendent said she never mentioned a retention list to K.F.M. K.F.M. was a bit confused, as Ms. Steffner had spoken with not just K.F.M., but her husband also. This incident "drew more red flags," and K.F.M. began to get more frequent calls about P.F. from Ms. Steffner that were bothersome.

On January 29, 2024, Ms. Steffner and K.F.M. had an in-person meeting for the first time, and she started the meeting with the incident that happened on November 29, 2023, with Ms. McGirl. She stated that she was alarmed by what she read concerning P.F. and how it was unacceptable to threaten a teacher. K.F.M. was confused because at that time, Ms. Steffner was not the acting principal. P.F. then began to be reprimanded

for everything. K.F.M. was notified that there were mass emails sent to every teacher in the school to look out for her, if they saw her in the hall to stop her, find out where she was going or where she should be, and send her there or to the office for a conduct (disciplinary form). The teacher (Ms. Jordan) who mentioned the emails also shared with P.F. that the reason she is not liked by the adults in the building is because they can't take her strong personality. All of these were red flags for K.F.M.

On January 22, 2024, P.F. received conduct emails for being late to class due to a misunderstanding with the resource teacher, Ms. Jordan, resulting in two after-school detentions. P.F. was on a list for one teacher's class but was told she was supposed to be somewhere else. On January 23, 2024, P.F. received another conduct report for being late to class, despite confirmation from the nurse about P.F.'s legitimate health concern. P.F. was in the nurse's office with a runny stomach. On January 24, 2024, P.F. received a conduct report for having her computer open during a Spanish class, with the teacher's reaction appearing disproportionate. On January 25, 2024, P.F. received another conduct report from the same Spanish teacher, raising questions about the consistency and fairness of disciplinary actions. On January 25, 2024, K.F.M. received an email regarding academic dishonesty from the science teacher, Ms. Furnari, which was later proven unfounded but contributed to the overall distress. During P.F.'s music class, the teacher gave them free time, and P.F. asked if she could complete a science worksheet. The music teacher told her, yes. There were other students in her class who were also unaware they had to complete the back of the worksheet, so they all began to work on it. The music teacher, Ms. Devita, sent an email to the science teacher saying that P.F. was copying another student's work, and K.F.M. received the email explaining she was cheating, but it was an ungraded assignment (busy work for students). She wanted students to complete it alone. After speaking to P.F., she of course said she wasn't cheating and that she in fact had not even completed the page, just what she and K.F.M. had done at home the night before. When this was shown, to everybody's amazement, it was a misunderstanding and proven unfounded. Again, K.F.M. was confused because the educator Ms. Devita, who claimed to have seen her cheating, never once said anything to her while in class; she just sent the email to her coworker. On January 29, 2024, on this day as listed above, K.F.M. was actually in the building meeting with Principal Steffner. P.F. and her friends were walking to their science class, where Ms.

Furnari is the teacher, and as they walked to the class and got closer to the door, the teacher stopped her to ask if she had everything she needed. They responded yes, the bell rang, and Ms. Furnari said, "sorry you guys are late" and closed the door. Despite providing evidence that she was indeed close enough to have a brief conversation with the teacher, P.F. received an unexcused tardy for a class, highlighting potential communication issues within the school.

On January 30, 2024, K.F.M. received a phone call from Ms. Steffner suggesting K.F.M.'s involvement in P.F.'s request to leave school early, reflecting a lack of accurate communication. Ms. Steffner called K.F.M. and told her that P.F. told her that K.F.M. called her, and during this alleged phone conversation, K.F.M. told her to come home because she had to go to class. K.F.M. had never spoken to P.F., but did indeed have class, so she was confused. Upon P.F.'s arrival home from school, K.F.M. asked if what Ms. Steffner reported was true. P.F. explained she didn't say what Ms. Steffner claimed, but she was overwhelmed and really wanted to come home, so she asked Ms. Steffner if she could make up the detention (which she receives for every conduct). K.F.M. spoke to Ms. Steffner, and she then said that P.F. made it seem like she spoke to her because she asked if she could make up the detention another day because her mom had class. Now normally, K.F.M. picks P.F. up from school because it saves her from an hour-long bus ride and gives her some extra time to complete homework assignments. If K.F.M. is unable because of school, her husband will go. Ms. Steffner then said that P.F. had double detention for dishonesty. She said P.F. lied to her and made it seem like K.F.M. called her and told her to come home. But K.F.M. didn't understand, nor did K.F.M. want to send the wrong message with what she was being punished for, so K.F.M. told Ms. Steffner that P.F. would not be serving detention for something that was assumed on her end and that K.F.M. didn't like that she lied to her and said P.F. told her she called. Ms. Steffner began to yell that if P.F. did not serve her detentions, that she would suspend her from school and if K.F.M. didn't comply, she would have her removed from the school altogether before hanging up.

On January 31, 2024, Ms. Steffner shared screenshots suggesting academic dishonesty, creating confusion and seemingly escalating the situation from January 25th unnecessarily.

In February 2024, during math class, Mr. Tylin walked up to P.F., snapping his fingers in her face and asking why she doesn't do that. P.F. responded, because she "just don't." Mr. Tylin continued and said, "but why you don't do that? She gave him the same response. Mr. Tylin went on to say, "I didn't like you before but now I have a reason." He continued with, get mad. "I like it when you're mad, I like to make P.F. mad, I like to see her roll her eyes." P.F. repeatedly asked to be excused from class to go to the office. Mr. Tylin refused, and P.F. walked out and went to the office, where she explained what was happening, and the supporting teacher explained that "Mr. Tylin was being very inappropriate and that he seemed a little off," but she wanted P.F. to relax and go to the office after class. K.F.M. didn't understand how P.F. could even function in the classroom after this happened and all that was said to her in front of her peers. P.F. was issued a warning for walking out of the class. Ms. Steffner said she is to stay in class until it's over and get a pass to come to the office for incidents such as this. She is not to leave class in conflict; she is to wait until the class is over.

On February 9, 2024, K.F.M. met with both Ms. Steffner and superintendent Dr. Chase, who seemed to be very understanding of all of her discomforts with P.F. and how she felt she was being targeted by the acting principal, Ms. Steffner, and some of the staff. That nothing was being done when P.F. was wrongfully accused, reprimanded, and harshly punished for things that other students got passes on. K.F.M. explained that the books on suicide and the conversations about how the white students feel about Newark and Irvington, a place where the majority is the minority, were inappropriate and made her daughter uncomfortable to listen to. Students say that criminals, unclean people, poor people live in these places, and they feel unsafe, how it's dirty and run down. She assured K.F.M. that they would speak to the teachers, that the town was changing, and they had a lot of work to do. P.F. has also reported to the guidance counselor, Ms. Nelson, that she has been called "n*****r" by some of the same students, and nothing was done. P.F. was also spoken to by an educator (Ms. Kepner) who said to her she already has a tally against her because of the color of her skin and that she won't get away with what the other students get away with because of that. The teacher felt it was best if P.F. just laid low and kept her head down.

On February 22, 2024, the family received a call from Ms. Steffner, notifying that P.F. was being issued an in-school suspension for leaving the class without a pass. Both P.F. and K.F.M. were confused, as class didn't start until 8:07 a.m., and it wasn't even 8:00 a.m. yet. Initially, Ms. Steffner said it was because she was late, but P.F.'s bus arrived at school early at 7:45 a.m. She took her things to her first period class to be prepared when classes started and went to her resource teacher's classroom. K.F.M. spoke to the superintendent, who reiterated what Ms. Steffner said: that P.F. left the class and didn't have a pass, so that behavior warranted an in-school suspension. She then went on to say that P.F. was being disrespectful to a teacher by the name of Ms. Gatti, whom P.F. has shared on numerous occasions that she can be a bit touchy, and on this day, with getting in trouble first thing in the morning and not understanding why, P.F. didn't like that she kept rubbing her arms, shoulders, and neck. She also wasn't feeling too great and was later picked up from school with a fever of 104 (reported by the nurse). She also received documented medical care that day.

On March 1, 2024, P.F. was suspended from school for cutting class and theft. K.F.M. received a call that P.F. received a pass from her technology teacher to leave class and that she and another student met up and walked the halls until they were outside of a teacher's class where student pencil cases and supplies were left outside. K.F.M. was made aware that the incident happened on February 21, 2024. They received an anonymous tip from a student and teacher who reported that there were two black girls going through the pencil cases in the hall, so they checked the cameras and saw P.F. going in another student's pencil case. After investigation, they found that P.F. had permission from the student to take lead for a pencil out of the pencil case but said it is against school policy to go in another student's belongings. There is also a record that P.F. got the pass from her teacher whose class she allegedly cut to go to the nurse. The nurse called K.F.M. on February 21, 2024, and asked if she could give P.F. Tylenol for a headache. K.F.M. had the understanding that by law, when medication is administered, the child is watched while taking the medication and is monitored a little while after to make sure there are no reactions.

Once P.F. left the nurse's office, she ran into her classmate, which isn't uncommon, and before going back to class, she went to get the lead she asked her friend

for that morning and reported back to class. K.F.M. was told she received the suspension for cutting and theft because she didn't go straight back to class, so it was considered a cut despite the pass, and despite having consent to go in her friend's pencil case, it's against school policy to do so.

On March 7,2024, K.F.M. had a meeting with principal Steffner, vice principal Derflinger, two of the school counselors, one being Ms. Nelson, and the teacher who reported P.F. was stealing. They wanted to set up a behavioral plan along with each of her teachers (even the ones who don't like her) because she is insubordinate and blatantly defiant among many others, all words used by principal Steffner. After K.F.M. shared her concerns and how the suspension was not warranted as P.F. hadn't broken any rules according to their student handbook and code of conduct, there was complete silence, as if amazed she had read it in its entirety. K.F.M. explained she felt at this point that P.F. was being targeted, and it was made plausible when mass emails were sent out about her and teachers felt the need to watch her so closely that she was publicly ostracized and verbally and physically attacked, and that had become her norm when walking the halls at Branchburg Central Middle School. Since starting at Branchburg Middle, she had never seen such a drastic change in her daughter's behavior as to always be on guard, and at times, defeated. She even got so overwhelmed with school and the adjustment to the culture of the school, with not many students who look like her in her classes and them so freely being able to call her a nigger or a monkey with no penalty, that she took a handful of Tylenol with the intent to not only stop the headaches she always having now, but to go to sleep and never wake up. It has been affirmed by teachers that "she is not liked and is targeted because of her personality and because of the color of her skin" (their words). It had gotten so bad that P.F. was coming home every day with a headache and was in the nurse's office every other day complaining of headaches, where the nurse administered medicine. With no resolve, and to save her daughter from being a partaker in the abuse of power from the authorities at Branchburg Middle School, K.F.M. removed her, and she is now being homeschooled for the remainder of the year. At this point, it is the safest option, as K.F.M. does not feel P.F. is protected while in school.

The petition is for P.F. to attend the 8th grade prom and graduation. P.F. entered the education system with boundless enthusiasm, eager to learn and excel. Her early years in school were marked by academic promise and a thirst for knowledge. However, P.F.'s journey turned dark when she became the target of discrimination. It began subtly, with biased remarks and microaggressions from classmates and even some educators. P.F. found herself marginalized and isolated, her confidence eroded by the constant reminders of her perceived differences. Each incident that K.F.M. has shared highlights a pattern of unfair treatment and prejudice against P.F., causing significant distress and harm to her well-being. The cumulative effect of the nine incidents in one month cannot be overstated, causing immense stress and isolation. The behavior exhibited by the staff at Branchburg Central Middle School created an intimidating and hostile environment for P.F., further exacerbating her distress. Even in the face of such blatant discrimination and harassment, the school failed to take appropriate action. Several meetings were held with no change; K.F.M.'s only recourse was to disenroll P.F. from school to protect her physical and mental health.

Closing the chapter of middle school is a big deal, and though P.F. faced many challenges to get through the school year, she maintained her grades to participate in her 8th grade festivities. P.F. should be given the opportunity to attend her 8th grade dance and graduate with her peers. P.F. has endured enough and deserves some relief.

Respondents claim that P.F. is a fourteen-year-old 8th grade student who no longer attends school in the Branchburg School District. P.F. was unilaterally disenrolled from the district by her parent on or about March 7, 2024. During the 2023–2024 school year, there were forty-one (41) incidents of various forms of inappropriate behavior reported by sixteen (16) different staff members involving P.F. Of the forty-one violations of the code of conduct, she received consequences ten times—the remaining thirty-one infractions involved conversations with counselors or administration. Additionally, there are several other infractions that have not been captured here and did not result in disciplinary outcomes, as respondent was trying to build a relationship with the student. These incidents illustrated a consistent pattern of non-compliance, disrespect, and disruption in the school environment.

On October 5, 2023, at 11:13 a.m., Mr. Tylin, a teacher, reported that P.F. was asked multiple times to spit out her gum, but she refused. Instead, she continued chewing gum while denying having any, demonstrating a failure to comply and being disrespectful. The recommended action was for P.F. to take a few minutes to reset before returning to class. On October 11, 2023, at 11:04 a.m., Mr. Tylin reported that P.F. used profanity in class, telling the teacher to "eat her dick." This behavior was categorized as inappropriate language, disruptive, work avoidance, and disrespectful. The action taken was to have P.F. remain in the office for the period, with work sent down for her to complete, and she was assigned two lunch detentions.

On October 16, 2023, at 8:31 a.m., Ms. Furnari, another teacher, reported that substitute Victoria Nguyen noted P.F.'s disrespect during her instruction. P.F. talked to a friend during Mrs. Nguyen's instruction and responded dismissively to the substitute's request to pay attention. This behavior was categorized as failure to comply, work avoidance, and disrespect. The recommended action was for P.F. to be sent back to class after speaking to someone.

On October 18, 2023, at 8:55 a.m., Ms. Valinoti, another teacher, reported that P.F. refused to start her Social Studies assignment, choosing instead to check emails and work on Science Gizmo. Despite verbal prompts and GoGuardian chats, she softly refused redirection and continued working on other assignments. This behavior was categorized as failure to comply and work avoidance. The recommended action was for P.F. to be sent back to class after speaking to someone.

On October 26, 2023, at 3:04 p.m., Mr. Wright, another teacher, reported that P.F. used foul language in class. This behavior was categorized as inappropriate language. The action taken was to have P.F. remain in the office for the period, with work sent down for her to complete. On November 21, 2023, at 9:03 a.m., Ms. Valinoti reported that P.F. was eating Twizzlers in class and lied about the quantity she had. This behavior was categorized as failure to comply, disruptive, and disrespectful. The behavioral focus was on respecting teachers. On November 22, 2023, at 7:42 a.m., Ms. Furnari reported that P.F. was in the bathroom for approximately seventeen minutes on November 21, cutting

class. This behavior was categorized as a student not being where they need to be. The behavioral focus was on respecting teachers and herself.

On November 22, 2023, at 7:44 a.m., Ms. Furnari reported that P.F. was in the bathroom for approximately ten minutes on November 13, cutting class. This behavior was categorized as a student not being where they need to be. The behavioral focus was on respecting teachers and herself. Also on November 22, 2023, at 7:46 a.m., Ms. Furnari reported that on November 14, P.F. left to go to the nurse's bathroom and did not return within a reasonable time. She was found hanging out with a friend in a different bathroom. This behavior was categorized as a student not being where they need to be. The behavioral focus was on respecting teachers and herself. On November 27, 2023, at 10:28 a.m., Ms. Furnari reported that P.F. was out of the classroom for more than ten minutes, cutting class. This behavior was categorized as a student not being where they need to be. The recommended action was for P.F. to be sent back to class after speaking to someone, with a focus on respecting teachers and herself.

On November 28, 2023, at 8:16 a.m., Vicki Brody, another teacher, reported that P.F. refused to take her new assigned seat after the entire class was given new seating assignments. P.F. voiced her refusal to the entire class and was told to either take her new seat or go to the office. She chose to leave for the office. This behavior was categorized as failure to comply and disruptive. The recommended action was for P.F. to take a few minutes to reset before returning to class. Also on November 28, 2023, at 11:49 a.m., Debbie Glick, another teacher, reported that she caught P.F. at her locker with a lollipop in her mouth. When asked what she had in her mouth, P.F. ignored the question and walked away. After being followed and asked again, she responded with "a stick" and then ran into Mr. Tylin's classroom. This incident was not the first time she had been told not to have candy in the halls. The behavior was categorized as failure to comply and disrespectful. The behavioral focus was on respect in the hallways and respect to teachers.

On November 29, 2023, at 3:10 p.m., Ms. Maloney, another teacher, reported that P.F. was off task during an activity and given an alternate task, which she tore up and refused to complete. She later asked to go to the bathroom and returned with her

backpack and jacket, suggesting she went to her locker instead. The behavior was categorized as failure to comply and student not being where they need to be. The behavioral focus was on respect to teachers.

On December 1, 2023, Ms. McGirl, another teacher, reported that P.F. got upset at a teacher and told her that "If you weren't a teacher, I would punch you in the face." The behavior was categorized as disrespectful to a staff member. The student was assigned an in-school suspension that was served on December 4, 2023.

On December 6, 2023, at 2:45 p.m., Ms. Maloney reported that P.F. appeared to be speaking negatively about another student's appearance. When asked about it, she told the teacher to mind their own business, mimicked the teacher, and then left the class to see Ms. Nelson despite being told to wait. This behavior was categorized as failure to comply, disruptive, and disrespectful. The behavioral focus was on respect to teachers and respect to each other.

On December 8, 2023, at 10:52 a.m., Mr. Tylin reported that P.F. came to class on time and was praised for making up her homework but left the classroom without notice when the bell rang. She returned only after being called back and was unaccounted for five minutes. The behavior was categorized as failure to comply, student not being where they need to be, and disruptive. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers.

On December 13, 2023, at 10:25 a.m., Mr. Tylin reported that P.F. disappeared after the bell without checking in. The behavior was categorized as failure to comply and student not being where they need to be. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers and accountability.

On December 14, 2023, at 8:25 a.m., Ms. Brody reported that after two verbal prompts and two GoGuardian messages, including a code word, P.F. refused to put her food back in her locker, hiding a bag of food under her hoodie. The behavior was categorized as failure to comply and disruptive. The recommended action was to send

the student back to class after speaking to someone. The behavioral focus was on following school rules.

On December 14, 2023, at 8:28 a.m., Ms. Brody reported that P.F. refused to go to the office, claiming her food was put away, but this was not confirmed. The behavior was categorized as failure to comply and disruptive. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers.

On December 15, 2023, at 3:16 p.m., Ms. Villanova reported that P.F., along with other students, was seen hanging out at a locker and meandering down the hallway during class. Despite being told to get to class, they ignored the instruction and continued strolling outside the gym. The behavior was categorized as failure to comply, student not being where they need to be, disrespectful, and physical/disrespectful towards school property. The behavioral focus was on respect to the school and its rules.

On December 19, 2023, at 2:15 p.m., Ms. Valinoti reported that P.F. entered a classroom to give a gift to another student and disrupted the class. She refused to leave when asked. The behavior was categorized as failure to comply and student not being where they need to be. The behavioral focus was on respect to teachers.

On December 20, 2023, at 8:49 a.m., Ms. Brody reported that P.F. left for the bathroom at 8:32 a.m. but had not returned by 8:47 a.m. She was reported to be hanging out in the 7th grade hall during her Social Studies class. This behavior was categorized as a failure to comply. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect in the hallways.

On December 21, 2023, at 10:29 a.m., Ms. Furnari reported that P.F. cut class by hanging out in the hallway, visiting the nurse, and then going to the office to avoid attending her class. The previous day, she had received a 5/50 on quiz. This behavior was categorized as student not where they need to be and work avoidance. The behavioral focus was on respect for teachers and self.

On December 21, 2023, at 11:02 a.m., Mr. Tylin reported that P.F. was not where she needed to be, which showed a lack of accountability. She asked to go to the bathroom and ended up in another room. The behavioral focus was on respect to teachers.

On January 8, 2024, at 8:56 a.m., Ms. Valinoti and Ms. Brody reported that P.F. had done no work for the entire class period, despite several redirections. She was talking to other students, using foul language, and disrupting classmates. This behavior was categorized as failure to comply, inappropriate language, disruptive, and work avoidance. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers.

On January 8, 2024, at 11:43 a.m., Ms. Pereira, another teacher, reported that P.F. did not show up to resource class and was missing for twelve minutes. This behavior was categorized as failure to comply and student not where they need to be. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on cutting class.

On January 17, 2024, at 8:36 p.m., Ms. Gatti, an instructional aide, reported repeated defiance of instructions by P.F. This behavior was categorized as failure to comply. The behavioral focus was on respect for each other.

On January 22, 2024, at 9:54 a.m., Ms. Furnari and Ms. Brody reported that P.F. and another student were over five minutes late to class without a pass, claiming they were in the bathroom. Both students left their first period early as well. This behavior was categorized as student not where they need to be. The behavioral focus was on respect in the hallways and respect to teachers.

On January 22, 2024, at 12:20 p.m., Ms. Pereira reported that P.F. did not report to her assigned resource class, was missing for over ten minutes, and falsely claimed she was pulled to another resource list. She argued and refused to follow directions, showing disrespect and work avoidance. This behavior was categorized as failure to comply, student not where they need to be, and disrespectful. The behavioral focus was on

respect to teachers. P.F. was assigned two (2) after-school detentions on January 23 and 25, 2024.

On January 23, 2024, Ms. McGirl reported that P.F. had arrived to her class late and was considered absent. She was assigned an after-school detention on January 3, 2024. On January 24, 2024, at 2:25 p.m., Ms. Maloney reported that P.F. refused to hand over her Chromebook when asked and was working on a project instead of listening to a presentation. This behavior was categorized as a failure to comply. The behavioral focus was on respect to teachers. She was assigned an after-school detention on February 1, 2024.

On January 25, 2024, at 9:06 a.m., Ms. Gatti reported that P.F. openly defied instructions and did not report to her scheduled class. This behavior was categorized as failure to comply and disrespectful. The behavioral focus was on respect to teachers.

On January 25, 2024, at 9:52 a.m., Ms. Furnari reported that P.F. was caught copying another student's science packet for the third time. This behavior was categorized as cheating/academic integrity. The behavioral focus was on respect to teachers and each other. P.F. was assigned a lunch detention on January 26, 2024.

On January 30, 2024, at 11:26 a.m., Mr. Tylin reported that P.F. asked to go to the office in the middle of class, did not accept the answer to wait until the end, and walked out of class. This behavior was categorized as failure to comply, technology misuse/electronics, student not where they need to be, disruptive, and disrespectful. The recommended action was for P.F. to take a few minutes to reset before returning to class. The behavioral focus was on respect to teachers. P.F. conferenced with the principal.

On February 7, 2024, at 3:20 p.m., Ms. Volpe reported that P.F. was observed pushing and shoving another student during dismissal, creating a potential safety hazard. This behavior was categorized as disruptive. The behavioral focus was on respect in the hallways. P.F. conferenced with the principal.

On February 9, 2024, at 10:36 a.m., Ms. Furnari reported that P.F. left for the bathroom at 10:13 a.m. and did not return, missing an entire lab session. This behavior was categorized as student not where they need to be. The behavioral focus was on respect for teachers and self. P.F. was assigned lunch detention on February 9, 2024.

On February 22, 2024, at 8:25 a.m., Ms. Maloney reported that P.F. was found in the World Language hallway going through another student's locker without a pass and without communicating her reason for being there. This behavior was categorized as student not where they need to be. The behavioral focus was on respect in the hallways.

On February 22, 2024, at 9:35 a.m., Mr. Wright reported that P.F. was in another student's locker in the 7th grade wing while she should have been in her first period class in the 8th grade wing. This behavior was categorized as cutting class. The behavioral focus was on respect in the hallways and respect for each other. (This may be two write-ups for the same situation since the student has gym first period—Mr. Wright wrote her up for the cut since she was supposed to be with him, and Ms. Maloney witnessed it and wrote it up because she was in someone else's locker.)

On February 23, 2024, at 8:24 a.m., Ms. Valinoti and Ms. Brody reported that P.F. left homeroom to talk to a friend and then went to Ms. Jordan's room despite being told to return to homeroom. This behavior was categorized as failure to comply. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers. P.F. was assigned in-school suspension on February 23, 2024.

On February 29, 2024, at 8:25 a.m., Mr. Updegrove reported that P.F. was walking down the hallway eating from a bag of goldfish crackers and responded disrespectfully when asked why she was eating in the hallway. This behavior was categorized as disrespectful. The behavioral focus was on respect in the hallways and respect to teachers. P.F. was assigned a lunch detention on March 1, 2024.

On March 1, 2024, a student reported property missing. Camera footage verifies that P.F. went into the student's belongings and stole items. Additionally, P.F. was

wandering hallways prior to this incident. P.F. was suspended from March 4 to March 6, 2024, spanning three days, due to theft and cutting class.

On or about March 7, 2024, a re-entry meeting was held with Mr. Derflinger, vice principal; Ms. Volpe, 8th-grade team leader; Ms. Nelson, counselor (attending virtually); and Mr. Harris, school psychologist. During this meeting, respondent offered a variety of strategies, including, among other things, regular check-ins with P.F.'s counselor, Ms. Nelson, counseling sessions with Ms. Ryan, MSW, LCSW, EdS, LMFT, who is the district's Mental Health & Well-Being Social Worker, and access to the school's behaviorist to determine methods that could help P.F. be more successful. When respondent asked the parent for her thoughts on the plan and whether she had any other suggestions, she abruptly stated that she would be homeschooling P.F. for the remainder of the school year. She was given the necessary paperwork and signed her child out of school. The parent completed the appropriate paperwork and disenrolled P.F. from the district shortly thereafter.

P.F. is ineligible to participate in the 8th grade prom and graduation, as she was disenrolled from the district several months ago. Unfortunately, based on the course of conduct set forth above and the likelihood that her presence at these events would be disruptive, it is unlikely that P.F. would have been allowed the privilege of attending the 8th grade dance and graduation even if she were still enrolled in the district. (Policy & Regulation 5541.)

LEGAL ANALYSIS AND CONCLUSIONS

The regulations governing controversies and disputes before the Commissioner of Education provide that "[w]here the subject matter of the controversy is a particular course of action by a district board of education . . . [,] the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may "[t]ransmit the motion to the OAL for immediate hearing on the motion." N.J.A.C. 6A:3-1.6(c)(3).

At a hearing for emergent relief, petitioner must show that they satisfy the following four standards:

> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
>
> 2. The legal right underlying petitioner's claim is settled;
>
> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
>
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than respondent will suffer if the requested relief is not granted.
>
> [N.J.A.C. 6A:3-1.6(b) (citing Crowe v. DeGioia, 90 N.J. 126 (1982)).]

The petitioner must prove each of these standards by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). Arguably, the standard is a high threshold to meet, and I will address each prong separately.

1. Irreparable harm

As the New Jersey Supreme Court explained in Crowe, "[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Indeed, the purpose of emergent relief is to "prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case." Ibid. (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854).)

"Irreparable harm is shown when money damages cannot adequately compensate plaintiff's injuries." Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "More than a risk of irreparable harm must be demonstrated." Cont'l Grp., Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). "The requisite for injunctive relief has been characterized as a 'clear

showing of immediate irreparable injury' . . . or a 'presently existing actual threat; [an injunction] may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by the common law.'" Ibid. (citations omitted).

Here, with respect to the first prong, despite the fact that K.F.M. testified that they "don't care about the dance," P.F. will suffer irreparable harm if the requested relief is not granted. If she does not attend either event, that opportunity will be lost forever.

Petitioner sustains her burden to show by clear and convincing evidence that P.F. will suffer irreparable harm. Accordingly, **I CONCLUDE** that petitioner has shown irreparable harm.

2. Settled Legal Right

However, as explained to the petitioner, there is a difference between emergent and important. I understand that the requests here are important; however, they are not emergent. Emergent relief "should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. at 304–05). While it is understood that P.F. will receive her diploma, the legal right underlying petitioner's claim is well settled. That is, case law establishes that attendance at a graduation ceremony is a privilege and not a right. See I.K. v. West Windsor-Plainsboro School District, 97 N.J.A.R. 2d (EDU) 639; M.P. v. Hackettstown Board of Education, 95 N.J.A.R. 2d (EDS) 210. Therefore, because she has no legal right to attend the ceremony, she cannot satisfy that prong of the test. Therefore, **I CONCLUDE** that petitioner has not shown a legal right underlying this claim.

3. Likelihood of Success on the Merits

Petitioner has not demonstrated that she is likely to succeed on the merits of the underlying claim. Under this emergent relief prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)).

This typically "'involves a prediction of the probable outcome of the case' based on each party's initial proofs, usually limited to documents." Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)).

Because I have found that petitioner has not shown a legal right underlying this claim, it logically follows that there is not a likelihood of success on the merits. The number of incidents allegedly perpetrated by P.F. that warranted discipline was exorbitant. Petitioner's claim is that there is a "cultural difference." Petitioner has not provided any clear and convincing evidence or legal authority showing that they have a reasonable probability of ultimate success on the merits, and **I CONCLUDE** that petitioner has not shown a reasonable probability of ultimate success on the merits.

4. Balancing the Equities

The fourth and final emergent relief standard involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

The only evidence presented here regarding relative hardship to the parties pertains to the fact that P.F. will not walk at graduation nor attend her dance. However, that was dealt with in the above analysis.

I CONCLUDE that the Board will suffer greater harm should emergent relief be granted than the student if the requested relief is not granted.

Based upon the foregoing, **I CONCLUDE** that petitioner failed to meet the requirements set forth in N.J.A.C. 6A:3-1.6(b), warranting an order for emergent relief in this matter.

ORDER

Accordingly, **I ORDER** that the petitioner's application for emergent relief be and hereby is **DENIED**. From representations made by counsel for the parties during prehearing conferences, I understand that there are no other issues to be decided on the underlying petition, and accordingly, the 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 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.

June 4, 2024
DATE

DEAN J. BUONO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

DJB/onl

APPENDIX

WITNESSES

For petitioner

K.F.M.

For respondent

None

EXHIBITS

For petitioner

Request for emergent relief dated May 24, 2024

For respondent

Opposition dated May 31, 2024

260-24
OAL Dkt. No. EDU 0188-124 (EDU 04075-22 on remand)
Agency Dkt. No. 94-4/22

New Jersey Commissioner of Education

Final Decision

K.M.,

Petitioner,

v.

Board of Education of the Township of Hainesport, Burlington County,

Respondent.

The record of this matter, which was transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-14.4 and includes an advisement of petitioner's failure to appear at the scheduled OAL hearing on May 17, 2024 has been reviewed. Petitioner did not file an explanation for the failure to appear, notwithstanding the opportunity to do so. Accordingly, this matter is no longer deemed to be a contested case before the Commissioner and is hereby dismissed with prejudice.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 11, 2024
Date of Mailing: July 12, 2024

[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.

261-24
OAL Dkt. No. EDU 11412-22
Agency Dkt. No. 305-11/22

New Jersey Commissioner of Education

Final Decision

Jeffrey Moultrie,

Petitioner,

v.

New Jersey Department of Education, Office of Student Protection,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent New Jersey Department of Education, Office of Student Protection (OSP) pursuant to *N.J.A.C.* 1:1-18.4, and petitioner's reply thereto, have been reviewed and considered.

In September 2022, Seashore Transportation hired petitioner as school bus driver for both public and private schools. A fingerprint check conducted pursuant to *N.J.S.A.* 18A:39-19.1(a) revealed that, in 1978, petitioner was convicted of second-degree attempted robbery in New York State. *N.J.S.A.* 18A:39-19.1(a) provides that school bus drivers "shall be permanently disqualified from employment or service if the individual's criminal history record reveals a record of conviction for which public school employment candidates are disqualified pursuant to

section 1 of P.L. 1986, c. 116 (C.18A:6-7.1)." Under *N.J.S.A.* 18A:6-7.1(c)(1) and (4), an attempted robbery conviction permanently disqualifies a person from public school employment.[1]

Accordingly, via email and letter dated October 18, 2022, OSP informed petitioner that, pursuant to *N.J.S.A.* 18A:39-19.1, he was "permanently disqualified from school employment, or service as a school board member or trustee of a charter school under the supervision of the Department of Education, or employment with a contracted service provider under contract with said school or educational facility." The letter further provided that OSP would direct the Motor Vehicle Commission to revoke petitioner's bus endorsement unless he filed a challenge to the accuracy of his criminal record within 14 days.

Petitioner appealed OSP's decision and the matter was transmitted to the OAL for a contested case hearing. At no point did petitioner deny the existence of the conviction or the fact that attempted robbery was a permanently disqualifying crime under *N.J.S.A.* 18A:6-7.1. Rather, petitioner argued that the Rehabilitated Convicted Offenders Act (RCOA), *N.J.S.A.* 2A:168A-1 to -16, supersedes *N.J.S.A.* 18A:6-7.1 and that, therefore, he should not be disqualified because he can prove that he has been rehabilitated since the 1978 conviction. In opposition to petitioner's appeal, OSP maintained that petitioner's permanent disqualification was mandatory under *N.J.S.A.* 18A:6-7.1 irrespective of any evidence of rehabilitation.

When it enacted the RCOA in 1968, the Legislature "declared that the public interest is advanced 'by removing impediments and restrictions upon [convicted offenders'] ability to obtain employment.'" *N.J. Tpk. Auth. v. Local 196, I.F.P.T.E.*, 190 *N.J.* 283, 301 (2007) (quoting

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[1] *N.J.S.A.* 18A:6-7.1(d) provides that out-of-state convictions for crimes that are substantially equivalent to New Jersey disqualifying crimes will permanently disqualify the offender from public school employment.

N.J.S.A. 2A:168A-1). In this matter, petitioner specifically relies upon *N.J.S.A.* 2A:168A-1 and -2 of the RCOA. *N.J.S.A.* 2A:168A-1, the RCOA's preamble, states in pertinent part that "the Legislature finds and declares that notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, a person shall not be disqualified or discriminated against by any licensing authority because of any conviction from a crime . . . unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought." (emphasis added). *N.J.S.A.* 2A:168A-2 provides that, "[i]n determining that a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business, the licensing authority shall explain in writing how the following factors, or any other factors, relate to the license or certificate sought," and those factors include:

> a. The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying;
>
> b. Nature and seriousness of the crime;
>
> c. Circumstances under which the crime occurred;
>
> d. Date of the crime;
>
> e. Age of the person when the crime was committed;
>
> f. Whether the crime was an isolated or repeated incident;
>
> g. Social conditions which may have contributed to the crime;
>
> h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release

> programs, or the recommendation of persons who have or have had the applicant under their supervision.[2]

At the hearing, petitioner credibly testified regarding his arrest, which occurred when he was eighteen years old, and the surrounding circumstances; his early release from parole; his service in the United States Army, including multiple medals he received while serving, and his honorable discharge; and subsequent employment with Amtrak and the United States Postal Service, where he also received various awards and commendations for his work performance, as well as work driving for an ambulance service. Petitioner's employer, the owner and operator of Seashore Transportation, credibly testified that he kept petitioner on staff as a mechanic after OSP disqualified him. He added that petitioner is an excellent employee and that he needs bus drivers.

In response, OSP maintained that petitioner's permanent disqualification was mandatory under *N.J.S.A.* 18A:6-7.1. In support of its position, OSP emphasized that *N.J.S.A.* 18A:6-7.1—enacted in 1986, decades after the RCOA—initially contained language similar to the RCOA that permitted employment applicants convicted of disqualifying offenses to provide clear and convincing evidence demonstrating rehabilitation for the Department to consider. *See L.* 1986, *c.* 116, § 1. However, in 1998, the Legislature amended *N.J.S.A.* 18A:6-7.1, expanded the list of disqualifying offenses, and deleted the provision in the law that had permitted applicants to provide evidence of rehabilitation. *L.* 1998, *c.* 31, § 5. *See also David Kelly v. N.J. Dep't of Educ.,*

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[2] Although the RCOA was expanded in 2007 to provide that, under certain conditions, a certificate may be issued by a court, Parole Board or other supervising authority pursuant to *N.J.S.A.* 2A:168A-7 and -8 that would presumptively demonstrate a qualified offender's "rehabilitation for purposes of seeking public employment," *In re Carluccio*, 426 *N.J. Super.* 15, 28 (App. Div. 2012), petitioner concedes that he lacks such a certificate.

Crim. Hist. Rev. Unit, Commissioner Decision No. 344-14 (Aug. 21, 2014) (explaining that "the Legislature has repeatedly amended" *N.J.S.A.* 18A:6-7.1, "broadening the scope of disqualifying offenses and precluding evidence of rehabilitation, to provide greater protection for children from those it deemed a danger to them").

OSP argued that because *N.J.S.A.* 18A:6-7.1 was amended more recently and is specific to employment in public schools, the Legislature must have intended for it to govern in this situation over the RCOA. OSP also relied upon *In the Matter of the Denial of the Issuance of a Teaching Certificate to Otto Krupp*, Commissioner Decision No. 255-04 (June 24, 2004), wherein the Commissioner found "no conflict or tension" between the RCOA and *N.J.S.A.* 18A:6-7.1. *Krupp*, at 19. In *Krupp*, the Commissioner explained that by amending *N.J.S.A.* 18A:6-7.1 in 1998, the Legislature "proclaimed that a conviction for a first or second degree crime was inimical to employment in the public schools" and determined that "an individual's conviction for certain crimes . . . *relates adversely to employment in the public school system of New Jersey*" as contemplated by *N.J.S.A.* 2A:168A-1. *Id.* at 19-21. Consequently, once the 1998 amendments took effect, OSP was not required to consider evidence of rehabilitation under the RCOA before permanently disqualifying said individuals from public school employment.

Ultimately, the ALJ agreed with petitioner. In particular, the ALJ concluded that the RCOA applied, that petitioner offered credible evidence of rehabilitation under the RCOA, and that OSP "failed to establish that petitioner's 1978 conviction relates adversely to the license being sought." Initial Decision, at 12. Without analyzing the significance of the 1998 amendments to *N.J.S.A.* 18A:6-7.1, the ALJ concluded that "the Legislature reopened the doors to employment in the public schools for certain rehabilitated offenders, notwithstanding any law to the contrary,

including *N.J.S.A.* 18A:6-7.1 and *N.J.S.A.* 18A:39-19.1, when it enacted RCOA." Initial Decision, at 11. Accordingly, the ALJ reversed OSP's determination that petitioner was permanently disqualified from public school employment.

OSP takes exception to: (1) the ALJ's determination that petitioner presented evidence of rehabilitation pursuant to the RCOA that must be considered; and (2) the ALJ's legal conclusion that respondent is precluded from fulfilling its mandatory statutory obligation under *N.J.S.A.* 18A:6-7.1 to permanently disqualify petitioner from employment as a public school bus driver because the RCOA supersedes *N.J.S.A.* 18A:6-7.1. In reply, petitioner argues that the ALJ's decision is correct and should be adopted by the Commissioner for the reasons he asserted before the ALJ. He reiterates that he has clearly shown that he has been rehabilitated pursuant to the RCOA since his conviction many years ago.

Upon careful review, the Commissioner adopts the ALJ's uncontested factual findings and credibility determinations as expressed in the Initial Decision but rejects the ALJ's legal conclusions. The Commissioner holds that the ALJ erroneously reversed OSP's permanent disqualification of petitioner from employment as a public school bus driver based upon a flawed analysis of the RCOA and *N.J.S.A.* 18A:6-7.1. Specifically, the ALJ overlooked a prior Commissioner decision, *Krupp*, which directly addresses the relationship between the two statutory schemes and the significance of the 1998 amendments to *N.J.S.A.* 18A:6-7.1. The ALJ also failed to apply well-established principles of statutory interpretation. The Commissioner concurs with OSP that petitioner's permanent disqualification from employment as a public school bus driver was mandatory under *N.J.S.A.* 18A:6-7.1 notwithstanding evidence of rehabilitation offered pursuant to the RCOA.

This conclusion is consistent with *Krupp*. As noted, in *Krupp*, the Commissioner held that "[b]ecause the . . . 1998 amendments to *N.J.S.A.* 18A:6-7.1 [were] specifically predicated on the Legislature's belief that an individual's conviction for certain crimes . . . *relates adversely to employment in the public school system of New Jersey*, disqualification or discrimination against such an individual . . . is specifically exempted from the dictates of the RCOA by that provision's [*N.J.S.A.* 2A:168A-1's] clear language as a consequence of the relationship between the offense and the certification being sought." *Krupp*, at 21. The Commissioner finds and concludes that the ALJ erroneously distinguished *Krupp* on the basis that in that matter, the applicant did not provide sufficient proof of rehabilitation whereas petitioner in this case did so. By distinguishing *Krupp* on its facts, the ALJ bypassed the significance of the 1998 amendments to *N.J.S.A.* 18A:6-7.1, as well as the fact that the Commissioner's interpretation of those amendments as explained in *Krupp* is entitled to deference because the "agency's expertise and superior knowledge of a particular field" is implicated. *Greenwood v. State Police Training Ctr.*, 127 *N.J.* 500, 513 (1992).

Furthermore, well-established principles of statutory interpretation support the need to consider the 1998 amendments to *N.J.S.A.* 18A:6-7.1 as part of the legal analysis in this matter. *See State v. Gomes*, 253 *N.J.* 6, 28 (2023) (holding that when determining "the intended overall meaning of the texts of multiple statutes that were adopted at different times," it is "the most recent statutory enactment [that] ordinarily supersedes, or at least qualifies or illuminates, language that was adopted in earlier statutes"). Additionally, "a more specific statutory provision" such as *N.J.S.A.* 18A:6-7.1, which expressly addresses employment in public schools, "usually controls over a more general one," such as the RCOA. *Ibid.* To conclude as the ALJ did that the RCOA, specifically *N.J.S.A.* 2A:168A-2, controls in this matter would render the

Legislature's 1998 amendments to *N.J.S.A.* 18A:6-7.1 inoperative and meaningless, thereby violating another important principle of statutory interpretation. *See Innes v. Innes*, 117 *N.J.* 496, 509 (1990) (holding that one must "avoid constructions that render any part of a statute inoperative, superfluous, or meaningless").

Moreover, when considering the significance of the 1998 amendments to *N.J.S.A.* 18A:6-7.1, it is important to acknowledge that the Legislature is presumed to be "aware of its own enactments." *Headen v. Jersey City Bd. of Educ.*, 212 *N.J.* 437, 449 (2012). When it removed the rehabilitation language from *N.J.S.A.* 18A:6-7.1 in 1998 and determined instead that convictions for certain crimes would permanently disqualify applicants from public school employment, the Legislature was aware of the RCOA. It nonetheless determined that convictions for certain enumerated crimes were so adverse to public school employment—in environments where student safety is at stake—that evidence of an offender's rehabilitation should not be considered. As the Commissioner explained in *Krupp*:

> [T]he Legislature in enacting the 1998 amendments to *N.J.S.A.* 18A:6-7.1 proclaimed that a conviction for a first or second degree crime was inimical to employment in the public schools. When these amendments were drafted, the Legislature declared that the interest and safety of school children in the State of New Jersey must prevail. Indeed, one of the sponsors of the amendments declared, "We are entrusting these people with our children's safety. The risk that these people have not been rehabilitated is a gamble that we are not willing to take."
>
> [*Krupp*, at 21.]

Accordingly, the Commissioner holds that petitioner shall remain permanently disqualified from employment as a public school bus driver pursuant to *N.J.S.A.* 18A:39-19.1 and *N.J.S.A.* 18A:6-7.1. However, as petitioner's employer testified that he hired petitioner as a

school bus driver for both public and private schools, OSP shall direct the Motor Vehicle Commission to restore petitioner's school bus endorsement for purposes of employment as a nonpublic school bus driver as he is not disqualified from operating a school bus for a nonpublic school. *See Scott Baron v. N.J Dep't of Educ., Off. of Student Prot.*, Commissioner Decision No. 95-20 (March 13, 2020) (holding that "*N.J.S.A.* 18A:39-19.1 applies only to bus drivers employed by public schools or other educational entities under the supervision of the Department of Education").

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 11, 2024
Date of Mailing: July 12, 2024

[3] 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 11412-22
AGENCY DKT. NO. 305-11/22

JEFFREY MOULTRIE,
Petitioner,
v.
NEW JERSEY DEPARTMENT OF EDUCATION, OFFICE OF STUDENT PROTECTION,
Respondent.

Martin J. Arbus, Esq, for petitioner, (Arbus, Maybruch & Goode, LLC, attorneys)

David L. Kalisky, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: April 18, 2024 Decided: May 29, 2024

BEFORE **WILLIAM T. COOPER III**, ALJ:

STATEMENT OF THE CASE

Petitioner, Jeffrey Moultrie (petitioner), appeals the determination by respondent, Department of Education, Office of Student Protection (respondent or OSP), that pursuant to N.J.S.A. 18A:6-7.1, he is permanently disqualified from

employment as a public-school bus driver and any other public-school employment because of his 1978 conviction in New York for second-degree robbery. Petitioner does not dispute the accuracy of his criminal history record or that N.J.S.A. 18A:6-7.1 requires his disqualification. Petitioner argues that the Rehabilitated Convicted Offenders Act (RCOA), N.J.S.A. 2A:168A-1 to -16, supersedes N.J.S.A. 18A:6-7.1, and that due to his rehabilitation, he should not be disqualified.

PROCEDURAL HISTORY

On October 18, 2022, the OSP issued a notice disqualifying petitioner from working at any educational institution under the supervision of the Department of Education.

On November 11, 2022, the petitioner timely appealed respondent's disqualification determination to the Commissioner of Education, pursuant to N.J.A.C. 6A:3-1.1 to -1.17. On December 18, 2022, respondent filed a motion to dismiss in lieu of an answer.

The matter, including the motion, was transmitted as a contested case to the Office of Administrative Law, where it was filed on December 21, 2022. N.J.S.A. 52:14 B-1 to -15; N.J.S.A. 52:14 F-1 to -13.

On October 6, 2023, an Order denying respondent's motion to dismiss was entered.

A hearing was conducted on January 23, 2024. The record remained open for the parties to submit written summations, which were submitted on February 26, 2024.

Clarification from the parties concerning the difference between a private school and public-school bus operator was requested, and the responses were received on April 18, 2024. The record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

Testimony

Jeffrey Moultrie

The petitioner testified in support of his application and candidly admitted to the actions that led to his arrest on September 18, 1978. Petitioner grew up in the South Bronx in what he characterized as a bad neighborhood. On the day of his arrest, he was eighteen years and one month, hanging out with his friends. The group began to "hassle" a gentleman who walked by, and the New York City Police Department's Anti-Crime Unit appeared on the scene and arrested the entire group. There were no weapons involved, but because of his age, the petitioner was charged with attempted robbery in the second degree, a crime that exposed him to a total of twelve years of incarceration. He was represented by a public defender who recommended he accept a plea bargain wherein the state would recommend a four-year sentence. The petitioner agreed, and on November 22, 1978, he was sentenced to a maximum of four years of incarceration. The petitioner served two years and was released. During his period of incarceration, the petitioner earned his General Education Degree (GED).

A condition of his parole was to "find and maintain gainful employment throughout his parole term," and he was able to comply with this condition with the assistance of the Neighborhood Work Project for convicted offenders. An additional condition of his parole included regular drug testing, which was not an issue as he did not use illegal drugs. The petitioner was successfully released early from his parole.

In 1982, the petitioner was accepted to the University of Syracuse (Syracuse), where he also played football. Unfortunately, the petitioner could not afford to stay in Syracuse and left the school in 1984. The petitioner maintained employment from 1984 to 1987, at which time he joined the United States Army (Army). While in the Army, the petitioner was trained as a "Light Wheel Vehicle Mechanic" and as a "Food Service Specialist." During his training, the petitioner was stationed at Fort Knox in Kentucky, Fort Sill in Oklahoma, and Fort Lee in Virginia. The petitioner was deployed in 1990 to

Germany and then to Saudi Arabia, where he participated in the Desert Shield campaign. The petitioner was returned to Fort Drum in New York State, where he was released from the armed service. The petitioner rose to the rank of sergeant and received an "Honorable Discharge" on January 8, 1995. The petitioner's discharge noted that he had earned the "Army Achievement Medal," "Army Service Medal," "National Defense Service Medal," "Overseas Service Ribbon," "Mechanic Badge," "Army Good Conduct Medal," and "Expert Badge Rifle and Hand Grenade."

Upon his honorable discharge, the petitioner relocated to the Bronx, N.Y. where he worked several jobs, including as a driver for a local cab service and as an attendant at a local gas station. In 1997, he was able to secure employment with Amtrak as a coach attendant. Petitioner's employment with Amtrak led to employment with the United States Postal Service (USPS). As a USPS employee, the petitioner received a "Spot Award" and "Certificate of Appreciation" in recognition of his outstanding ability and quality performance of duty on January 8, 2007, and again on March 5, 2010, petitioner received a letter of appreciation for reporting to work during the blizzard that occurred February 26, 2010.

The petitioner left USPS for employment that had better wages and benefits. He obtained his Commercial Driver License (CDL) in the State of New York and was employed by the Richmond County Ambulance Service located in Staten Island, N.Y.

The petitioner is married and has five children, four boys and one girl, and his family moved to Perth Amboy, New Jersey, where he obtained employment with Seashore Transportation (Seashore). The petitioner passed the New Jersey CDL test but was unable to obtain passenger endorsement due to his 1978 criminal conviction.

John Villapiano

John Villapiano (Villapiano) is the owner and operator of Seashore. He testified that he hired the petitioner in September 2022 to be a school bus driver for both public and private schools. When the petitioner was disqualified, Villapiano provided the petitioner an opportunity to work in the "garage" as a mechanic. He explained that the

petitioner does an excellent job keeping the bus fleet running. However, Villapiano advised that what he really needs is a bus driver because finding people qualified to operate a school bus has become very difficult. Villapiano further testified that the petitioner is an excellent employee, is punctual, and has had no problems at all while working for Seashore.

FINDINGS

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "the interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp.,53 N.J. Super 282, 287 (App. Div. 1958).

There was no indication that either the petitioner or Villapiano had any interest, motive or bias that would affect their testimony. As such, I accept both witnesses as credible.

The respondent did not dispute any of the testimony provided or object to any of the evidence submitted by the petitioner, nor did any witnesses testify on behalf of OSP.

Based upon the testimony heard and documents entered in evidence, I **FIND** the following as **FACT**:

1. The petitioner was originally hired by Seashore as a bus driver for both public and private schools in the Monmouth and Ocean County areas. The petitioner applied for a CDL with P (Passenger) and S (School Bus) endorsements necessary to operate a school bus for Seashore. As required, the petitioner submitted his fingerprints as part of the background check.

2. The fingerprint search revealed that the petitioner had a 1978 criminal conviction out of the State of New York for second-degree robbery.

3. The petitioner does not challenge the accuracy of his criminal history record or the fact that his criminal convictions would disqualify him under N.J.S.A. 18A:6-7.1.

4. Based upon his criminal history, the petitioner was notified that he was "permanently disqualified" from serving in any position, paid or unpaid, with any educational institution under the supervision of the Department of Education, or any contracted service provider under contract with any "school or educational facility." The notice does not differentiate between public and private schools.

5. On September 18, 1978, when the petitioner was a resident of Bronx, New York, he was arrested and charged with robbery. Petitioner readily admits to this conviction but explained that he did not participate in the robbery and was instead attempting to prevent younger individuals from attempting to rob an older gentleman. Unfortunately, because he was eighteen years old, he was charged as an adult with robbery. The petitioner was represented by a public defender and was advised that if he did not accept a plea agreement, he would face up to twelve years of incarceration. The petitioner accepted the plea agreement, pleaded guilty to robbery, and on November 22, 1978, was sentenced to four years of incarceration. The

petitioner served less than two years of his four-year sentence and was released on parole in April 1980. While he served his time in prison, the petitioner earned his GED and had no issues during his two years of parole.

6. Upon his release and the termination of his parole, the petitioner attended Syracuse University, where he played football. Unfortunately, after two years, the petitioner was unable to afford tuition, and as a result, he returned to his parents' home in the Bronx.

7. In 1985, the petitioner entered military service with the United States Army (Army). The petitioner served two four-year enlistments, achieving the rank of sergeant. While in the service, the petitioner received numerous accommodations, including a National Defense Service Medal and a good conduct medal. The petitioner served during Operation Desert Storm as a mechanic, repairing military vehicles during combat operations. The petitioner was "Honorably Discharged" from the Army on January 8, 1995.

8. Upon his discharge, the petitioner maintained gainful employment, which included working for Amtrak, the United States Postal Service (USPS), and Richmond County (Staten Island) Ambulance service.

9. The petitioner is married and has five children. His family moved to New Jersey, and the petitioner was hired by Seashore as a bus driver. The petitioner passed the NJ State CDL driving test but was permanently banned based upon his criminal conviction from forty-five years ago.

10. The petitioner's forty-five-year-old 1978 criminal conviction is petitioner's only criminal violation.

11. Seashore provides bus services to both public and private schools. The position of OSP is that because Seashore holds contracts with boards of education under the Department's authority, the petitioner's inability to meet the criminal history record requirements under N.J.S.A. 18A:39-19.1 precludes petitioner from working as a school bus driver.

LEGAL ANALYSIS

The issue here is whether the respondent's determination to permanently disqualify petitioner from employment as a public-school bus driver was appropriate.

N.J.S.A. 18A:6-7.1 provides that if a prospective public school bus driver's criminal history background check reveals a disqualifying second-degree attempted robbery conviction, that person is permanently disqualified from school employment. N.J.S.A. 18A:6-7.1 provides in relevant part as follows:

> A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ for pay or contract for the paid services of any . . . person serving in a position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file . . . which would disqualify that individual from being employed or utilized in such capacity or position. **An individual employed by a board of education or a school bus contractor holding a contract with a board of education, in the capacity of a school bus driver, shall be required to meet the criminal history record requirements**
>
> . . . .
>
> **An individual**, except as provided in subsection g. of this section, **shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree**; or
>
> . . . .
>
> c.
>
> (1) A crime involving the use of force or the threat of force to or upon a person or property including, but not limited to, **robbery,** aggravated assault, stalking, kidnapping, arson, manslaughter and murder[.]
>
> [N.J.S.A. 18A:6-7.1 (emphasis added).]

Further, N.J.S.A. 18A:6-7.1 mandates that the criminal convictions that would result in such disqualification include, but are not limited to, "a record of conviction for any crime of the . . . **second degree**; or . . . [a] crime involving the use of force or threat of force to or upon a person or property including, but not limited to, **robbery**[.]" N.J.S.A. 18A:6-7.1(c)(1) (emphasis added). This statute also provides that "for purposes of this section, a conviction exists if the individual has at any time been convicted under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense." N.J.S.A. 18A:6-7.1(d). Finally, under the disqualification law, a prospective employee is afforded "an opportunity to challenge the accuracy of the disqualifying criminal history record." N.J.S.A. 18A:6-7.1(e). Here, there is no dispute that the petitioner has a 1978 criminal conviction in the State of New York for second-degree robbery. Based upon this conviction, the respondent maintains that the decision to disqualify the petitioner is mandatory.

Petitioner counters that RCOA allows the employment in public schools for certain rehabilitated offenders, notwithstanding any laws to the contrary, including N.J.S.A. 18A:6-7.1, noting:

> The Legislature finds and declares that it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment or to participate in vocational or educational rehabilitation programs based solely upon the existence of a criminal record.
>
> Therefore, the Legislature finds and declares that notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, a person shall not be disqualified or discriminated against by any licensing authority because of any conviction for a crime, unless N.J.S.A. 2C:51-2 is applicable or unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought.
>
> [N.J.S.A. 2A:168A-1.]

N.J.S.A. 2A:168A-2 provides:

> Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, no State, county or municipal department, board, officer or agency, hereinafter referred to as "licensing authority" authorized to pass upon the qualifications of any applicant for a license or certificate of authority or qualification to engage in the practice of a profession or business or for admission to an examination to qualify for such a license or certificate may disqualify or discriminate against an applicant for a license or certificate or an application for admission to a qualifying examination on the grounds that the applicant has been convicted of a crime, or adjudged a disorderly person, except that a licensing authority may disqualify or discriminate against an applicant for a license or certificate if N.J.S.A. 2C:51-2 or any disqualifying criminal activity set forth in subsection a. of section 7 of P.L.2009, c.53 (C.17:11C-57) is applicable, or if a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought. In determining that a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business, the licensing authority shall explain in writing how the following factors, or any other factors, relate to the license or certificate sought:
>
> a. The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying;
> b. Nature and seriousness of the crime;
> c. Circumstances under which the crime occurred;
> d. Date of the crime;
> e. Age of the person when the crime was committed;
> f. Whether the crime was an isolated or repeated incident;
> g. Social conditions which may have contributed to the crime;
> h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

In this matter, the OSP did not detail how the enumerated factors related to the bus license sought by petitioner. Rather, it was argued that, "[b]ecause the enactment of the 1998 amendments to N.J.S.A. 18A:6-7.1 is specifically predicated on the Legislature's belief that an individual's conviction for certain crimes, including [robbery], relates adversely to employment in the public school system of New Jersey, disqualification or discrimination against such an individual who has applied for [public school employment] is specifically exempted from the dictates of the RCOA by that provision's clear language as a consequence of the relationship between the offense and [the employment] being sought." In re Krupp, EDU 05196-03, Final Decision (October 6, 2004), https://njlaw.rutgers.edu/collections/oal.

However, the Legislature reopened the doors to employment in the public schools for certain rehabilitated offenders, notwithstanding any law to the contrary, including N.J.S.A. 18A:6-7.1 and N.J.S.A. 18A:39-19.1, when it enacted RCOA.

Thus, RCOA permits a licensing authority to disqualify or discriminate against an applicant for a license or certificate if that applicant has a conviction for a crime that "relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought." In determining whether a conviction for a crime so relates, the licensing authority is required to detail how specific factors relate to the license or certificate sought. These factors include but are not limited to; a.) Nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying; b.) Nature and seriousness of the crime; c.) Circumstances under which the crime occurred; d.) Date of the crime; e.) Age of the person when the crime was committed; f.) Whether the crime was an isolated or repeated incident; g.) Social conditions which may have contributed to the crime; and h.) Any evidence of rehabilitation, including good conduct in prison or in the community, schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision. See N.J.S.A. 2A:168A-2.

Respondent's reliance upon In re Krupp is misplaced, as that case is factually distinguishable from the present matter. Krupp was a former mathematics teacher who was seeking reinstatement of his teaching certificate after serving twenty-three years in

prison for a conviction of first-degree murder. Krupp, who was recently released from prison prior to applying to renew his teaching certificate, was unable to provide sufficient proof that he had been rehabilitated. Here, the credible evidence establishes that the petitioner has been rehabilitated; the disqualifying crime occurred forty-five years ago when the petitioner had just turned eighteen years old; the petitioner has led a law-abiding lifestyle since his release from prison; subsequently attended Syracuse University; then served in the United States Army from 1987 to 1995 (including service in the Desert Storm campaign), achieving an honorable discharge in 1995; and since his honorable discharge, petitioner has maintained gainful employment, which includes, among others, employment at Amtrak, the United States Postal Service, and Richmond County Ambulance Services. Further, the petitioner is married and has five children. Lastly, his employer describes him as an excellent employee. In short, the petitioner is the ideal example of why RCOA was enacted.

Accordingly, I **CONCLUDE** that the credible evidence establishes that the petitioner has been rehabilitated. I further **CONCLUDE** that respondent has failed to establish that petitioner's 1978 conviction relates adversely to the license being sought.

ORDER

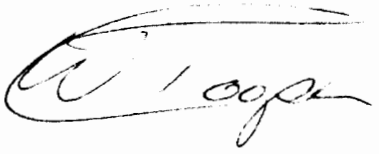
For the reasons set forth above, the determination by respondent Department of Education, Office of Student Protections that pursuant to N.J.S.A. 18A:6-7.1, the petitioner is permanently disqualified from employment as a public-school bus driver and any other public-school employment, is hereby **REVERSED.** The OSP shall notify the Motor Vehicle Commission to issue the petitioner a school bus driver license.

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.



May 29, 2024
DATE

WILLIAM T. COOPER, III, ALJ

Date Received at Agency: May 29, 2024

Date E-Mailed to Parties: May 29, 2024

WTC/sg

APPENDIX

WITNESSES

For petitioner

Jeffrey Moultrie

John Villapiano

For respondent

None

EXHIBITS

For petitioner

P-1 Certificate of Discharge from United States Army 1/8/95.

P-2 United States Postal Service 3/5/10 letter of accommodation.

P-3 United States Postal Service 1/8/07 certificate of appreciation.

P-4 Supreme Court of New York certificate of disposition. Dated 12/7/05.

For respondent

None

#262-24

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

State of New Jersey
DEPARTMENT OF EDUCATION
PO BOX 500
TRENTON, NJ 08625-0500

KEVIN DEHMER
Acting Commissioner

July 11, 2024

Christopher J. Dasti, Esq.
Dasti & Staiger
310 Lacey Road
P.O. Box 779
Forked River, NJ 08731

David L. Kalisky, DAG
25 Market Street
P.O. Box 112
Trenton, NJ 08625

Re: In the Matter of Shawn Giordano, Lacey Township Board of Education, Ocean County, Agency Dkt. No. 9-8/23A, Commissioner Decision No. 193-24

Dear Counsel:

The motion for a stay of the Commissioner's decision in the above-captioned matter, submitted by appellant Shawn Giordano on June 8, 2024, has been reviewed.

Pursuant to N.J.A.C. 6A:3-1.6(b), a motion for stay is considered an extraordinary remedy that may only be issued upon a finding that appellant has met each prong of the four-pronged standard for the granting of interim relief set forth in Crowe v. DeGioia, 90 N.J. 126 (1982). Thus, a stay may be granted where necessary to prevent irreparable harm, where the legal right underlying the movant's claim is settled, where there is a likelihood of success on the merits, and where the relative hardship to the moving party favors granting such relief. Id. at 132-134.

Upon review, the Commissioner finds that appellant has failed to meet the standard required for a stay of the May 15, 2024 decision. Most notably, appellant has failed to establish that the legal right underlying his claim is settled or that he is likely to succeed on the merits. In the May 15, 2024 decision, the Commissioner determined that it was not arbitrary, capricious, or unreasonable for the School Ethics Commission to conclude that appellant requested the

services of the Lacey Board of Education's attorney to conduct research regarding another Board member to secure an advantage for himself and for his own personal gain. On these issues, appellant's motion papers reiterate arguments that were fully considered – and rejected – by the Commissioner in the May 15, 2024 decision.

In light of the fact that all of the Crowe prongs must be met in order for a stay to be granted, it is not necessary to analyze the remaining factors. Accordingly, appellant's request for a stay of the May 15, 2024 decision is hereby DENIED.

Sincerely,

Kevin Dehmer
Acting Commissioner

KD/JS
c: State Law Library

262-24L

263-24
OAL Dkt. No. EDU 04701-23
Agency Dkt. No. 115-4/23

New Jersey Commissioner of Education

Final Decision

Robin S. Alexander,

Petitioner,

v.

Board of Trustees of the Paterson Charter School for Science Technology, Passaic County,

Respondent.

The record of this matter, the proposed Release and Settlement Agreement (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraphs 1.1 and 1.2 of the Agreement references actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 11, 2024
Date of Mailing: July 12, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 04701-23
AGENCY DKT NO. 115-4/23

ROBIN S. ALEXANDER,
Petitioner,
v.
BOARD OF TRUSTEES OF THE PATERSON CHARTER SCHOOL FOR SCIENCE TECHNOLOGY, PASSAIC COUNTY,
Respondents.

Analiese W. Smith, Esq. on behalf of petitioner (Oxfeld Cohen, P.C.)

Hope Blackburn, Esq. and **Jennifer Lear**, Esq. on behalf of respondent (Bush Law Group)

Record Closed: June 12, 2024 Decided: June 14, 2024

BEFORE **NANCI G. STOKES**, ALJ:

This case was transmitted to the Office of Administrative Law (OAL) on May 30, 2023, for resolution as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F1 to -13. On July 18, 2023, I conducted a telephone prehearing. Several conference calls were conducted thereafter, the last one being April 22, 2024. On June

12, 2024 the fully executed Settlement Agreement and Board Resolution was received, which is attached hereto for reference.

Having reviewed the contents of the attached Settlement Agreement and General Release, I **FIND**:

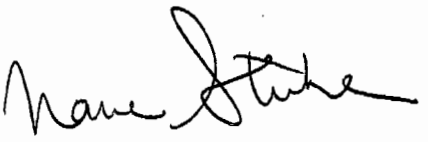
1. The parties have voluntarily agreed to the settlement, as evidenced by their signatures or the signatures of their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this settlement meets the requirements of N.J.A.C. 1:1-19.1 and that the stipulation should be approved. I approve of the settlement and, therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.



June 14, 2024

DATE

NANCI G. STOKES, ALJ

Date Received at Agency: June 14, 2024

Date Mailed to Parties: June 14, 2024

ljb

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into on April 17th, 2024 (the "Effective Date") and is between **Robin S. Alexander** ("Alexander"), residing at 126 Route 46 East, Apartment 27B, Lodi, New Jersey 07644 and the **Paterson Charter School for Science & Technology Board of Trustees, Passaic County** (the "Board" or the "PCSST"), located at 196 West Railway Avenue, Paterson, New Jersey 07503 (together "the Parties").

Background

(A) Alexander is a 10-month secretary who has been employed with the PCSST since November 1, 2015, has been tenured since November 1, 2020, and is a Paterson Charter Education Association ("PCEA") member;

(B) the PCSST employs PCEA members, including but not limited to school secretaries;

(C) the PCSST and PCEA are bound by a collective bargaining agreement ("CBA"); and,

(D) the Parties desire to resolve a dispute that occurred on or about June 15, 2022 regarding the setting of Alexander's salary for the 2022-2023 school year and thereafter;

Therefore, the Parties agree as follows:

1. **Agreement.**

1.1 Appointment of Robin S. Alexander as a 12-month PCSST Secretary.

(A) *Appointment.* ***Effective no later than July 1, 2024***, the PCSST Board of Trustees shall appoint Robin S. Alexander as a 12-month School Secretary.

(B) *Compensation.* ***Effective no later than July 1, 2024***, Alexander's salary shall be set at Step 15 of the 2024-2025 School Year salary guide for 12-month secretaries in the amount of $48,657.

(C) *Subsequent Compensation.* As with all other 12-month secretaries, Alexander's 12-month secretarial salary shall be paid in accordance with the Parties' collective bargaining agreement.

(D) *Right to Refile.* If the PCSST does not fulfill its obligations under this Agreement, Alexander reserves the right to refile this matter with the Office of Administrative Law or elsewhere.

1.2 Back-Pay Payment from March 2023 to Present.

(A) ***No later than Friday, April 26, 2024***, the PCSST shall pay Alexander back-pay for the red-circled amount of $46,264 from the first pay period in March 2023 through present (excluding July and August 2022 and July and August 2023) for a ***total of $3,000.00***.

1.3 Withdrawal of OAL Docket Number EDU 04701-2023N.

(A) *Withdrawal.* Within ten days of the execution of this Agreement, Alexander shall withdraw Docket Number EDU 04701-2023N from the Office of Administrative Law.

(B) *Release of Claims.* Unless Subsections 1.1, 1.2, or any of subsections 2 through 6 are violated, Alexander shall release all claims related to this Agreement and shall waive the right to pursue all claims related to this Agreement in the future. Furthermore, Alexander acknowledges that by executing this Agreement, Alexander no longer has any claim for back-pay, interest, or any other emoluments from March 2023 to present and that she shall continue at her present salary until the effective date of her appointment as a 12-month secretary.

2. **Non-Precedent-Setting Agreement.** This Agreement constitutes solely a settlement agreement between the Parties and shall not be used as a precedent-setting agreement between the PCSST and any other PCEA member.

3. **Non-Admission of Liability.** This Agreement shall not be construed as Alexander, PCEA, or the PCSST's admission of any underlying allegation or of the parties'

liability.

4. **Indemnification.** If the PCSST violates this Agreement in any way, the PCSST shall pay, in addition to all other remedies allowed by law or this Agreement, all of Alexander's costs and expenses incurred as a result of such violation, including reasonable attorneys' fees.

5. **Consultation with Attorney.** Each party has consulted an attorney with respect to this Agreement and has reviewed with their attorney all of the terms and conditions of this Agreement prior to execution.

6. **Miscellaneous.**

6.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with reference to the subject matter of this Agreement and supersede all prior agreements either written or oral in relation to the subject matter of this Agreement.

6.2 Governing Law, Jurisdiction, and Venue. This Agreement is subject to New Jersey law, and any disputes must be submitted to the Courts and administrative agencies of the state of New Jersey.

6.3 Modification. This Agreement cannot be modified except in writing, signed by the Parties.

6.4 No Construction Against Drafting Party. Each Party expressly recognizes that *no legal or other presumptions exist against the Party drafting this Agreement* concerning its construction, interpretation, or otherwise accrue to the benefit of any Party to this Agreement, and each Party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

6.5 Severability. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected and said illegal, unenforceable, or invalid part, term, or provision shall be deemed not part of this Agreement.

6.6 Incorporation by Reference. The PCSST Charter, as well as the PCSST and PCEA's collective bargaining agreement, are incorporated by reference.

Accepted and agreed by the Parties.

ROBIN S. ALEXANDER

Signed: _____

Printed: Robin S. Alexander

Title: Secretary

Date: 5/21/2024

PCSST BOARD OF TRUSTEES

Signed: _____

Printed: Matt A. Anar

Title: School Business Administrator/Board Secretary

Date: 05/13/2024

_____

Notary Public of the State of New Jersey

Paterson Charter School for Science & Technology
Est. 2002

Central Office
196 W. Railway Ave. Paterson, NJ 07503
(973) 750-4401
www.pcsst.org

RESOLUTION OF MEETING

Resolution # SR24-56 04/25/2024

Paterson Charter School for Science and Technology
196 W. Railway Avenue
Paterson, NJ 07503

Subject of Resolution: Settlement in the matter of Ms. Alexander

Approval of the settlement in the matter of Ms. Alexander v. Paterson Charter School for Science and Technology Board of Trustees, Docket Number EDU 04701-2023N, in accordance with the agreement on file in the Office of the School Business Administrator.

Motion made by: Mrs. Garcia-Rodriguez **Seconded by**: Mrs. Smith

Trustee	Vote	Trustee	Vote
Mr. Turkileri	Yes	Mr. Koroglu	Absent
Mrs. Garcia-Rodriguez	Yes	Mr. DeJesus	Yes
Mr. Kutlu	Yes	Mrs. Smith	Yes
Mrs. Arik-Copur	Yes		

I, SBA/Board Secretary, hereby certify that the foregoing resolution is a true copy of a motion duly adopted by a majority of a quorum of this Board of Trustees, as indicated above.

Signature: _____
Matt A. Anar, SBA/Board Secretary

Date of Board Meeting: 04/17/2024

264-24
OAL Dkt. No. EDU 07454-24
Agency Dkt. No. 172-5/24

New Jersey Commissioner of Education

Final Decision

F.M. and A.M., on behalf of minor child, A.M.,

Petitioners,

v.

Board of Education of the Clinton-Glen Gardner School District, Hunterdon County,

Respondent.

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 that this matter should be dismissed because no issues remain to be addressed following the resolution of the motion for emergent relief.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 11, 2024
Date of Mailing: July 12, 2024

[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 DENYING EMERGENT RELIEF
OAL DKT. NO. EDU 07454-24
AGENCY DKT. NO. 172-5/24

F.M. AND A.M., ON BEHALF OF MINOR CHILD A.M.,
Petitioners,
v.
BOARD OF EDUCATION OF CLINTON-GLEN GARDNER SCHOOL DISTRICT,
Respondent.

F.M. and A.M., **o/b/o A.M.**, petitioners, pro se

Marc Mucciolo, Esq., for respondent

Record Closed: June 6, 2024 Decided: June 7, 2024

BEFORE **MICHAEL R. STANZIONE**, ALJ:

STATEMENT OF THE CASE

Petitioners, F.M. and A.M., on behalf of A.M., filed an emergent petition for an order permitting A.M. to walk in his eighth-grade graduation on June 14, 2024. Respondent,

Clinton-Glen Gardner School District, determined that A.M. could not walk in the graduation ceremony due to safety concerns.

PROCEDURAL HISTORY

Petitioner filed a verified petition and request for emergent relief with the Commissioner of the Department of Education, Office of Controversies and Disputes (DOE). On June 3, 2024, DOE transmitted this matter to the Office of Administrative Law (OAL), where it was filed as a contested case seeking emergent relief. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing was held on June 6, 2024, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

A.M. is a fourteen-year-old eighth-grade student at Clinton Public School (CPS) within the Clinton-Glen Gardner School District (District). A.M. has a Section 504 plan due to a diagnosis of ADHD. R-2. A 504 Plan in New Jersey is designed to allow a disabled student to participate fully in the educational environment.

A.M. has engaged in disruptive and inappropriate behavior requiring significant discipline. Respondent articulated that it would rely on the certification of Dr. Seth Cohen, superintendent and principal of Clinton Public School, in opposition to petitioners' application for emergent relief.

Dr. Cohen's certification lists the following disciplinary incidents and harassment, intimidation, and bullying (HIB) findings that took place throughout the school year:

- On September 7, 2023, A.M. broke his Chromebook. A.M. stated it was "kinda on purpose." A.M. was shadowboxing and punched the Chromebook screen.

- On September 11, 2023, two of A.M.'s teachers raised concerns about behavior in class; especially concerning student safety, including impulsive behaviors,

shadowboxing, blurting out, and grabbing friends in headlocks and other mixed martial arts (MMA) moves.

- On September 13, 2023, A.M. twice put a chokehold on another student and got out of his seat to shadowbox during instruction.

- On September 14, 2023, A.M.'s teacher, Mr. Adase, reported that "within twenty seconds of entering the classroom, A.M. put his hands on another student in a headlock or half nelson fashion, followed by a light kick to the other student's leg. Mr. Adase immediately sent A.M. to the office. Upon A.M.'s return (about 30 min later) he was able to complete the class notes, participate, and start working on his homework independently."

- On September 22, 2023, A.M. and another student repeatedly threw a peer's water bottle in the air multiple times, resulting in a damaged and broken water bottle.

- On October 6, 2023, A.M. wrapped his hands around a peer's neck and then continued to shadow-box.

- On October 18, 2023, A.M. put a peer in a headlock during recess.

- On October 24, 2023, Mrs. Ruch sent A.M. to the main office. First, A.M. threw two pieces of candy corn at student E.H. Then, he stuck candy corn up his nose.

- On November 29, 2023, Mr. Adase called Mr. Stanbro and asked for A.M. to finish his social studies work in Mr. Stanbro's office after numerous disruptions and class distractions. A.M. was yelling things out, throwing things, moving around, and running into furniture.

- On December 8, 2023, A.M. asked to go to the bathroom, and Mr. Viotto noticed his phone in his pocket. Mr. Viotto asked A.M. to give it to him, and he did.

- On December 15, 2023, Mr. Adase reported the following to Dr. Cohen: "I wanted to bring to your attention that A.M. has been very disruptive in class, and I feel it is impact[ing] the other students[']' ability to learn and focus. In addition, he is choosing to do little to no work in class. In the past, I was able to send him to the library with support staff and he was able to get some work accomplished. However, at present, this is not an option. To date, I've reduced his workload, modified assignments, tried several seating arrangements, provided extended breaks, allowed plenty of class time to work on homework, provided praise, and positive reinforcement. I'm reaching out for solutions, as I don't see the situation improving."

- On January 2, 2024, A.M. said the "F-word" loudly and was given a recess detention.

- On January 8, 2024, A.M. had his cell phone out during study hall. Mr. Decker confiscated it and returned it at the end of the day.

- On January 9, 2024, A.M. fell asleep twice during English language arts (ELA) and was unable to engage in class activities. He was sent to the nurse. Instead of going straight to the nurse, he wandered the halls. Mrs. Rizzi needed to leave class to find him and escort him to the nurse. The nurse sent him back within minutes.

- On January 17, 2024, Mr. Decker spoke with A.M. in homeroom about his use of inappropriate language, which referred to a male body part. In study hall, he used the same word again. Mr. Decker spoke with A.M. again and asked him to be respectful of the people in the class. Mr. Decker told A.M. that he would impose lunch detention if he heard A.M. use the word again.

- On January 23, 2024, A.M. asked to go to the restroom during class, and Mr. Viotto noticed his cell phone in his pocket. Mr. Viotto asked A.M. to give him the cell phone, and A.M. complied. At the end of class, A.M. asked if he could have it back

and promised to put it in his locker. Mr. Viotto declined and took it down to the main office.

- On January 24, 2024, the 8th grade team raised numerous concerns from the prior week regarding a pattern of A.M.'s disruptive and distracting behavior: excessive calling out, physicality among peers like shadow-boxing and pretend fighting (teachers report that the other students are uncomfortable with the headlocks and similar actions but fear speaking up), physical actions around the classroom (intentionally running into and knocking over desks/chairs), crawling on the floor, throwing things at peers, not doing his work, taking belongings from peers, inappropriate language, ignoring teacher directions, and aggressive behavior towards both males/females while walking in the halls. As a result, administration, counselors, and teachers collaborated on a plan to offer additional modifications and provide structured breaks three times per day.

- On January 26, 2024, A.M. was told not to kick basketballs and not to throw balls in the direction of other students. He continued to do so after Mr. Stanbro asked him not to and Mrs. McVerry asked him not to. Continued to play after the bell and was told multiple times recess was over.

- On January 31, 2024, A.M. returned from Mr. Stanbro's office at 2:10. He was given instructions to continue to read the short story he selected and note two dystopian characteristics. A.M. said he didn't remember anything that Mr. Stanbro had said to him. This was the second time he returned saying that. He said he couldn't read the story or find two dystopian characteristics even after prompting. He put his head down and slept the remainder of the period.

- Also on January 31, 2024, A.M. answered about six questions on IXL, then put his head down and slept for thirty minutes.

- On February 5, 2024, A.M. was disruptive in several classes. When asked to work on his classwork, he told Dr. Cohen that he would do it at home so he could use

Photomath to get the answers. His teacher asked him several times to please work on his assignment. He kept laughing and trying to engage other students. In addition, A.M. was asked to try and remain more focused on his academics. The poor behavior continued, and he was removed from class and given an after-school detention. Finally, AM kept talking over his teacher during a lesson with little regard for his actions.

- On February 8, 2024, one of A.M.'s teachers asked him to read his independent novel. He refused. He took his cell phone out. Mrs. Rizzi took it and then the teacher gave it to Mr. Stanbro. Because his behavior was poor, his teacher asked him to sit in the office.

- On February 9, 2024, a teacher reached out to the administrator for support regarding a pattern of distracting and disruptive behaviors.

- On February 14, 2024, A.M. was found to be in possession of a marijuana vape in school. He was sent for testing and tested positive.

- On February 23, 2024, A.M. had his cell phone out during class. His teacher took it and gave it to the main office for him to pick up after school.

- On February 5, 2024, during health class, A.M. pushed another classmate out of their chair and across the floor. His teacher brought him into the hallway to ask what happened and if that student said anything to him to cause that response. A.M. said they didn't say anything. His teacher issued a lunch detention.

- On March 7, 2024, A.M. was asked to leave the room with another student and Dr. Brenner to work in a small group setting, as he was not able to accomplish anything in the large group setting. He became combative and flipped his desk over. Dr. Brenner was going to take him to the office, and he refused to go. She explained the situation to Dr. Cohen, and Mr. Merrigan called the classroom and asked the teacher to send A.M. down. After his teacher asked him several times to go to the

office, he finally left the room. He came back about seven minutes later, at which time Mr. Stanbro came to get him, as he never went to the office.

- On March 12, 2024, two teachers reported that over the last few weeks, they have observed A.M. taking food from others' lunches, particularly 7th graders. Both teachers asked A.M. to stop. A.M. has responded "No, it's fine" and "I'm allowed to." None of the students gave permission for A.M. to take their food.

- On March 14, 2024, Mrs. Lauricella reported that A.M. held a ruler to his crotch, turned towards peers and said, "Mine is longer than this ruler." This resulted in a Student-Administration discussion and warning about appropriate comments. A.M.'s response was "Mrs. Lauricella told me I get two passes (warnings) so that's one of them."

- On March 15, 2024, A.M. shot a rubber band across the room that nearly hit the teacher. He followed it up by slapping his hand against his stomach and making farting noises. He was sent to Mr. Stanbro's office. In addition, A.M. was not doing his artwork; he was out of his seat frequently; touched other students; crawled on the floor and meowed; and tried to leave the classroom without permission. A lunch detention was assigned after several verbal warnings.

- On March 18, 2024, A.M. barely completed any classwork. At one point, he was on the floor sliding around on his stomach. Also, during class, A.M. was sending photos of a rapper to the media center's printer without permission. This was not part of any work assigned that day.

- On March 22, 2024, A.M. finished his test and was told to work on his diagnostic. While the other students were working on their test, A.M. yelled out "Skibidi Toilet." Mr. Merrigan sent him to the office with his Chromebook to work on IXL.

- On April 8, 2024, A.M. was involved in the harassment of a peer, E.H., that involved derogatory terms which were recorded and shared via social media. A.M. admitted

to CPS staff that the voice in the background of the video was his. The two students pictured in the video confirmed A.M. was present and contributed to the video. A.M. said in the video, "Fuck [E.H.], Fuck [E.H.], SKANK, SKANK, SKANK." A.M. received a two-day out-of-school suspension on April 12 and April 15, 2024. This incident was also investigated and found to be HIB.

- On April 11, 2024, during lunch, A.M. made physical threats towards a peer, including saying "I'm going to get you," "I'm going to beat you up," and "I'm going to come to your house." These were overheard by two teachers. The teachers also observed A.M. aggressively stepping towards the peer and flexing, which seemed intimidating. A.M. also told a teacher that he asked the peer to punch him and to "give me a reason because I handle my own business." A.M. stated that this was all "joking around." A.M. also stated he gave the peer a fist bump "to show him we're good." A.M. was given an administrative warning and was told that joking about threats is not allowed and will be handled as serious threats in the future.

- On April 26, 2024, A.M. had another vape device and admitted it was his. His parent was called to pick him up. A.M. punched the walls while leaving the building.

- On May 2, 2024, during a suspension reentry meeting with the parent, CPS recommended referring A.M. to the child study team, and the parent did not agree.

- On May 3, 2024, several students confirmed that A.M. called E.H. "whore" and "skank" while in the hallway. A.M. admitted to this, but claimed he was speaking about a different person. Upon A.M.'s return from his suspension on April 12 and 15, 2024, Mr. Stanbro clearly communicated to A.M. that retaliation would not be permitted and that derogatory terms such as hoe, skank, etc. were code of conduct violations. Additionally, A.M. turned and shouted "Fuck up" directed at E.H. while exiting his homeroom. After homeroom, A.M. entered Spanish class. As reported by a staff member, "I did not hear what was said in the hall, but when A.M. walked

into class he said 'Something smells in here' and it was directed at E.H." E.H. also reported that A.M. told her to shut up and called her a skank again.

- Dr. Kastner and Mr. Stanbro met with A.M. After Dr. Kastner asked for clarification, A.M. shouted, punched the table, then punched the wall behind his chair. A.M. then left Dr. Kastner's office despite attempts to calm and de-escalate him. A.M. ignored administrative directions to remain in the office and kept walking. Mr. Stanbro walked with A.M. through the halls with Officer Testa and Dr. Kastner following. Mr. Stanbro attempted multiple times to de-escalate as A.M. continued shouting. During this, A.M. saw E.H.'s older sister, who initially turned towards them coming out of CST, then quickly redirected to go the opposite way. A.M. said out loud "Yeah, she better walk the other way." A.M. was still visibly frustrated, but Mr. Stanbro did get him to return to Dr. Kastner's office and then to his own office. After discussion, A.M. seemed calm. A.M. was permitted to go to social studies with the understanding that Mr. Stanbro and Dr. Kastner would address the comments later. After further understanding of events, Mr. Stanbro attempted to clarify the order of events with A.M. in his office. A.M. became upset again, punched his Chromebook, then left Mr. Stanbro's office without permission again. A.M.'s dad was called to pick him up. A HIB investigation was opened regarding this incident, and it was determined to be founded.

- On May 6, 2024, in the hallway, A.M. called E.H. "fat." One student confirmed that A.M. said this and that when E.H. responded by calling him ugly, A.M. responded to her by saying "you're fuckin' fat." This was overheard by a staff member in the hall as well. A.M. was brought to the main office to avoid any additional issues and to keep E.H. safe. Work was provided by teachers to A.M. while in the office, and lunch was also provided. A.M. left the office several times without permission and would not respond to directives. A.M.'s parents were emailed to pick him up from school. As a result of this conduct, A.M. received a four-day out-of-school suspension followed by home instruction pending a CST evaluation.

- On May 8, 2024, E.H.'s parent reported the following: "Last night I picked E. up from her friend's house in Clinton. We go through town to get to Rt 31. As we were driving through on Halstead Street, we see A.M. with a group of friends, he sees E.H. and starts jumping up and down, as we pass he flips us off and yells 'Skank!'"

- Since these incidents, the parents of E.H. reach out on a regular basis to inquire about A.M.'s attendance at school events, due to the significant concerns they have about E.H. being around A.M. in any capacity.

- On May 16, 2024, the parents of A.M. were requested to sign a release of records to North Hunterdon High School and alternate program but refused.

- As a result of these incidents, the CPS administrative team placed A.M. on home instruction for the last few weeks of the school year. This decision was not taken lightly but was necessary to ensure the safety of other students and ensure that A.M. would continue to be educated.

- Often, A.M.'s emotional state dictates his level of compliance and participation daily. When he becomes frustrated, A.M. will simply walk away and not communicate with his teachers. A.M. requires a significant level of accommodations, such as frequent breaks as reinforcement as well as to meet his need for constant movement. A.M. is a bright young man, but his behavior and noncompliance interfere with his ability to participate in his current educational setting without a significant level of support, accommodations, and modifications. R-2.

- As a result of A.M.'s increasingly inappropriate, disruptive, and aggressive behaviors, including the two HIB findings against him and his specific targeting of student E.H., CPS made the administration decision, based upon the totality of A.M.'s conduct, to revoke the privilege of A.M. attending end-of-the-year 8th grade

activities. These activities included the 8th grade breakfast and BBQ, prom, overnight class trip, and graduation.

- CPS's decision stems from the administration's responsibility to ensure the safety of the District's students, including E.H., and not simply to discipline A.M.

- CPS respectfully submits that due to A.M.'s increasing and unmanageable behaviors, and specific targeting of student E.H., he should not be permitted to attend graduation. A.M.'s past behavior raises legitimate concerns about the likelihood of disruption at this event should he be permitted to attend.

Certification of Dr. Seth Cohen. R-2.

Petitioners testified that A.M. has been painted in a bad light by CPS and Dr. Cohen. A.M. has never been involved in a fight or an altercation, despite the assertions previously made by the respondent. As parents, they feel that A.M. should be acknowledged at graduation for his hard work and dedication throughout the school year. Closing the chapter of middle school is a big deal, and though A.M. faced many challenges to get through the school year, he maintained his grades. They believe that the school has mishandled A.M. and built a case against him just to exclude him from end of the year activities.

Petitioners did not dispute the facts offered by the Board. They did testify that there were incidents the board "left out." On March 19, 2024, Dr. Cohen falsely accused A.M. of being under the influence of alcohol, when in fact he was experiencing spring allergies. Dr. Cohen has admitted to closely monitoring A.M. and has exhibited a pattern of bias and mistreatment towards him, attempting to manipulate A.M. into causing trouble to build a case against him. Petitioners cited an October 11, 2023, incident involving a school aide, David Henry, who dragged A.M. across the school corridor. In February 2023, A.M. was falsely accused of attacking a teacher. During a June 2023, Board meeting, the minor child A.M. and his mother F.M. shared A.M.'s side of the story with respect to one of the incidents that involved E.H. Dr. Cohen became volatile towards A.M

and F.M. He did not like the questions A.M. and F.M. asked or the answers his staff was providing. Dr. Cohen rose from his seat, slammed the desk, and screamed, "no more questions and no more answers," pointing the finger at this staff. He turned to F.M. and A.M. and asked them to leave immediately, as they had exceeded their fifteen minutes of allowed time. Petitioners asserted that these incidents demonstrate a clear pattern of mistreatment, discrimination, and harassment towards A.M. by CPS. Such behavior violates A.M.'s rights as a student and undermines the integrity and fairness of the educational environment at CPS.

Petitioners do not believe A.M.'s ADHD is a learning disability, and they further assert that the school is not equipped to handle him. Petitioners rejected the school trying to place A.M. in an individualized educational plan (IEP) because they want him to "figure it out on his own." They believe that CPS has tirelessly tried to put A.M. "in a box" and back on an IEP.

LEGAL ANALYSIS AND CONCLUSIONS

The regulations governing controversies and disputes before the Commissioner of Education provide that "[w]here the subject matter of the controversy is a particular course of action by a district board of education . . . [,] the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may "[t]ransmit the motion to the OAL for immediate hearing on the motion." N.J.A.C. 6A:3-1.6(c)(3).

At a hearing for emergent relief, petitioner must show that they satisfy the following four standards:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying petitioner's claim is settled;

3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and

> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.
>
> [N.J.A.C. 6A:3-1.6(b) (citing Crowe v. DeGioia, 90 N.J. 126 (1982)).]

The petitioner must prove each of these standards by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). The standard is a high threshold to meet, and I will address each prong separately.

1. Irreparable harm

As the New Jersey Supreme Court explained in Crowe, "[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Indeed, the purpose of emergent relief is to "prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case." Ibid. (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854).)

"Irreparable harm is shown when money damages cannot adequately compensate plaintiff's injuries." Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "More than a risk of irreparable harm must be demonstrated." Cont'l Grp., Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). "The requisite for injunctive relief has been characterized as a 'clear showing of immediate irreparable injury' . . . or a 'presently existing actual threat; [an injunction] may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by the common law.'" Ibid. (citations omitted).

Here, with respect to the first prong, A.M. will suffer irreparable harm if the requested relief is not granted. If he does not attend graduation, that opportunity will be lost forever.

Accordingly, I **CONCLUDE** that petitioners have met their burden of proof with respect to this prong.

2. Settled Legal Right

However, there is a difference between emergent and important. I understand that the requests here are important; however, they are not emergent. Emergent relief "should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. at 304–05). Case law establishes that attendance at a graduation ceremony is a privilege and not a right. See I.K. v. West Windsor-Plainsboro School District, 97 N.J.A.R. 2d (EDU) 639; M.P. v. Hackettstown Bd. of Educ., 95 N.J.A.R. 2d (EDS) 210. Therefore, because he has no legal right to attend the ceremony, he cannot satisfy that prong of the test. Therefore, **I CONCLUDE** that petitioners have not shown a legal right underlying this claim.

3. Likelihood of Success on the Merits

Petitioners have not demonstrated that they are likely to succeed on the merits of the underlying claim. Under this emergent relief prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)). This typically "'involves a prediction of the probable outcome of the case' based on each party's initial proofs, usually limited to documents." Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)).

Because I have found that petitioners have not shown a legal right underlying this claim, it logically follows that there is not a likelihood of success on the merits. The number of incidents that resulted in discipline of A.M. is exorbitant. Although petitioners claim that the school is building a case against them, they have not provided any clear and convincing evidence or legal authority showing that they have a reasonable

probability of ultimate success on the merits. I therefore **CONCLUDE** that petitioners have not shown a reasonable probability of ultimate success on the merits.

4. Balancing the Equities

The fourth and final emergent relief standard involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

The only evidence presented here regarding relative hardship to the parties pertains to the fact that A.M. will not walk at graduation. However, that was dealt with in the above analysis.

I **CONCLUDE** that the Board will suffer greater harm should emergent relief be granted than the student if the requested relief is not granted.

Based upon the foregoing, I **CONCLUDE** that petitioners failed to meet the requirements set forth in N.J.A.C. 6A:3-1.6(b), warranting an order for emergent relief in this matter.

ORDER

Accordingly, I **ORDER** that the petitioners' application for emergent relief be and hereby is **DENIED**. I understand that there are no other issues to be decided on the underlying petition, and accordingly, the petition is **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

June 7, 2024
DATE

MICHAEL STANZIONE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

WITNESSES

For petitioner

F.M.

A.M.

For respondent

None

EXHIBITS

For petitioner

P-1 Request for emergent relief dated May 30, 2024

For respondent

R-1 Opposition dated June 5, 2024

R-2 Certification of Dr. Seth Cohen dated June 5, 2024

274-24
OAL Dkt. No. EDU 14293-23
Agency Dkt. No. 311-11/23

New Jersey Commissioner of Education

Final Decision

Hillsborough Education Association,

Petitioner,

v.

Board of Education of the Township of Hillsborough, Somerset County,

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 18, 2024
Date of Mailing: July 24, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 14293-23
AGENCY REF. NO. 311-11/23

HILLSBOROUGH EDUCATION ASSOCIATION,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF HILLSBOROUGH, SOMERSET COUNTY,
Respondent.

Richard A. Friedman, Esq., for petitioner (Zazzali, P.C., attorneys)

Stephen R. Fogarty, Esq., for respondent (Fogarty and Hara, attorneys)

Record Closed: June 13, 2024 Decided: June 18, 2024

BEFORE **DEAN J. BUONO**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the

Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties, however, have settled this case without the need for a hearing. Their settlement agreement is attached to this decision.

Having reviewed the terms of their settlement agreement, I have determined that the settlement is voluntarily, consistent with the law, and fully dispositive of all issues in controversy between the parties.

I **ORDER** that the parties comply with the terms of their settlement agreement.

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

This recommended decision may be adopted, modified or rejected by the **ACTING 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.

June 18, 2024
DATE

DEAN J. BUONO, ALJ

Date Received at Agency: 6/19/2024

Date Mailed to Parties: 6/19/2024

DJB/onl

FOGARTY & HARA, ESQS.
21-00 Route 208 South
Fair Lawn, New Jersey 07410
(201) 791-3340
(201) 791-3432 Telecopier
Attorneys for Respondent,
Hillsborough Township Board of Education
Our File No.: 77/1853

HILLSBOROUGH EDUCATION ASSOCIATION Petitioner, v. HILLSBOROUGH TOWNSHIP BOARD OF EDUCATION, SOMERSET COUNTY Respondent.	:	BEFORE THE COMMISSIONER OF EDUCATION Agency Ref. No.: 3411-11/23 OAL Dkt. No.: EDS 14293-23 **SETTLEMENT AGREEMENT AND RELEASE**

THIS SETTLEMENT AGREEMENT AND RELEASE is made and entered into as of this 30th day of May, 2024 by, among, and between the Hillsborough Education Association ("Association" or "Petitioner") and the Hillsborough Township Board of Education, board members, trustees, directors, officers, and attorneys ("Board" or "Respondent").

WHEREAS, on or about November 17, 2023, the Association filed a Petition of Appeal with the Commissioner of Education

("Commissioner") alleging inter alia that Board Regulation 1641.02, "Sick Leave," (incorrectly cited as Board Policy 1641.02) is in violation of *N.J.S.A.* 18A:30-4 (e), as far as the policy requires employees to provide a physician's certificate for claims of sick leave of less than three consecutive days; and

WHEREAS, on or about December 7, 2023, the Board filed an Answer to the Petition of Appeal and Separate Defenses, denying that Board Regulation 1641.02 violates *N.J.S.A.* 18A:30-4 (e), or any other provision of *N.J.S.A.* 18A:30-1 et seq.; and

WHEREAS, the matter was transmitted by the Commissioner as a contested case to the Office of Administrative Law where it was assigned to Administrative Law Judge Dean J. Buono; and

WHEREAS, a prehearing conference with Administrative Law Judge Buono took place on or about February 29, 2024; and

WHEREAS, on or about March 11, 2024 and April 29, 2024, status conferences were conducted by Administrative Law Judge Buono; and

WHEREAS, the parties find it to be in their best interests to resolve their dispute based on the terms set forth herein, thereby avoiding the inconvenience and expense associated with litigation; and

NOW, THEREFORE, in consideration of the promises and mutual covenants, understandings and agreements contained in this Settlement Agreement and Release ("Agreement"), it is hereby agreed by and between the Board and the Association as follows:

1. **Settlement Terms**. The Board will not require a physician's certificate to be filed with the Secretary of the Board in order to obtain sick leave in cases of sick leave claimed for less than three (3) consecutive days for a purpose permitted pursuant to *N.J.S.A.* 18A:30-1, unless there is a reasonable basis to suspect there is an abuse of sick leave.

2. **No Further Action**. Except as provided by Paragraph 1 above, the parties acknowledge that this settlement resolves any and all claims that were brought or could have been brought against the Board related to the subject matter of this contested case and the Association shall voluntarily dismiss this Petition of Appeal, bearing OAL Docket No.: EDU 14293-2023 and Agency Ref. No.: 3411-11/23 with prejudice.

3. **No Admission**. This Agreement and compliance with this Agreement shall not be construed as an admission by any party of any liability whatsoever with respect to any matter, as it is made solely to avoid the inconvenience and cost of further litigation.

4. **No Reliance**. This Agreement constitutes the entire understanding of the parties with respect to the subject matter

hereof, and there are no representations, warranties, covenants, or undertakings other than those expressly set forth herein. Each party acknowledges that they are not relying upon any oral statements, representations, promises, or expectations which are not expressly set forth in this Agreement, which alone fully and completely expresses all agreements between the parties.

5. **Full Understanding**. The parties acknowledge that they are entering into this Agreement of their own accord and without any undue influence, coercion, or pressure of any kind; that all the provisions of this Agreement, as well as all questions pertinent thereto, have been fully and satisfactorily explained to them; that they have given due consideration to such provisions and questions, and understand them clearly; that the provisions embodied in this Agreement are in all respects acceptable to them and that they, therefore, accept these provisions in full and final satisfaction of all claims and demands which have been raised or which could have been raised in any litigation.

6. **Representation**. All parties acknowledge that they have consulted with (or had the opportunity to consult with) an attorney of their own choosing prior to signing this Agreement, and that they sign this Agreement as their own voluntary act and deed and fully understand the duties and obligations enumerated herein.

7. **Non-Severability and Reformation**. All terms of this Agreement are deemed material. In the event that any portion of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the Parties agree, in advance, to reform the Agreement in good faith to provide each Party with the full benefit of the settlement memorialized by the Agreement to the extent permitted by law. Should such reformation not be possible, if any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall not remain in full force and effect (the Agreement shall be voided).

8. **Modifications and/or Waivers.** A modification or waiver of any of the provisions of this Agreement shall be effective and enforceable only if made in writing and executed with the same formality as this Agreement. The failure of any party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature or of a continuation of an existing default.

9. **Governing Law.** This Agreement shall be subject to the laws of the State of New Jersey, without regard to its choice of law principles.

10. **Ratification**. This Agreement is subject to ratification by the Board and is without prejudice to any party

if the terms are not agreed upon. Upon ratification, a true copy of the Board minutes or resolution approving this Agreement will be attached to this Agreement as Exhibit A.

11. **Section Headings**. Section headings are for reference purposes only and shall not in any way affect the meaning or interpretation of any provision of this Agreement.

12. **Counterparts**. This Agreement may be signed in counterparts, which, when taken together, shall constitute but a single document when executed by all parties. This Agreement shall not be effective until such time as it has been duly authorized and executed by all.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the date and year set forth.

WITNESS:

Gerald M Eckert

GERALD ECKERT
Business Administrator/
Board Secretary

DATED: 5/31/24

WITNESS: Nancy Barbiero

Nancy Barbiero

DATED: 5/30/2024

HILLSBOROUGH TOWNSHIP
BOARD OF EDUCATION

BY: _____

PAUL MARINI
Board President

DATED: 5/31/24

Henry Goodnite

HILLSBOROUGH EDUCATION
ASSOCIATION

BY: _____

DATED: 5/30/24

RESOLUTION

BE IT RESOLVED by the Hillsborough Township Board of Education ("the Board") that the terms, stipulations, and conditions as established in the Settlement Agreement and Release between the Board and the Hillsborough Education Association are hereby adopted and approved by the Board. The Board President and Business Administrator/Board Secretary are hereby authorized and directed to execute the Settlement Agreement and Release, and any other documents necessary to effectuate the settlement.

ROLL CALL VOTE:

AYES: 9

NAYS: 0

ABSTENTIONS: 0

CERTIFICATION

I hereby certify that the within Resolution was adopted by the Hillsborough Township Board of Education by a majority vote at its duly authorized meeting on June 10, 2024.

Gerald M. Eckert
School Business Administrator/
Board Secretary

DATED: June 11, 2024

275-24
OAL Dkt. No. EDU 01364-24
Agency Dkt. No. 364-12/23

New Jersey Commissioner of Education

Final Decision

I.D., on behalf of minor child, I.R.,

Petitioner,

v.

Board of Education of the City of Burlington, Burlington County,

Respondent.

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's (ALJ) finding that petitioner failed to sustain her burden of establishing that minor child I.R. was entitled to attend school in Burlington pursuant to *N.J.S.A.* 18A:38-1. The Commissioner further concurs with the ALJ's conclusion that I.R. was, therefore, not entitled to a free public education in the district during that time.

Accordingly, the Initial Decision is adopted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 18, 2024
Date of Mailing: July 24, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 01364-24
AGENCY DKT. NO. 364-12/24

I.D. ON BEHALF OF MINOR CHILD I.R.,

Petitioners,

v.

BOARD OF EDUCATION OF THE CITY OF BURLINGTON, BURLINGTON COUNTY,

Respondent.

I.D., appearing pro se

Alicia D'Anella, Esq., for respondent (Gorman, D'Anella & Morlok, LLC, attorneys)

Record Closed: May 3, 2024 Decided: June 14, 2024

BEFORE **WILLIAM T. COOPER III**, ALJ:

STATEMENT OF THE CASE

Petitioner I.D. ("petitioner") filed an appeal with the Department of Education from the determination of the Board of Education of the City of Burlington ("Board") that her niece, I.R., was only residing with I.D. for purposes of attending school, and petitioner failed to

demonstrate economic or family hardship and/or that I.R.'s parents C.A. and A.A. were incapable of supporting her, as required by N.J.S.A. 18A:38-1.

PROCEDURAL HISTORY

On December 4, 2023, the Board issued a final Notice of Ineligibility to I.D. stating that her niece I.R. was ineligible to attend school within the district. The petitioner filed a notice of appeal on or about December 21, 2023. The Board filed an answer and motion for summary decision and requested that the Commissioner dismiss the appeal and assess petitioner the cost of tuition.

The matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case on January 26, 2024. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A status conference was conducted on March 14, 2024, and the petitioner was afforded an opportunity to provide a response to the motion for summary decision by April 12, 2024. No response or opposition to the motion was received from the petitioner.

A hearing on the motion was scheduled for May 3, 2024. The petitioner failed to appear at the hearing. All notices for the hearing were served properly by the Office of Administrative Law (OAL). No mailings were returned or unsuccessfully delivered. The OAL did not receive any contact from the petitioner while this matter was pending.

FACTUAL DISCUSSION

The material facts were uncontroverted, and I **FIND** as **FACT** the following:

I.R. previously attended Burlington City High School through the end of the 2022–2023 school year, which was her junior (eleventh-grade) year. I.R.'s parents, C.A. and A.A., moved out of the City of Burlington Public School District ("district") during the 2022–2023 school year, after purchasing a home in Marlton, New Jersey. As a result, I.R. was transferred to Cherokee High School for the 2023–2024 school year. Prior to her transfer,

I.R.'s parents requested permission for her to remain in the district through the 2023–2024 school year. This request was denied.

Families are allowed to enroll students in the district due to economic or family hardship pursuant to N.J.S.A. 18A:38-1, and on or about November 28, 2023, I.D., who is I.R.'s aunt and resides within the district, sought to enroll her niece I.R. in the district under the provisions of that statute. An application for families seeking to enroll students in the district due to economic or family hardship was forwarded to I.D. The completed affidavits were submitted on or about December 1, 2023.

In the affidavits, under the section titled "Explanation of Hardship," I.R.'s mother, C.A., provided the following explanation:

> [I.R.] is having a hard time adapting to the new school. She's being depressed, doesn't leave the room, crying all day, claiming her life is ruined ever since we moved, as she doesn't want to graduate with students and teachers that she doesn't know and the students in the new school isn't being opened [sic] to include her.

On December 4, 2023, I.R.'s family was notified that I.R.'s enrollment had been denied and the family was provided with a Notice of Ineligibility and information on how petitioners may appeal to the Commissioner of Education. The district concluded that I.R. was only residing with I.D. for purposes of attending school, and petitioner failed to demonstrate economic or family hardship as required by N.J.S.A. 18A:38-1 and/or that I.R.'s parents were incapable of supporting her.

The daily tuition rate for a student in the district during the 2023–2024 school year is $114.19 per day.

LEGAL ANALYSIS AND CONCLUSIONS

Summary Decision

At any time concurrent with or after the filing of an answer, but prior to transmittal of a matter to the Office of Administrative Law, any party may apply for summary decision by way of a motion with proof of service on each other party. N.J.A.C. 6A:3-1.12. A contested case can be summarily disposed of before a plenary hearing in instances where the undisputed material facts, as developed on motion or otherwise, indicate that a particular disposition is required as a matter of law. See In re Robros Recycling Corp., 226 N.J. Super. 343, 350 (App. Div. 1988). When a motion for summary decision is made and supported, to prevail, an adverse party must, by responding affidavit, set forth specific facts showing that there is a genuine issue that can only be determined in an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

Here, the petitioner was afforded an opportunity but failed to respond to the motion filed on or before April 12, 2024. Petitioner also failed to appear for the scheduled motion hearing on May 3, 2024.

I **CONCLUDE** that the material facts are undisputed and, as such, this matter is ripe for summary decision.

Issues

There are two issues here: 1. Did petitioner demonstrate economic or family hardship as required by N.J.S.A. 18A:38-1 and/or that I.R.'s parents were incapable of supporting her? 2. Was the determination by the Board that I.R. is not entitled to a free education in the City of Burlington Public School District arbitrary and capricious?

Analysis

Public schools are required to provide a free education to individuals between the ages of five and twenty years in certain circumstances, including individuals who are

domiciled within the school district. N.J.S.A. 18A:38-1(a). Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is the domicile of the parent, custodian, or guardian. P.B.K. ex rel. minor child E.Y. v. Bd. of Educ. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001). Thus, a child would routinely attend school in the district where his or her parents live.

Here, I.R. previously attended Burlington City High School through the end of the 2022–2023 school year, which was her junior (eleventh-grade) year. I.R.'s parents, C.A. and A.A., moved out of the district during the 2022–2023 school year after purchasing a home in Marlton, New Jersey. The district concluded that I.R. was not entitled to a free education in the City of Burlington Public School District because petitioner was unable to demonstrate either an economic or family hardship or that C.A. and A.A. are unable to provide care and support to I.R. N.J.S.A. 18A:38-1 requires that the parent or guardian of a child file a sworn statement with the secretary of the board of education attesting that the parent or guardian is not capable of supporting or providing care for the child due to a family or economic hardship, and that the child is not residing with the resident of the district solely for the purpose of receiving a free public education within the district. With respect to meeting the threshold for establishing hardship, N.J.S.A. 18A:38-1(b) requires that parents not only show a "hardship," but also show that they are incapable of providing support or care to the child because of that hardship. As set forth below, neither hardship nor inability to care for I.R. has been demonstrated.

I.R.'s mother, C.A., submitted a sworn statement in support of I.R.'s enrollment as an "affidavit student" that demonstrates only that I.R. is unhappy at having to transfer to a new school due to her parents' relocation. Specifically, C.A. attests that I.R. is "claiming her life is ruined" and "doesn't want to graduate with students and teachers that she doesn't know." While I.R.'s unhappiness and disappointment are perfectly understandable, a student's displeasure does not meet the legal threshold for family or economic hardship. Further, even if I.R.'s unhappiness constituted a hardship, the affidavit is lacking any information regarding C.A. and A.A.'s capability to provide care or support to I.R. The statute requires the parent to provide "a sworn statement that he is

not capable of supporting or providing care for the child due to a family or economic hardship," not merely that a hardship may exist. N.J.S.A. 18A:38-1(b); see also J.B. ex rel. R.H. v. Bd. of Educ. of Ocean, SB# 26-97 (Sept. 3, 1997), http://www.nj.gov/education/legal/sboe/1997/jb3.pdf.

Applying the law to the facts and circumstances, I **CONCLUDE** that I.R. is not entitled to free public education in the respondent's district. I **CONCLUDE** that the petitioners have failed to satisfy their burden of proof that C.A. and A.A. are incapable of providing care and support to I.R. or that the family is facing an economic hardship. I **CONCLUDE** that the respondent did not act in an arbitrary and capricious manner in denying enrollment to I.R. I **CONCLUDE** that summary decision in favor of respondent is appropriate.

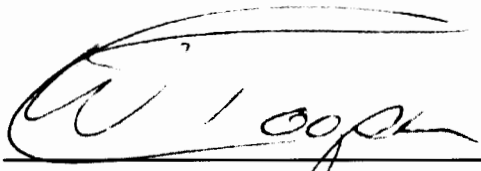
ORDER

It is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**. Petitioner's appeal 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 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.



June 14, 2024
DATE

WILLIAM T. COOPER III, ALJ.

Date Received at Agency: _____

Date E-Mailed to Parties: _____

WTC/am

APPENDIX

Witnesses

For Petitioners

None

For Respondent

None

Exhibits

For Petitioners

None

For Respondent

R-1 Motion for Summary Decision and supporting Affidavit

276-24
OAL Dkt. No. EDU 01411-24
Agency Dkt. No. 13-1/24

New Jersey Commissioner of Education

Final Decision

E.B., on behalf of minor child, A.R.,

Petitioner,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

The record of this matter, the proposed Release and Settlement Agreement (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 2 of the Agreement references actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 18, 2024
Date of Mailing: July 24, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. EDU 01411-24

AGENCY DKT. NO. 13-1/24

E.B., ON BEHALF OF MINOR CHILD, A.R.,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY OF ELIZABETH, UNION COUNTY,

Respondent.

E.B. on behalf of minor child, A.R., petitioner, pro se

Brian J. Kane, Esq., for respondent (LaCorte, Bundy, Varady & Kinsella, attorneys)

Record Closed: June 14, 2024 Decided: June 17, 2024

BEFORE **ANDREA PERRY-VILLANI**, ALJ:

This matter was transmitted to the Office of Administrative Law on January 26, 2024 for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

A hearing was scheduled for April 18, 2024 and during that time, the parties agreed to settle the matter. The executed Settlement Agreement indicating the terms of agreement was forwarded to the OAL on June 14, 2024 and is attached hereto.

Having reviewed the record and the settlement terms, I **FIND:**

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or the signatures of their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of 1:1-19.1 and that settlement should be approved. Accordingly, I approve the settlement and **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

Andrea Perry-Villani

June 17, 2024
DATE

ANDREA PERRY-VILLANI, ALJ

Date Received at Agency: 6-18-24

Date Mailed to Parties: 6-18-24

sej

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE, (hereinafter referred to as "Agreement"), is made this 14 day of June, 2024, by and between the Erica Baez (hereinafter, also referred to as "Petitioner"), who currently resides at 160 Hillside Avenue, Hillside, New Jersey 07205 and the Elizabeth Board of Education (hereinafter, also referred to as the "Board"), with its principal offices located at 500 North Broad Street, Elizabeth, New Jersey 07208.

WHEREAS, Petitioner enrolled her minor child A.R., as a student in the Elizabeth Public School District for the 2023-2024 school year; and

WHEREAS, the Board determined that the minor child A.R. was ineligible to attend the schools of the Elizabeth Public School District due to domicile outside of Elizabeth; and

WHEREAS, Petitioner commenced an action against the Board appealing its residency determination in a matter entitled E.B. on behalf of minor child, A.R. v. City of Elizabeth Board of Education, OAL Docket No. EDU 01411-24, Agency Ref. No.: 13-1/24, (hereinafter referred to as the "Petition"); and

WHEREAS, the Board filed a Counterclaim to the Petition against Petitioner for tuition reimbursement for A.R.'s ineligible attendance in the Elizabeth School District; and

WHEREAS, the Petitioner and the Board (hereinafter, also referred to as the "Parties") having reached a negotiated agreement to fully, and finally, settle all claims among them, including those asserted in the Petition and Counterclaim; and

NOW, THEREFORE, in consideration of the mutual promises and undertaking said forth herein, the parties agree as follows:

The foregoing recitals are incorporated herein as if set forth at length.

1. **Consideration.** In settlement of this matter, the Respondent Elizabeth Board of Education hereby agrees to waive their counterclaim for tuition reimbursement for the period of allegedly ineligible attendance. The Elizabeth Board of Education originally sought tuition at the per diem rate of $99.75 which was calculated pursuant to N.J.A.C. 6A:22-6. The period of alleged ineligible attendance was from the date of the final notice of ineligibility, January 3, 2024, until the date on which the matter was resolved. (See January 3, 2024, Notice of Final Ineligibility attached hereto as **Exhibit A**). On April 12, 2024, counsel for the Board notified the Office of Administrative Law that the above matter has been resolved. Therefore, the period of alleged ineligible attendance was sixty-two (62) days. (See 2023-2024 School Calendar attached hereto as **Exhibit B**). When the per diem rate of $99.75 is applied to the sixty-two (62) school days, the total amount of alleged tuition waived is $6,184.50.

In the event that Petitioner fails to abide by the terms outlined in Paragraph 2 below, the Petitioner shall be in default of this agreement, and the parties agree that a judgment shall be entered and docketed in the Superior Court of New Jersey in favor of the Respondent for the alleged unpaid tuition of six-thousand, one hundred, eighty-four dollars and fifty cents, $6,184.50.

2. **Attendance of M.M. at Elizabeth Public School District.** Petitioner shall unenroll the minor child A.R. from the Respondent's school district at the conclusion of the 2023-2024 school year on June 24, 2024. (See 2023-2024 School Calendar attached hereto as **Exhibit B**). A.R.'s final day of school shall be June 24, 2024, upon which all necessary transfer paperwork will be completed so that A.R. shall begin the 2024-2025 school year outside of the Respondent's district. Petitioner shall not be permitted to attempt to re-enroll the minor child A.R. within the Respondent's school district. So long as the Petition unenrolls student A.R. on June 24, 2024, the Respondent shall not seek a judgment for the alleged tuition calculated in Paragraph 1 above.

3. **Waiver and Release of Claims.** In settlement of this matter and in consideration of the waiver payments set forth in Paragraph 1 above, Petitioner hereby releases and forever discharges the Board, in its official and personal capacities, and its related or affiliated entities, and its past, present and future officers, directors, attorneys, employees, owners, insurers, and their respective successors and assigns (collectively "Releasees"), jointly and severally, from any and all actions, complaints, causes of action, lawsuits or claims of any kind (collectively "Claims"), known or unknown, asserted or unasserted, which Petitioner, her heirs, agents, executors, successors or assigns ever had, now have or hereafter may have against Releasees arising out of any matter, occurrence, omission, or event existing or occurring prior to Petitioner's execution of this Agreement, including, without limitation: any and all causes of action suits, debts, dues, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, obligations, promises, variances, trespasses, damages, judgments, executions, claims and demands, whether arising in contract or tort, vested or contingent, whether known or unknown, direct or indirect, existing or not existing, by reason of any matter, cause or thing whatsoever, in law or at equity from the beginning of time to the date of the execution of this Agreement.

In settlement of this matter and in consideration of the Petitioner's actions set forth in Paragraph 2 above, Respondent hereby releases and forever discharges the Petitioner from any and all actions, complaints, causes of action, lawsuits or claims of any kind, known or unknown, asserted or unasserted, regarding tuition reimbursement for 2023-2024 school year. Respondent waives and releases the Petitioner from any and all other causes of action, suits, debts, dues, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, obligations, promises, variances, trespasses, damages, judgments, executions, claims and demands, whether arising in contract or tort, vested or contingent, whether known or unknown,

direct or indirect, existing or not existing, by reason of any matter, cause or thing whatsoever, in law or at equity from the beginning of time to the date of the execution of this Agreement.

4. **Stipulation.** Simultaneous with the execution of this Agreement, Petitioner and counsel for the Board shall execute a Stipulation of Dismissal with Prejudice with regard to the Petition and the Board's Counterclaim in the form attached hereto as **Exhibit C**.

5. **Counterparts; Entire Agreement; No Oral Modification.** This Agreement may be executed in counterparts, which together shall comprise the entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements, written or oral, expressed or implied. No other promises, agreements or amendments, or any separate agreement relating to the subject matter of this Agreement shall be binding or shall modify this Agreement unless expressed in writing and signed by all parties hereto.

6. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

7. **No Admission of Liability.** Nothing in this Agreement shall be construed as an admission or concession of liability or wrongdoing by either party to this agreement. Rather, this Agreement is being offered for the sole purpose of settling cooperatively and amicably any and all possible disputes between the parties.

8. **Severability.** Nothing in this Agreement is intended to violate any law or shall be interpreted to violate any law. If any paragraph or part or subpart of any paragraph in this Agreement or the application thereof is construed to be overbroad and/or unenforceable, then the court making such determination shall have the authority to narrow the paragraph or part or subpart of the paragraph as necessary to make it enforceable and the paragraph or part or subpart of the paragraph shall then be enforceable in its/their narrowed form. Moreover, each paragraph or part

or subpart of each paragraph in this Agreement is independent of and severable (separate) from each other. In the event that any paragraph or part or subpart of any paragraph in this Agreement is determined to be legally invalid or unenforceable by a court and is not modified by a court to be enforceable, the affected paragraph or part or subpart of such paragraph shall be stricken from the Agreement, and the remaining paragraphs or parts or subparts of such paragraphs of this Agreement shall remain in full, force and effect.

9. **Headings**. The headings contained in this Agreement are for convenience of reference only and are not intended, and shall not be construed, to modify, define, limit, or expand the intent of the parties as expressed in this Agreement, and they shall not affect the meaning or interpretation of this Agreement.

10. **Interpretation**. This Agreement shall be construed without aid of any canon or rule of law requiring construction or interpretation against the party drafting or causing this Agreement or any provision thereof to be drafted.

11. **Contingency**. It is agreed and understood by all Parties hereto that this Agreement is contingent upon each of the Parties fulfilling all of their respective duties, obligations, and/or promises as stated herein.

12. **Entire Agreement**. This Agreement sets forth the entire agreement between the parties, and supersedes any, and all, prior agreements, or understandings between the parties. By executing this Agreement, Petitioner represents and acknowledges, that she does not rely, and has not relied, upon any representation, or statement, not set forth in this Agreement made by Respondent, or their Counsel, with regard to the subject matter, basis, or effect of this Agreement, or otherwise.

13. **Assent to Terms.** The parties have negotiated the terms of this Agreement. Petitioner's signature below indicates that she was given the opportunity to fully review this Agreement, that the Petitioner has read and understood the provisions, and that she has executed it voluntarily with full knowledge of the significance of all provisions. Ms. Erica Baez hereby acknowledges that she enters into this agreement with a full understanding of her rights and that she was fully informed of the implications of this Agreement, and does so without duress, of her own free will and volition.

STATEMENT BY PETITIONER

The Respondent has advised me, in writing through the Agreement, to carefully read, and fully understand, the provisions of the Agreement, the acceptance, and sufficiency, of which I acknowledge. I have had sufficient time, and opportunity, to consult with Counsel of choice prior to executing the document, and I intend to be legally bound by its terms. I further so execute the Agreement in a knowing, and voluntary, manner with the full knowledge that I am waiving any and all rights, or claims, I may have to later challenge the sufficiency, scope, or terms of the Agreement and have, again, done so after consultation with my Counsel. I understand that I may revoke my signature within seven (7) days following my signing, I understand that my rights under the Agreement are contingent on my signing the Agreement, and not revoking my signature on said document.

IN WITNESS WHEREOF, the signatures and/or seals of the parties or their duly authorized representatives have been set forth on the dates indicated below:

Erica Baez

ERICA BAEZ

Dated: 6 13 2024

Brian Kane

Brian J. Kane, Esq.
Attorney for Respondent, Elizabeth Board of Education
Date: 04/18/2024

EXHIBIT A

ELIZABETH PUBLIC SCHOOLS

Every child, Achieving Excellence

Olga Hugelmeyer
Superintendent of Schools

Heather Savage-Ford
Deputy Counsel

Vito Mazza
Associate Counsel

January 3, 2024

Erica Baez
160 Hillside Ave.
Hillside, NJ 07205

Re: **NOTICE OF FINAL INELIGIBILITY**
Student Name: **Aubree Lee Rivera**
Student ID#: **311177**

Dear parent:

We have carefully reviewed the application for enrollment of **Aubree Lee Rivera** in the Elizabeth School District, as well as all information submitted in support of the application, and have determined that **Aubree Lee Rivera** is ineligible to attend the schools of the district.

We have made this determination based on the following:

YOUR DOMICILE/RESIDENCY IS NOT IN THE DISTRICT. OUR INVESTIGATION REVEALS THAT YOU RESIDE OUTSIDE OF ELIZABETH.

If you believe the district's determination is in error, you have the right to appeal it to the Commissioner of Education within 21 days of the date of this notice. **Aubree Lee Rivera** will be permitted to attend school during this period, and to continue in attendance while the appeal is pending before the Commissioner. However, if no appeal is filed by the 21st day following the date of this notice **Aubree Lee Rivera** will be removed from school, you will be asked to indicate where they will be educated (see below) and we may assess your tuition at the per diem rate of $99.75 *(rate calculated pursuant to N.J.A.C. 6A:22-6)* for each day **Aubree Lee Rivera** attended school during this period. Information on how to appeal to the Commissioner is included with this letter.

Legal Department

31 Parker Road, Elizabeth, New Jersey 07208 Ph: 908.436.5006 Fx: 908.436.5041
Email: varonaes@epsld.org Website: www.epsnj.org

Please be aware that, if you appeal to the Commissioner but abandon your appeal through withdrawal, failure to prosecute or any means other than settlement with the district and/or **Aubree Lee Rivera** is found not to be entitled to free education in the district, you may be assessed tuition for any period of **Aubree Lee Rivera's** ineligible attendance, including the initial 21-day filing period and the period during which the appeal was pending before the Commissioner. The Commissioner assesses such tuition, which will be calculated at the approximate rate of $20,000 per year (*rate calculated pursuant to N.J.A.C. 6A:22-6)*, through an order enforceable against you in Superior Court.

If you do not intend to appeal the district's determination, please advise Investigator William Buteau as soon as possible, but in no event later than 21 days from the date of this notice, so that **Aubree Lee Rivera's** removal can be effectuated promptly and arrangements can be made for his education elsewhere. State statute on compulsory education requires you to ensure that any student who is between the ages of 6 and 16 is enrolled in a public or private school or received instruction elsewhere than at a school. Therefore, unless you indicate to us by returning the form below that **Aubree Lee Rivera** will be receiving an education, we will contact the school district of your actual domicile or residence, or the Department of Children and Families (DCF), **Aubree Lee Rivera's** name, and your name and address, in order to ensure compliance with the law.

If you have any questions about this notice, please call Investigator Willian Buteau at **(908) 436-5006 between the hours of 8:30 a.m. and 4:30 p.m. to the Legal Department: 31 Parker Road, Elizabeth, NJ 07208**. We anticipate hearing from you regarding **Aubree Lee Rivera's** removal and education elsewhere, or your intent to appeal the Board's determination of ineligibility to the Commissioner of Education.

Sincerely yours,

William Buteau

William Buteau
Investigator

Attachments: Appeal Form with Instruction Sheet
Statement of Compliance with Compulsory Education Law

Legal Department

31 Parker Road, Elizabeth, New Jersey 07208 Ph: 908.436.5006 Fx: 908.436.5041
Email: varonaes@epsld.org Website: www.epsnj.org

EXHIBIT B

ELIZABETH PUBLIC SCHOOLS
2023-2024 SCHOOL CALENDAR

Revised March 28, 2024

JULY				
MON	TUE	WED	THU	FRI
~~3~~	~~4~~	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28
31				

AUGUST				
MON	TUE	WED	THU	FRI
	1	2	3	4
7	8	9	10	11
14	15	16	17	18
21	22	23	24	25
28	29	30	31	

SEPTEMBER (18/15)				
MON	TUE	WED	THU	FRI
				~~1~~
~~4~~	5	6	7	8
11	12	13	14	15
18	19	20	21	22
~~25~~	26	27	28	29

OCTOBER (21/21)				
MON	TUE	WED	THU	FRI
2	3	4	5	6
~~9~~	10	11	12	13
16	17	18	19	20
23	24	25	26	27
30	31			

NOVEMBER (17/17)				
MON	TUE	WED	THU	FRI
		1	2	3
6	~~7~~	8	~~9~~	~~10~~
13	14	15	16	17
20	21	~~22~~	~~23~~	~~24~~
27	28	29	30	

DECEMBER (16/16)				
MON	TUE	WED	THU	FRI
				1
~~4~~	5	6	7	8
11	12	13	14	15
18	19	20	21	22
~~25~~	~~26~~	~~27~~	~~28~~	~~29~~

7/3-4/23	Mon, Tue	Independence Day Observance – Schools and District Closed
8/31/23	Thu	Schools Open for 10 Month Administrators, New Student Registration
9/1/23	Fri	Labor Day Weekend – Schools and District Closed
9/4/23	Mon	Labor Day – Schools and District Closed
9/5/23	Tue	Schools Open for Team Members
9/6-7/23	Wed, Thu	Professional Development Days for Team Members
9/8/23	Fri	Schools Open for Students
9/25/23	Mon	Yom Kippur – Schools and District Closed
10/9/23	Mon	Columbus Day Observance – Schools and District Closed
11/7/23	Tue	Schools Closed – Election Day
11/9-10/23	Thu, Fri	NJEA Convention and Veterans Day – Schools & District Closed
11/22/23	Wed	Schools Close at 12 15 p.m. for Thanksgiving Recess
11/23-24/23	Thu, Fri	Thanksgiving Recess – Schools and District Closed
12/4/23	Mon	Schools Close at 12:15 p.m. for Professional Development
12/25-29/23	Mon through Fri	Christmas Recess – Schools and District Closed
1/1/24	Mon	New Year's Day Observance – Schools and District Closed
1/2/24	Tue	School Reopen
1/15/24	Mon	Observance of Dr. Martin Luther King, Jr.'s Birthday – Schools and District Closed
1/19/24	Fri	Schools and District Closed – Snow Day
1/29/24	Mon	Schools Close at 12 15 p.m. for Professional Development
2/8/24	Thu	Schools Close at 12:15 p.m. for Parent Teacher Conferences
2/13/24	Tue	Schools and District Closed – Snow Day
2/19/24	Mon	President's Day – Schools and District Closed
3/11/24	Mon	Schools Close 12:15 p.m. for Professional Development
3/29/24	Fri	Easter Recess – Schools and District Closed
4/1/24	Mon	Easter Recess – Schools and District Closed
4/2-5/24	Tues through Fri	Easter Recess – Schools Closed
4/8/24	Mon	Schools Reopen
4/10/24	Wed	Schools and District Closed for Eid-al-Fitr
5/27/24	Mon	Memorial Day – Schools and District Closed
6/4/24	Tue	Schools Closed – Primary Election Day
6/21/24	Fri	Juneteenth – Schools and District Closed
6/24/24	Mon	Schools Close at 12 15 for Students and Team Members
6/25/24	Tue	Schools Close for 10-Month Administrators

Key

	Schools Closed		Schools and District Closed
	Schools Close at 12:15 p.m.	(xx/xx)	Teachers/Students Total Days Per Month

This calendar provides for 181 team member days, 180 student days, and 2 Professional Development Days

In the event that schools must close for inclement weather, etc , days will be made up commencing with June 25 2024 with an additional day added to the calendar for each day missed through June 28, 2024 to fulfill the legal requirement of 180 days of school attendance for the regular school year If additional days are needed beyond June 28, 2024 days will come from Easter Recess commencing with April 5, 2024 and working backward from the end of that week

Administrative offices will remain open until 4 30 p.m daily except Fridays during summer hours On Wed , November 22, 2023 all schools will close at 12 15 p m for Thanksgiving Recess. administrative offices will be open regular hours and all 12 month employees and all secretaries, security personnel, and custodians will follow their regular schedules

JANUARY (20/20)				
MON	TUE	WED	THU	FRI
~~1~~	2	3	4	5
8	9	10	11	12
~~15~~	16	17	18	~~19~~
22	23	24	25	26
~~29~~	30	31		

FEBRUARY (19/19)				
MON	TUE	WED	THU	FRI
			1	2
5	6	7	~~8~~	9
12	~~13~~	14	15	16
~~19~~	20	21	22	23
26	27	28	29	

MARCH (20/20)				
MON	TUE	WED	THU	FRI
				1
4	5	6	7	8
~~11~~	12	13	14	15
18	19	20	21	22
25	26	27	28	~~29~~

APRIL (16/16)				
MON	TUE	WED	THU	FRI
~~1~~	~~2~~	~~3~~	~~4~~	~~5~~
8	9	~~10~~	11	12
15	16	17	18	19
22	23	24	25	26
29	30			

MAY (22/22)				
MON	TUE	WED	THU	FRI
		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	23	24
~~27~~	28	29	30	31

JUNE (14/14)				
MON	TUE	WED	THU	FRI
3	~~4~~	5	6	7
10	11	12	13	14
17	18	19	20	~~21~~
~~24~~	~~25~~	~~26~~	~~27~~	~~28~~

EXHIBIT C

Brian J. Kane, Esq.
N.J. Attorney I.D. # 333912021
LA CORTE, BUNDY, VARADY & KINSELLA
989 Bonnel Court
Union, NJ 07083
(908) 810-0500
Attorneys for Defendant Board of Education
of the City of Elizabeth, Union County

E.B. on behalf of minor child, A.R., Petitioner, v. Board of Education of the City of Elizabeth, Union County Respondent.	BEFORE THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW JERSEY AGENCY DOCKET NO.: 13-1/24 OAL DOCKET NO.: EDU-01411-24 **STIPULATION OF DISMISSAL WITH PREJUDICE**

The matter in difference in the above-entitled action having been amicably adjusted by and between the Petitioner, E.B. on behalf of minor child A.R., and Respondent Board of Education of the City of Elizabeth, Union County, it is hereby stipulated and agreed by the undersigned that the same be and is hereby dismissed with prejudice, without costs.

All parties to this action further agree that this stipulation may be executed in counterparts and that photocopies and/or facsimile copies of this stipulation shall be deemed original signatures for the purposes of this stipulation.

STIPULATED:

Erica Baez

Erica Baez, pro se petitioner
160 Hillside Ave,
Hillside, New Jersey 07205
Dated: 06/13/2024

LA CORTE, BUNDY, VARADY & KINSELLA
Attorneys for Respondent, Elizabeth Board of Education

/s/ Brian Kane

Brian J. Kane, Esq.
989 Bonnel Court
Union, New Jersey 07083
Dated: 04/18/2024

277-24
OAL Dkt. No. EDU 02295-24
Agency Dkt. No. 25-2/24

New Jersey Commissioner of Education

Final Decision

S.W., on behalf of minor child, K.B.,

Petitioner,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

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's (ALJ) finding that petitioner failed to sustain her burden of establishing that she and her minor child, K.B., were domiciled in Elizabeth (the District) between January 26, 2024, and May 17, 2024. The Commissioner further concurs with the ALJ's conclusion that K.B. was, therefore, not entitled to a free public education in the District during that time.

Pursuant to *N.J.S.A.* 18A:38-1(b), the Commissioner shall assess tuition against petitioner for the time period during which K.B. was ineligible to attend school in the District. Therefore,

respondent, Board of Education of the City of Elizabeth (Board) is entitled to tuition reimbursement in the amount of $6,974 for the period from January 26, 2024, to May 17, 2024.[1]

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of $6,974 for tuition costs incurred from January 26, 2024, to May 17, 2024, when K.B. was ineligible to attend school in the District. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 18, 2024
Date of Mailing: July 24, 2024

[1] This amount is based on the per diem tuition rate of $99.63 per day listed in the District's Final Notice of Ineligibility (Exhibit R-4) and the District's 2023-2024 School Year Calendar (Exhibit R-12), which reflects 70 school days between January 26, 2024, and May 17, 2024.

[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
OAL DKT. NO. EDU 02295-24
AGENCY DKT. NO. 25-2/24

S.W. ON BEHALF OF MINOR CHILD K.B.,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY OF ELIZABETH,

Respondent.

S.W., petitioner, pro se

Brian Kane, Esq., for respondent, (La Corte, Bundy, Varady & Kinsella, attorneys)

Record Closed: May 16, 2024 Decided: June 20, 2024

BEFORE **ANDREA PERRY VILLANI**, ALJ:

STATEMENT OF THE CASE

K.B. is a minor child and student who attends high school in Elizabeth, New Jersey, though her mother, S.W., rents an apartment for the family in Linden, New Jersey. Is K.B. entitled to a free public school education in Elizabeth? No. Under N.J.S.A. 18A:38-

1(b)(2), a free public education is not available to a child whose parent is domiciled outside of the district.

PROCEDURAL HISTORY

On January 26, 2024, the Board issued a Notice of Final Ineligibility regarding minor child, K.B.'s, attendance at Elizabeth Public Schools.

On February 1, 2024, S.W. filed her pro se Residency Appeal on K.B.'s behalf.

On February 14, 2024, the Board filed an Answer and Counterclaim.

On February 20, 2024, the New Jersey Department of Education, Office of Controversies and Disputes, transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On March 11, 2024, I conducted the first Prehearing Conference. During that conference, the Board stated its position that S.W. and K.B. live in Linden, New Jersey, not Elizabeth. S.W. stated that she would like time to consider hiring an attorney. I granted her request and allowed her thirty days.

On April 15, 2024, I conducted the second Prehearing Conference and issued a Prehearing Order. The Prehearing Order set the hearing date for May 16, 2024, and among other things, it directed the parties to exchange their witness lists ten days before the hearing.

On May 16, 2024, I conducted the hearing and closed the record.

DISCUSSION AND FINDINGS OF FACT

S.W., mother of K.B., is married with five children. K.B. is the oldest. She is fifteen years old and in tenth grade at Dwyer High School in Elizabeth, New Jersey. S.W.'s other four children are all younger than K.B. and attend public school in Linden, New Jersey.

Back in 2019, S.W. moved her family from New Jersey to Philipsburg, PA. The family remained there for about two years until they moved to Hampton, VA during the Covid-19 pandemic. They remained in Virginia until 2023, when S.W. and her husband experienced marital problems. In or about April 2023, S.W. sent K.B. back to New Jersey to live with S.W.'s sister, K.W., in Elizabeth. K.B. did not attend school for about one month. K.B. was eventually enrolled in public school in Elizabeth at Dwyer High School on May 8, 2023. (R-1.)

S.W. moved back to New Jersey about a month after K.B. She estimates that was in May 2023. S.W. states that she moved in with K.B. at K.W.'s Elizabeth residence. At some point that summer, S.W.'s husband and the other four children moved back to New Jersey from Virginia. During that time, S.W. was the sole breadwinner for the family, working as a Respiratory Support Technician.

On July 15, 2023, S.W. entered into a one-year lease for an apartment in Linden, NJ. The term of the lease agreement is from August 1, 2023 to July 31, 2024. Paragraph six of the lease states that the household members are S.W. and her children. S.W.'s signature appears on the lease. (R-7.)

S.W. states that she leased the apartment for her husband and her four youngest children (K.B.'s siblings). She claims that when she and her husband had marital problems in Virginia, they decided to separate, and her four youngest children chose to live with their father. S.W. further claims that her husband was not working at the time, so he was not able lease an apartment on his own.

The name that appears on the Linden lease is clearly S.W.'s, except that she used her married name with the initials "S.R." (R-7.) She opened a Xfinity Account for the Linden home under her married name. (R-8.) She also had a bank account with TD Bank

under her married name at the Linden address, as she received mail from TD Bank at the Linden address. (R-9.)

However, when S.W. registered K.B. for school in Elizabeth, she used her maiden name, "S.W." (P-1.) She also used her maiden name on the 6-C Affidavit, which stated that she and K.B. "are in full-time residence [at K.W.'s home in Elizabeth]...for the period of April 2023 through Dec. 2023" (P-1); but, as noted above, S.W. did not come back to New Jersey until May 2023 (per her testimony), and she leased an apartment in August 2023 (R-7).

Then, in December 2023, S.W. signed a Residency Affidavit stating that she "is the renter of the property located...in the City of Linden." (R-10.) S.W. states that she signed this Affidavit so her sister, K.W., could enroll her children in Linden schools, after K.W.'s son had a bad experience in Elizabeth schools and didn't feel safe there.

Despite the Linden Residency Affidavit, lease, cable bill, and TD bank account, S.W. maintains that she does not live in Linden. She states that she and her husband are still separated, and that she has been staying at K.W.'s home in Elizabeth since she returned to New Jersey in May of last year. S.W. further states that only her husband and four younger children live at the Linden home. S.W. and her husband have no written separation agreement and S.W.'s husband did not testify.[1]

S.W. did not provide any photos of her living or sleeping space at K.W.'s home in Elizabeth. She did provide several photos of K.B.'s alleged sleeping accommodation in Elizabeth. (P-3.) The photos indicate that K.B. may have a bed at K.W.'s home, as there are some female articles of clothing that appear in the photos. (K.W.'s children are all boys.) There is also women's deodorant on the dresser; but, there is men's deodorant next to it on the dresser as well.

[1] S.W.'s husband was listed as a possible witness in the Prehearing Order. However, the Prehearing Order also required the parties to exchange witness lists at least ten days prior to the hearing. It was during this exchange of information that S.W. informed opposing counsel that her husband would not be testifying on her behalf and, accordingly, he did not appear at the hearing.

While it is possible that K.B. sleeps at K.W.'s home in Elizabeth, and that she is there before and after school since she attends school close by, it is unclear how often she sleeps there. To answer this question, the Board provided location data for K.B.'s school-issued laptop computer. (R-6.) The data indicates that, from September 27, 2023 to March 8, 2024, K.B.'s laptop was turned on at K.W.'s Elizabeth home on only five days: October 27, 2023, January 8, 2024, January 25, 2024, January 29, 2024, and February 23, 2024. (R-6.)

By contrast, during this same time period, K.B.'s laptop was turned on at the Linden home on sixty-four different days. (R-6.) Those days were:

Saturday September 30, 2023
Sunday October 8, 2023
Monday October 9, 2023
Wednesday October 11, 2023
Sunday October 15, 2023
Tuesday October 17, 2023
Friday October 20, 2023
Sunday October 22, 2023
Monday October 23, 2023
Tuesday October 24, 2023
Tuesday October 31, 2023
Wednesday November 1, 2023
Thursday November 2, 2023
Sunday November 5, 2023
Monday November 6, 2023
Thursday November 16, 2023
Friday November 17, 2023
Saturday November 18, 2023
Sunday November 19, 2023
Monday November 20, 2023
Tuesday November 21, 2023
Sunday December 3, 2023
Tuesday December 5, 2023
Tuesday December 12, 2023
Wednesday December 13, 2023
Thursday December 14, 2023
Friday December 15, 2023
Saturday December 16, 2023
Wednesday January 10, 2024
Saturday January 20, 2024
Sunday January 21, 2024
Monday January 22, 2024
Tuesday January 23, 2024
Tuesday January 30, 2024

Wednesday January 31, 2024
Thursday February 1, 2024
Friday February 2, 2024
Saturday February 3, 2024
Sunday February 4, 2024
Monday February 5, 2024
Tuesday February 6, 2024
Thursday February 8, 2024
Friday February 9, 2024
Saturday February 10, 2024
Sunday February 11, 2024
Tuesday February 13, 2024
Saturday February 17, 2024
Monday February 18, 2024
Monday February 19, 2024
Tuesday February 20, 2024
Wednesday February 21, 2024
Thursday February 22, 2024
Friday February 23, 2024
Saturday February 24, 2024
Sunday February 25, 2024
Wednesday February 28, 2024
Thursday February 29, 2024
Friday March 1, 2024
Saturday March 2, 2024
Sunday March 3, 2024
Monday March 4, 2024
Wednesday March 6, 2024
Thursday March 7, 2024
Friday March 8, 2024

As shown, the last time K.B.'s laptop was detected in Linden was March 8, 2024. Three days later, March 11, 2024, was the day of the first Prehearing Conference in this matter. It was at this time the Board stated its position that K.B. lives in Linden, not Elizabeth. Thereafter, K.B.'s laptop was never turned on at the Linden home again; and, for the next month, from March 12, 2024 to April 13, 2024, K.B.'s laptop was turned on at the Elizabeth home ten times: March 12, 2024, March 13, 2024, March 15, 2024, March 22, 2024, March 23, 2024, March 25, 2024, March 27, 2024, March 29, 2024, April 9, 2024, and April 13, 2024.[2] (R-6.)

[2] For this same time period (March to April 2024), S.W. presented security video footage of K.B. entering and exiting K.W.'s home. (P-4.) Counsel for the Board objected to moving the videos into evidence based on the lack of time and date stamp. However, I **FIND** that K.W. sufficiently authenticated the videos in her testimony and reliably identified the videos as taken on March 23, 2024, March 26, 2024, March 27, 2024, March 28, 2024, April 9, 2024, and April 12, 2024. Nevertheless, I **FIND** that the videos are of little probative value as they only cover a three-week period after this case commenced.

S.W. explains that K.B. goes to the Linden home to visit her father and siblings, but she still maintains that K.B. does not live there. However, the sheer volume of location data from the laptop at the Linden home – compared to the lack of data at the Elizabeth home – during the time leading up to the start of this case, says otherwise.

Given this discussion of facts, I **FIND** that S.W. has not met her burden to establish by a preponderance of the evidence that she currently lives in the City of Elizabeth. See, N.J.S.A. 18A:38-1(b)(2). Indeed, I **FIND** that the preponderance of the evidence including, but not limited to, the laptop data (R-6), the Linden lease (R-7), Linden mail in S.W.'s name (R-8, R-9), and Linden Residency Affidavit (R-10), demonstrates that both S.W. and K.B. live in Linden, New Jersey.

I also **FIND** that the Board has requested tuition reimbursement for seventy school days: from January 26, 2024, the date of the Notice of Final Ineligibility, to May 17, 2024, the date the record closed. (R-12.) I further **FIND** that, at the rate of $99.63 per day, the total amount of tuition requested is $6,974.

CONCLUSIONS OF LAW

Any child between the ages of five and twenty years old is entitled to a free public education in the district where he or she resides. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). However, if a board of education finds that the parent or guardian of a child who is attending school in the district is not domiciled within the district, the board may pursue removal of the child. N.J.S.A. 18A:38-1(b)(2). Where a local board of education seeks removal of a child from the school, the parent may appeal to the Commissioner of Education. Id. In the proceeding before the Commissioner, the parent has the burden of proof by a preponderance of the evidence that the child meets the eligibility requirements for a free education. Id.

In this case, I **CONCLUDE** that the parent, S.W., has not proven by a preponderance of the evidence that the child, K.B., meets the eligibility requirement for a free education in Elizabeth, New Jersey. More specifically, S.W. did not prove by a

preponderance of the evidence that she is domiciled in Elizabeth.[3] Rather, the preponderance of the evidence demonstrates that S.W. is domiciled in Linden, New Jersey. Therefore, K.B. is entitled to a free public education in Linden, but not Elizabeth.

If the evidence does not support the parent's claim, the Commissioner shall assess the parent tuition for the student prorated to the time of the student's ineligible attendance in the schools of the district. Id. However, "[n]othing...shall preclude an equitable determination, by the district board of education or the Commissioner, that, when the particular circumstances of a matter so warrant, tuition shall not be assessed for all or part of any period of a student's ineligible attendance in the school district." N.J.A.C. 6A:22-6.3(b).

In this case, I **CONCLUDE** that the Board is entitled to tuition due to K.B.'s ineligible attendance at Dwyer High School in Elizabeth. I further **CONCLUDE** that the Board made an appropriate equitable determination to assess tuition only from the Notice of Final Ineligibility to the date the record closed. Therefore, I **CONCLUDE** that the Board is entitled to reimbursement of tuition for seventy school days in the amount of $6,974, as requested.

ORDER

Based on the foregoing, I **ORDER** that S.W.'s residency appeal is **DENIED**, and the Board's request for $6,974 in tuition reimbursement is **GRANTED**.

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

[3] As noted above, S.W. also did not prove by a preponderance of the evidence that K.B. is domiciled in Elizabeth. However, even if S.W. did prove that K.B. lives in Elizabeth with her aunt, K.W., she would not be entitled to a free education there. Under N.J.A.C. 6A:22-3.2(a), a student is eligible to attend the school where he or she is kept in the home of a relative, but only if that person is supporting the student without remuneration as if the student were his or her own child. S.W. did not present any evidence on this point. Finally, K.B. also does not meet the definition of a homeless child under N.J.A.C. 6A:17-2.2(a)(3): "...a child or youth is homeless when the child or youth resides in any of the following...[t]he residence of relatives or friends where the homeless child or youth resides out of necessity because the child's or youth's family lacks a regular or permanent residence of its own." As of August 1, 2023, K.B.'s family did have a regular, permanent residence of its own in Linden, New Jersey.

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.

June 20, 2024
DATE

ANDREA PERRY VILLANI, ALJ

Date Received at Agency: June 20, 2024

Date Mailed to Parties: June 20, 2024

sej

APPENDIX

WITNESSES:

For Petitioner:

S.W., pro se

K.W.

For Respondent:

William Buteau, Investigator

EXHIBITS:

For Petitioner:

P-1 Residency Appeal and Verification

P-2 Bank Statements and Invoices

P-3 Photographs

P-4 Videos

For Respondent:

R-1 Powerschool Records

R-2 Investigation Report

R-3 Notice of Initial Determination

R-4 Notice of Final Ineligibility

R-5 Investigator's Photographs

R-6 Laptop Location Data

R-7 S.W.'s Lease Agreement

R-8 S.W.'s Xfinity Cable Bill

R-9 S.W.'s Mail (TD Bank)

R-10 Affidavit of Residency

R-11 Memorandum of Enrollment

R-12 Elizabeth Academic Calendar

278-24

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

In the Matter of Tenure Charges

PINELANDS REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION, OCEAN COUNTY, NEW JERSEY

Petitioner,

-and-

SHARI SAKS,

Respondent.

AGENCY DOCKET NO.: 294-10/23

OPINION AND AWARD

BEFORE: RUTH MOSCOVITCH, Arbitrator

Appearances:

For the Petitioner:

Kasi Marie Gifford
William Donio
Cooper Levenson, PA
1125 Atlantic Avenue, Third Floor
Atlantic City, NJ 08401

For the Respondent:

Edward A. Cridge, Esq.
Mellk Cridge, LLC
211 Blackwell Road
Pennington, New Jersey 08534

This matter comes before me on tenure charges brought under N.J.S.A. 18A:28-5 and N.J.S.A. 18A:6-10, et seq., by Petitioner Pinelands Regional School District Board of Education (the "District) against Respondent Shari Saks. The tenure charges at issue here were certified to the Bureau of Controversies and Disputes by the District on or about October 16, 2023. I was appointed the arbitrator to adjudicate this matter on December 20, 2023.

In this proceeding, I heard testimony from ten witnesses over 5 days. On April 8, 10, May 10, and 14, 2024, I conducted in person hearings at the offices of Cooper

Levenson, PA in Atlantic City, New Jersey. On May 23, 2024 I heard testimony via a Zoom platform. Both sides were represented by counsel and were afforded the opportunity to call witnesses, present evidence, and to cross-examine witnesses offered by the opposing party. The District presented the testimony of Superintendent Melissa McCooley, Principal Troy Henderson, Janel Gonzalez, Director of school-based youth services at the District, one current student and one former student in its case-in-chief. Respondent testified in her own behalf. The District then present the testimony of two additional current students in rebuttal, and Respondent presented the testimony of two additional witnesses in surrebuttal. All witnesses were sworn. The District placed 27 exhibits into evidence, and Respondent placed 25 exhibits into evidence. A court reporter produced a transcript of the proceedings that was made available to the parties and to me. The parties submitted post-hearing briefs prior to July 1, 2024.

TENURE CHARGES

PETITIONER'S STATEMENT OF CHARGES AND SPECIFICATIONS REGARDING THE EMPLOYMENT OF SHARI SAKS, A TENURED FACULTY MEMBER WITHIN THE EMPLOY OF THE PINELANDS REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION

The Pinelands Regional School District Board of Education (the "Board" or the "District") is a body politic and corporate in the State of New Jersey, legally designated as a local educational agency, and charged with the responsibility of operating a Junior High School for grades 7-8 and a High School for grades 9-12 serving the communities of Bass River, Eagleswood, Little Egg Harbor, and Tuckerton, and providing a thorough and efficient education for students from these communities. The Board, in discharging its obligations, and pursuant to Title 18A of the New Jersey Statutes, is authorized and required by New Jersey law, New Jersey Department of Education rules and regulations and Board Policy, Rules, and Regulations to oversee and supervise Staff and Students of the Board's Schools. Pursuant to such authority, the Board brings forth and files the within Tenure Charges with the Commissioner of Education (the "Commissioner") against Respondent, **Shari Saks** as follows:

CHARGE 1:

SHARI SAKS, is a tenured teaching staff member originally employed by the

Pinelands Regional School District Board on September 2, 2004 as a Temporary Leave Replacement English Language Ails Teacher. She was hired as a full time English Language Arts Teacher in September of 2005. Ms. Saks has engaged in unbecoming conduct pursuant to New Jersey Law, New Jersey Department of Education rules and regulations, and Board Policy, Rules, and Regulations, as follows:

SPECIFICATION 1: On January 18, 2022 a *"student concern"* was presented to Principal Troy Henderson by Janel Gonzalez, Director of SBYS (district youth services). This email contained a statement from an MSW student intern (Brittany White) who wrote in relevant part that: *"[Student K.] reports that Ms. Saks showed her naked pictures of a significant other that Ms. Saks is 'talking to' between classes at school in her classroom ...To my knowledge there were no other students present at the time [student] was shown these pictures and the incident only lasted a few minutes since it was between classes. [Student] also reported that Ms. Saks showed [student] 'inappropriate conversations' between Ms. Saks and an individual she is intimate with and explained to [student] she [Ms. Saks] is pansexual so there were [sic.] conversations between her [Ms. Saks] and men and women."* Student K. was a ninth grader at the time of this incident. **(See attached January 18, 2022 email from Director Gonzalez to Principal Henderson.)**

SPECIFICATION 2: On January 19, 2022 the student (K.), a ninth grader, and her mother were recorded by Principal Troy Henderson **(see attached)** as part of a phone call investigating these allegations. The student's mother confirmed she was aware of the incident involving Ms. Saks and the inappropriate pictures and conversations. She stated her daughter thought it was *"inappropriate"* and that it "*made her [daughter] feel uncomfortable."* This student advised her mother she was "provided a couple of inappropriate photos of a young female that [Ms. Saks] knows outside of school." She also indicated that Ms. Saks had referred to other female students as *"sluts"* and *"whores"* for the way they dressed while at school. She stated: *"A line was crossed and it was inappropriate."* Student K. confirmed she was shown nude photos by Ms. Saks as well as inappropriate text messages of a sexual nature. She stated this occurred while at the school, and that other students were present when this occurred as well. She stated the nudity was full body of a young women/co-worker at a banquet catering. The student indicated the text messages were also inappropriate as they were the *"conversation after the photos were sent...the way [Ms. Saks] was responding to the photos "* She advised that certain older students would often be present in Ms. Saks's classroom who should not be there, some of whom were present when this occurred. Notably, at one point during this discussion, the student referred to Ms. Saks as *"Shari, "* [Ms. Saks's first name] while describing the incidents, which also occurred in the presence of another 9th grade student, G. **(See attached audio/audio transcript of January 19, 2022 telephone conference.)**

SPECIFICATION 3: On January 19, 2022, during a telephone conference between Principal Henderson and another 9th grade student (G., along with her mother), that student also confirmed that she was present when these incidents occurred and that she too was shown inappropriate photos of the naked girl by Ms. Saks. **(See Principal Troy Henderson's Notes/attached audio/audio transcript of January 19, 2022 telephone conference.)**

SPECIFICATION 4: Both of these students indicated they would cooperate with the school or any authorities, but would prefer to limit involvement if necessary given fear of its impacting their reputation at school or in the greater community.

SPECIFICATION 5: On January 19, 2022 Ms. Saks was notified via letter from Superintendent McCooley that she was suspended with pay, effective immediately *"due to allegations of inappropriate conduct. "* **(See attached January 19, 2022 Letter from Superintendent McCooley to Ms. Saks.)**

SPECIFICATION 6: On January 19, 2022 the school contacted the Ocean County Prosecutor's office regarding this incident, as well as the Division of Institutional Abuse to self-report. The Ocean County Prosecutor's Office indicated it would begin an investigation into this matter.

SPECIFICATION 7: On June 21,2022 Ms. Saks was provided with a due process hearing regarding the allegation of the showing of inappropriate photos and texts to ninth graders and following additional investigation. Those present at this meeting included Association President Reid, Superintendent McCooley, Assistant Superintendent Frasca, and Ms. Saks. When asked how the students knew she was or had been in a romantic relationship with a junior high teacher, Ms. Saks responded: *"We are told to make connections with kids...* " She admitted to having many non-students come to her class, arguing it was necessary and appropriate as a "*safe space, "* and that many students study better while in her classroom than in others. Ms. Saks declined to address the specific allegations of her showing nude photos to certain 9'h grade students aside from saying: *"I have no idea what you're talking about. "* **(See attached audio/audio transcript of June 21, 2022 Meeting.)**

SPECIFICATION 8: During further investigation into this matter by the school, one of the students (K.) stated that Ms. Saks *"Showed us a picture of a woman in a bikini showing her pierced nipples, " and another student (G. G.) stated that the photos were of "A naked wom[an] with her legs apart revealing her breast and vagina. "* ***(See attached.)***

SPECIFICATION 9: On October 5, 2022 Ms. Saks was provided with notice that she had been placed on income withholding consistent with N.J.S.A. 18A:29-14 **(See attached October 5, 2022 Letter of Income Withholding.)**

SPECIFICATION 10: The District took immediate steps to remove Ms. Saks from her position, and she has been placed on administrative leave with pay since that time. **(See attached Letter re Administrative Leave.)**

SPECIFICATION 11: For the 2022-2023 school year assignments, it was determined that **Ms.** Saks must remain on leave/suspended as the Board believed she *had "lost public trust,"* and that she could not even be placed in an area where she would not work directly with any students **(See attached communication.)** As the 2023-2024 school year commences, she remains on such leave.

SPECIFICATION 12: N.J.S.A. 9:6-8.11 requires that the Department of Children and Families, Institutional Abuse Investigation Unit (IAIU) investigate allegations of child abuse and neglect occurring in various out-of-home settings.

SPECIFICATION 13: N.J.A.C. 6A: 16-11.1 Applies to this charge. (See Charge 1 where this section of the Code is set forth at length).

SPECIFICATION 14: The ***IAIU*** findings noted that *the "sexual abuse/sexual abuse-sexual exploitation " allegations were "not established" but that "some information indicates that the child was harmed or placed at risk of harm."* **(See attached February 21, 2023 Report.)**

SPECIFICATION 15: This matter was determined by the IAIU before the new allegations of 'grooming,' outlined in Charge 1 were brought to the District's attention, giving rise both collectively and individually to the necessity of these tenure charges.

SPECIFICATION 16: District Policy #3159 ("Teaching Staff Member/School District Reporting Responsibilities") applies to this charge. **(See Charge 2 where this policy is set forth at length, and attached Policy #3159).**

SPECIFICATION 17: District Policy #3281 ("Inappropriate Staff Conduct") applies to this charge. **(See Charge 2 where this policy is set forth at length, and attached Policy #3281).**

SPECIFICATION 18: District Policy #3144 ("Certification of Tenure Charges") applies to this charge. **(See Charge 2 where this policy is set forth at length, and attached Policy #3144).**

SPECIFICATION 19: District Policy #5751 ("Sexual Harassment") applies to this charge. This policy provides, in relevant part:

> The Board of Education will not tolerate sexual harassment of pupils by school employees, other pupils, or third parties. Sexual harassment of pupils is a form of prohibited sex discrimination. School district staff will investigate and resolve allegations of sexual harassment of pupils

engaged in by school employees, other pupils (peers), or third parties... **(See attached Policy #5751.)**

SPECIFICATION 20: The standards have thus been met to proceed with tenure charges for unbecoming conduct against teacher Shari Saks for having inappropriate communications with multiple minor students including engaging in sexual conversations, inquiring about the students' sexual relationships, and sharing nude photos with minor children K. and G.

CHARGE 2:

Shari Saks, a tenured teaching staff member employed by the Board has acted in a manner unbecoming pursuant to New Jersey Law, New Jersey Department of Education rules and regulations and Board Policy, Rules, and Regulations, as follows:

SPECIFICATION 1: The above specifications and recitals of law, code, and district policy for Charge 1 are incorporated herein as if set forth in their entirety.

SPECIFICATION 2: It has recently come to the District's Attention that SHARI SAKS, a tenured teaching staff member, engaged in what may reasonably be considered inappropriate 'grooming' behavior with a former Pinelands Regional School Distinct student (Isabelle Boyer) who stated she had known Ms. Saks dating back to 7th grade. Although this relationship apparently only culminated in a physical relationship once the student reached eighteen years of age and was a first-year student in college, in an interview with school Superintendent Dr. Melissa McCooley, this former student advised that looking back on her relationship with Shari Saks, she realized it was inappropriate commencing from the time she was in junior high school and at all times thereafter. This former student stated specifically that: *"She would, like, take me places, and do things...She like, took me to New York and took me to a show... "* She confirmed this occurred while she was still a minor in high school and that others had mentioned to her the term *"grooming"* regarding this relationship and a lack of appropriate boundaries by an adult/school staff member. She stated that though she thought Ms. Saks *"had bad boundaries,"* she [Ms. Saks] *"didn't try anything"* until she was 18 and when she had recently graduated from high school. She also stated that before her physical encounter with Ms. Saks, her former teacher had pulled up a bunch *"nude photos "* of herself and her ex-wife and showed them to her. She stated she was eighteen or nineteen years old at the time of this physical encounter. She indicated they had both been drinking alcohol that evening, though she had not consumed alcohol at Ms. Saks's house, only beforehand. She stated: *"I don't think it's right what she did with me [as a student] at all...I probably never would have put Shari in a bad position until I started to hear that other students were saying stuff... "* She also stated she would speak to the authorities or sign a witness statement about her experiences with Ms. Saks. **(See April 3, 2023 Audio/Audio Transcript Interview with former student, See attached Certification of Mr. Hand.)**

SPECIFICATION 3: Some of the activities the student now deems as 'grooming,' and

which all occurred prior to her turning eighteen years of age or graduating from high school include: frequent telephonic, text, and email communications, spending time with Ms. Saks outside of normal school hours while at the school, and spending time with Ms. Saks outside of normal school hours outside of the school setting, including Ms. Saks taking this then minor student on a personal trip to New York City while the student, all of which is against district policy. **(See April 3, 2023 Audio/Audio Transcript Interview with former student, School Policy #3281),**

SPECIFICATION 4: This matter has been turned over to the Ocean County Prosecutor's Office, which is continuing to investigate, and should also be turned over, along with the other misconduct allegations contained herein to the State Board of Examiners regarding suspension or termination of Ms. Saks's educational certifications. Regardless of the ultimate criminal disposition of this matter, the below policies and laws demonstrate that Ms. Saks engaged in these and other inappropriate grooming-type behaviors with this then student and acted inappropriately in a similar manner with other current students, which is all the more concerning regarding the nude photos she allegedly showed ninth grade students (K. and G.), as specifically outlined in Charge 1.

SPECIFICATION 5: This matter came to the school's attention after Ms. Saks had already been placed on administrative leave for alleged inappropriate behavior toward students/minor children, and Ms. Saks has remained on paid administrative leave pending an investigation since January 19, 2022. **(See January 19, 2022 Letter of Notice re Administrative Leave.)**

SPECIFICATION 6: Board Policy #3159 ("Teaching Staff Member/School District Reporting Responsibilities") provides in relevant part that:

> The Board of Education and all certificate holders shall adhere to the reporting requirements outlined in N.J.A.C. 6A:9B-4.3 and N.J.S.A. 18A:16-1.3...The Superintendent shall notify the New Jersey State Board of Examiners when: 1. Tenured teaching staff members who are accused of criminal offenses or unbecoming conduct resign or retire from their positions; 2. Nontenured teaching staff member, including substitute teachers, who are accused of criminal offenses or unbecoming conduct resign, retire, or are removed from their positions. 3. A certificate holder fails to maintain any license, certificate, or authorization that is mandated pursuant to N.J.A.C. 6A:9B for the holder to serve in a position. 4. The Superintendent becomes aware that a certificate holder has been convicted of a crime or criminal offense while in the district's employ; or 5. The Superintendent has received a report from the Department of Children and Families substantiating allegations of abuse or neglect, or establishing "concerns" regarding a certificated teaching staff member...In accordance with N.J.S.A. 9:6-8.14, any person failing to report an act of child abuse, having reasonable cause to believe that an act of child abuse has been committed, may be deemed a disorderly person. **(See attached Policy #3159.)**

SPECIFICATION 7: Board Policy #3281 ("Inappropriate Staff Conduct") provides in relevant part that:

> The Board of Education recognizes its responsibility to protect the health, safety, and welfare of all pupils within this school district. Furthermore, the Board recognizes there exists a professional responsibility for all school staff to protect a pupil's health, safety, and welfare. The Board strongly believes that school staff members have the public's trust and confidence to protect the well-being of all pupils attending the school district. In support of this Board's strong commitment to the public trust and confidence of school staff, the Board of Education holds all school staff to the highest level of professional responsibility in their conduct with all pupils. Inappropriate conduct and conduct unbecoming a school staff member will not be tolerated in this school district. The Board recognizes and appreciates the staff-pupil relationship that exists in a school district's educational environment. This Policy has been developed and adopted by the Board to provide guidance and direction to avoid actual and/or the appearance of inappropriate staff conduct and conduct unbecoming a school staff member toward pupils.
>
> School staff's conduct in completing their professional responsibilities shall be appropriate at all times. School staff shall not make inappropriate comments to pupils or about pupils and shall not engage in inappropriate language or expression in the presence of pupils. School staff shall not engage in inappropriate conduct toward or with pupils. School staff shall not engage or seek to be in the presence of a pupil beyond the staff member's professional responsibilities. School staff shall not provide transportation to a pupil in their private vehicle or permit a pupil into their private vehicle unless there is an emergency or a special circumstance that has been approved in advance by the Building Principal/immediate supervisor and the parent/legal guardian.
>
> Inappropriate conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a staff member. Therefore, school staff members are advised to be concerned with such conduct which may include, but is not limited to, communications and/or publications using e-mails, text-messaging, social networking sites, or any other medium that is directed and/or available to pupils or for public display.
>
> A school staff member is always expected to maintain a professional relationship with pupils and school staff members shall protect the health, safety and welfare of school pupils. A staff member's conduct will be held to the professional standards established by the New Jersey State Board of Education and the New Jersey Commissioner of Education. Inappropriate conduct or conduct unbecoming a staff member may also

include conduct not specifically listed in this Policy, but conduct determined by the New Jersey State Board of Education, the New Jersey Commissioner of Education, an arbitration process, and/or appropriate courts to be inappropriate or conduct unbecoming a school staff member... **(See attached #3281.)**

SPECIFICATION 8: N.J.A.C. 6A: 16-11.1 provides, in relevant part that:

(a) The district board of education shall develop and adopt policies and procedures for school district employees, volunteers, or interns to provide for the early detection of missing, abused, or neglected children through notification of, reporting to, and cooperation with appropriate law enforcement and child welfare authorities pursuant to *N.J.S.A. I8A: 36-25* and 25.2, *N.J.S.A. 9:6-8.10, and* 6A:22-4.1(d)...

SPECIFICATION 9: The decision to seek these tenure charges is based upon the District's concern about its students' health, safety, and welfare. After being RICED on many occasions, Ms. Saks's inappropriate behavior as a teaching staff member has been discussed at numerous Board of Education executive session meetings. Although the Board did not want to continue paying Ms. Saks, they were extremely uncomfortable allowing her to work with our students. The Board continues to be adamant about keeping Ms. Saks out of the classrooms and the school, as they are charged with providing students with a healthy and safe learning environment. As noted in the additional charges herein, such concerns are not limited to only one student or one isolated incident, although each of the charges herein should be sufficient in and of themselves to successfully proceed with tenure charges for unbecoming conduct.

SPECIFICATION 10: Board Policy No. 3144 ("Certification of Tenure Charges") provides in relevant part that:

Tenure charges may be instituted against a tenured staff member of the district in accordance with the provisions of N.J.A.C. 6A:3-5.1 et seq. In all instances of the filing and certification of tenure charges, except charges filed against a teacher, Principal, Assistant Principal, or Vice Principal for reasons of inefficiency pursuant to N.J.S.A. 18A:6-17.3, the procedures and timelines outlined in N.J.A.C. 6A:3-5.1(b) shall be observed. In the event the tenure charges are charges of inefficiency pursuant to N.J.S.A. 18A:6-17.3, except in the case of Principals, Assistant Principals, and Vice Principals in school districts under full State intervention, where procedures are governed by the provisions of N.J.S.A. 18A:7A-45 and such rules as may be promulgated to implement it, the procedures and timelines outlined in N.J.A.C. 6A:3-5,1(c) shall be observed...

An individual against whom tenure charges are certified shall file a written response to the charges in accordance with the provisions of N.J.A.C. 6A:3-5.3 et seq. The Commissioner shall determine whether such charge(s) are sufficient, if true, to warrant dismissal or reduction in salary in accordance with the provisions of N.J.A.C. 6A:3-5.5. Any

withdrawal, settlement, or mooting of tenure charges shall be in accordance with the provisions of N.J.A.C. 6A:3-5.6. **(See attached Policy #3144.)**

SPECIFICATION 11: The standards have thus been met to proceed with tenure charges for unbecoming conduct against teacher Shari Saks for engaging in inappropriate communications with a student and for 'grooming' that student while a minor prior to culminating a physical relationship with them upon their reaching the age of eighteen and graduating from high school, a relationship with origins the student herself now deems both inappropriate and abusive.

CHARGE 3:

SHARI SAKS, a tenured teaching staff member employed by the Board engaged in additional unbecoming conduct pursuant to New Jersey Law, New Jersey Department of Education rules and regulations and Board Policy, Rules, and Regulations, as follows:

SPECIFICATION 1: The above specifications and recitals of law, code, and district policy for Charges 1 and 2 are incorporated herein as if set forth in their entirety.

SPECIFICATION 2: In another, unrelated incident, Ms. Saks was investigated and found responsible for a confirmed HIB (Harassment, Intimidation, and Bullying) act against current students. Specifically, during the height of the COVID-19 pandemic, and specifically in February of 2021, pictures of minor students being unmasked at lunch were sent to Ms. Saks by a colleague, and those photographs later ended up on a disparaging social media page meant to embarrass people not wearing masks in public places. Ms. Saks admitted to forwarding these pictures of students to individual(s) outside the school, though denied she was responsible for uploading them to the *Maskholes: Make Them Infamous*[1] ("Maskholes") Facebook page, of which she was a member. **(See attached photos; 'Maskholes' Facebook Page, and HIB investigation/determination.)**

SPECIFICATION 3: Screenshots of the Maskholes Facebook page show that parents were upset about photos being used of minors while at school, and one poster even called out Ms. Saks specifically. **(See attached 'Maskholes Facebook Page Comments.)**

SPECIFICATION 4: This incident caused negative implications for students, parents, and the district as a whole, including the Violation of policies #3211 ("Code of Ethics"), #3281 ("Inappropriate Staff Conduct"), #5512 ("Harassment, Intimidation, and Bullying"), and #9120 ("Public Information Program"). **(See attached Policies #3211, #3281, #5512, and #9120.)**

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[1] The Maskholes: Make them Infamous Facebook Page was created on January 31, 2021 and its "about" section states in relevant part: *"Post pics and vids of maskholes. Time to stick together and stop these people from not wearing masks so we can beat Covid."*

SPECIFICATION 5: Accordingly, and consistent with the above policies, Ms. Saks did not follow the chain of command regarding students at lunch without masks during the Covid-19 pandemic. Instead, Ms. Saks shared the pictures with third parties outside the school, thus violating four separate district policies, as outlined below, Ms. Saks thus failed to follow proper protocols or to inform the administration of any valid concerns she might have had. **(See attached Policies #3211, #3281, #5512, and #9120.)**

SPECIFICATION 6: The parents of the students disseminated on the "Maskholes" Facebook page were uniformly upset, particularly as the photos were taken during the school day, were taken of at least five separate minors, and were taken at a time the students were eating lunch (on February 9, 2021) and thus were not required to wear masks consistent with then in place State healthcare Directives; though clearly a photo should not have been taken of minor students while at school, disseminated to non-school employees, and posted on the internet without permission even if such directives were not being followed. **(See attached photos; 'Maskholes Page' Policies #3211, #3281, #5512, #9120; Communications from Families and their Attorney(s).)**

SPECIFICATION 7: At least one of the parents of the involved students hired a law firm who sued or threatened to sue the District over this matter. Specifically, on February 17, 2021 an allegation of cyberbullying was sent to Superintendent McCooley on behalf of one of the minors in the posted photo. **(See Attached February 17, 2021 Allegation of Cyberbullying.)**

SPECIFICATION 8: On May 6, 2021 an attorney for one of the families filed a Tort Claim notice with the school concerning this matter (see attached). The tort Claim sought damages for negligent infliction of emotional distress, intentional infliction of emotional distress, false light, libel/slander, defamation, improper publication of private facts, tortious invasion of privacy, negligence, and negligent supervision and sited to a *"very negative impact"* on the student's education. **(See Attached May 6, 2021 Tort Claim Notice.)**

SPECIFICATION 9: At least one of the parents of the parents of the involved students contacted local law enforcement over this matter. **(See attached Emails.)**

SPECIFICATION 10: Several of the parents of the minor students involved in this matter called or emailed administration to complain. **(See attached Emails.)**

SPECIFICATION 11: The minor children involved in this matter indicated, throughout the HIB investigation, that they were concerned and upset by what occurred. As one student stated ***(See Student Interview #13624756, HIB Presentation)*** *"At* first *I was very like upset and kind of mad about it because*

like I am under age, I'm only 15 and I was just eating lunch, like a simple normal thing everyday and my photos in the group chat and school is supposed to be like a safe *space for kids and you know at first I thought like maybe it was a student ...*it *kind of like makes me* feel *like* unsafe... "

SPECIFICATION 12: Also in February 2021, a photograph of the district's Educational Facilities manager was also uploaded to the "Maskholes" Facebook page, which was apparently created to shame those who were not wearing masks during the pandemic. The individual who took that photograph (Ms. Dorothy Gleason) admitted to sharing it with colleagues but denied sharing it with the administrator of the Maskholes Facebook group. It is unclear how this occurred.

SPECIFICATION 13: The individual who admitted to taking the photos (Mrs. Patricia Fraley, high school teacher) stated she only disseminated the photos to two *"union rep employees, "* one of whom was Shari Saks and the other was Mrs. Allison Laurence. Mrs. Laurence admitted to receiving the photo but denied sharing it with anyone else. Ms. Saks admitted to forwarding the matter to others, but stated she could not remember whom. Ms. Saks also stated she regularly deleted her texts and therefore could not confirm which individual or individuals she disseminated these photos to. Ms. Saks stated she had *"no idea*" how the photos got onto the Maskholes Facebook page. She also specifically stated: *"The only thing I wrote [on that page] that was inappropriate was calling (a colleague) a fucking idiot."* She again stated she did share the photos with others, but she did not remember with whom, though it was not the individual who actually posted them onto the Maskholes Facebook page. Ms. Saks was requested to provide a written statement of the incident but failed to do so. **(See the February 12, 2021 attached audio/audio transcript detailing the investigation. Pinelands Regional Educational Association representation was present for Ms. Saks and the other school employees being investigated at that time. See also the attached HIB documents, investigation records, and notes.)**

SPECIFICATION 14: As a result of the investigation, the District found evidence that Ms. Saks and another colleague (Fraley) *"committed an act. of harassment, intimidation, or bullying, "* consistent with N.J.S.A. 18A:37-14. Ms. Saks was required to follow up with the Superintendent, to attend voluntary confidential counseling, and to receive additional training on school policies 3211 ("Code of Ethics,"), 3281 ("Inappropriate Staff Conduct,"), 5512 ("Harassment, Intimidation, Bullying," and 9120 ("Public Information Program"). **(See attached letter of March 18, 2021 to Ms. Saks from Superintendent McCooley. See also March 30,2021 official reprimand letter re conduct unbecoming of a teaching staff member.)**

SPECIFICATION 15: On March 17, 2021 Ms. Saks was provided with Due Process and provided with steps to be taken after being found responsible for a

HIB violation. During that meeting, Ms. Saks stated she did not wish to say anything and was provided a letter for the HIB. **(See attached audio/audio transcript; Pinelands Regional Educational Association representation was present for this meeting.)**

SPECIFICATION 16: Three of the involved students expressed emotional harm from the incident, and one student did not return to school after the photo was posted on February 9, 2021 and has not returned since. **(See attached.)**

SPECIFICATION 17: Ms. Saks engaged in a separate social media page displaying a picture of other Pinelands' school employees meeting and, during the school day commented on that page: *"fucking idiots ...Yet the teachers get blamed for the school closing. I'm so over all of this,"* thus violating the "Shall not knowingly make false or malicious statements about a colleague," section of policy #3211, "Code of Ethics." **(See attached "Maskholes" Page Comments** by **Ms. Saks.)**

SPECIFICATION 18: District Policy #3144 ("Certification of Tenure Charges") applies to this charge. **(See Charge 2 where this policy is set forth at length, and attached Policy #3144).**

SPECIFICATION 19: The standards have thus been met to proceed with tenure charges for causing a disruption to the education of the students involved and to the educational environment as a whole and to failing to protect the confidentiality of the minor children involved by taking their photos and disseminating them to third parties who placed them on the internet on a Facebook page dedicated to shaming those who do not wear masks.

SPECIFICATION 20: District Policy #3211 ("Code of Ethics") provides, in relevant part:

> The Board of Education endorses the code of ethics for professional educators published by the National Education Association.
>
> Preamble
>
> The educator, believing in the worth and dignity of each human being, recognizes the supreme importance of the pursuit of truth, devotion to excellence, and the nature of democratic principles. Essential to these goals is the protection of freedom to learn and to teach and the guarantee of equal educational opportunity for all. The educator accepts the responsibility to adhere to the highest ethical standards.
>
> The educator recognizes the magnitude of the responsibility inherent in the teaching process. The desire for the respect and confidence of one's colleagues, of students, of parent(s) or legal guardian(s), and of the members of the community provides the incentive to attain and maintain

the highest possible degree of ethical conduct. The Code of Ethics of the Education Profession indicates the aspiration of all educators and provides standards by which to judge conduct...

In fulfillment of the obligation to the student, the educator-

1) Shall not unreasonably restrain the student from independent action in the pursuit of learning.

2) Shall not unreasonably deny the student access to varying points of view.

3) Shall not deliberately suppress or distort subject matter relevant to the student's progress.

4) **Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety.**

5) **Shall not intentionally expose the student to embarrassment or disparagement.**

6) Shall not on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, family, social or cultural background, or sexual orientation, unfairly—

a. Exclude any student from participation in any program

b. Deny benefits to any student

c. Grant any advantage to any student

7. Shall not use professional relationships with students for private advantage.

8. Shall not disclose information about students obtained in the course of professional service, unless disclosure serves a compelling professional purpose or is required by law...

(See attached Policy #3211.)

SPECIFICATION 21: District Policy #3281 ("Inappropriate Staff Conduct") applies to this charge. **(See Charge 2 where this policy is set forth at length, and attached Policy #3281).**

SPECIFICATION 22: District Policy #5512 ("Harassment, Intimidation, and Bullying") provides, in relevant part:

> The Board of Education prohibits acts of harassment, intimidation, or bullying of a student. A safe and civil environment in school is necessary for students to learn and achieve high academic standards. Harassment, intimidation, or bullying, like other disruptive or violent behaviors, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe and disciplined environment. Harassment, intimidation, or bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance. Since students learn by example, school administrators, faculty, staff and volunteers should be commended for demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation, or bullying...
> **(See attached Policy #5512.)**

SPECIFICATION 23: Board Policy **#9120** ("Public Relations Program") provides, **in** relevant part:

> The Board of Education believes all reasonable means should be employed to keep the community served by the school district informed on matters of importance regarding district programs, finances, personnel, policies, and operations.
>
> The Board will determine which of its official actions have sufficient community impact and interest to warrant special release; the Board alone will release to the news media information about those matters of importance. The Board President may release information regarding Board actions of lesser importance as they have been recorded in the minutes of the Board meetings and upon the request of media representatives. The release of all other publications, photographs, and documents depicting the accomplishments of the pupils and staff of the district shall be approved by the Superintendent of Schools or designee.
>
> The school district will not release or publish photographs or release other personal identifying information of an individual district pupil without the prior written permission of the parent(s) or legal guardian(s) or from the adult pupil. Written permission slips for such release from each parent(s) or legal guardian(s) or adult pupil will be obtained by the Principal or designee for the pupils in their school building or by the Program Administrator for pupils in programs where a Principal is not assigned. These written permission forms shall be maintained by the Principal or Program Administrator. Group photographs may be released by the district without permission, but in no event will an individual pupil in a group photograph be identified by name and/or by other personal identifier without written permission from the parent(s) or legal

guardian(s) or adult pupil...
(See attached 9210.)

SPECIFICATION 24: The standards have thus been met to proceed with tenure charges for unbecoming conduct against teacher Shari Saks for engaging or assisting in the dissemination of minors to third-party websites absent their permission, potentially defaming such students and/or invading their privacy.

CHARGE 4:

SHARI SAKS, a tenured teaching staff member employed by the Board engaged in additional unbecoming conduct pursuant to New Jersey Law, New Jersey Department of Education rules and regulations and Board Policy, Rules, and Regulations, as follows:

SPECIFICATION 1: The above specifications and recitals of law, code, and district policy for Charges 1, 2, and 3 are incorporated herein as if set forth in their entirety.

SPECIFICATION 2: Ms. Saks also invited the Ocean County Prosecutor's office staff into the high school on May II, 2021 without first notifying the school Principal, as required per policy #9150 ("School Visitors"). **(See attached May 11, 2021 Email of Principal Henderson and Response; Policy #9150.)**

SPECIFICATION 3: On May 11, 2021, High School Principal Troy Henderson wrote an email to Ms. Saks (attached) stating, in relevant part: "Did *you coordinate to have the Ocean County Prosecutor s* Office *come to the school today? Can you please let me know the purpose of their visit and what is happening with our students? None of the administrators were aware. Who approved this? "* Notably, this occurred shortly after the Maskholes issue and the pending HIB violation were filed against Ms. Saks by the District. That same day, Ms. Saks responded in relevant part via email (see attached) *"Michael Colwell and Paul Whitehead from the Ocean County Prosecutor's* Office *wound up coming to the high school on extremely short notice to help three students technologically prep for a discussion panel that they will be participating in on Thursday evening at 5pm with Congressman Andy Kimm... "* **(See attached May 11, 2021 email from Principal Henderson to Ms. Saks.)**

SPECIFICATION 4: On May 11, 2023 Principal Henderson advised Ms. Saks via email (see attached) that *"inviting outside visitors without prior approval is a violation of [District] Policy 9150. Any future plans to invite anyone in the school or to speak with our students virtually must have prior approval."* **(See attached May 11, 2021 email from Principal Henderson to Ms. Saks.)**

SPECIFICATION 5: District Policy #9150 ("School Visitors") provides:

> The Board of Education welcomes and encourages visits to school by parent(s) or legal guardian(s), other adult residents of the community, and interested educators. In order for the educational program to

continue undisturbed when visitors are present and to prevent the intrusion of disruptive persons into the schools, the Board directs the enforcement of rules governing school visits.

The Superintendent and Building Principal each possess the authority to prohibit the entry of any person into a school of this district or to expel any person from the school when there is reason to believe the presence of such person would be inimical to the good order of the school. If such a person refuses to leave the school grounds or creates a disturbance, the Principal is authorized to request from the local law enforcement agency whatever assistance is required to remove the individual.

Visitors shall be required to register their presence in the school. No staff member shall transact business with or permit the continuing presence in the school of a visitor who has not been duly registered.

No visitor may confer with a pupil in school without the approval of the Principal; any such conference may take place only in the presence of a teaching staff member and/or administrator

The Superintendent shall develop regulations that will protect pupils and employees of the district from disruption to the educational program and the efficient conduct of their assigned tasks. **(See attached Policy #9150.)**

SPECIFICATION 6: The standards have thus been met to proceed with tenure charges for unbecoming conduct against teacher Shari Saks for violating District Policy by inviting third parties onto school grounds absent permission or prior notice.

CHARGE 5:

SHARI SAKS, a tenured teaching staff member employed by the Board engaged in additional unbecoming conduct pursuant to New Jersey Law, New Jersey Department of Education rules and regulations and Board Policy, Rules, and Regulations, as follows:

SPECIFICATION 1: The above specifications and recitals of law, code, and district policy for Charges 1, 2, 3, and 4 are incorporated herein as if set forth in their entirety.

SPECIFICATION 2: Ms. Saks failed to attend a mandatory faculty meeting on June 15, 2021. Ms. Saks responded on June 16, 2021 that she was upset the *"Cat Eye"* position was taken from her in the District and that she was *"extremely distraught and had an extremely difficult time remaining composed throughout the remainder of the school* day. " She stated that: *"I spent the rest of the school day fighting back tears. I then contacted my therapist and my doctor to make appointments for [that* day] after *school. I tried to mentally prepare* myself *to attend the faculty meeting but knowing that I would be in the presence of people that do not believe in me. do not support me,*

and are taking away the responsibilities that I hold the most dear to me upset me so much that I came home and continued to struggle to be okay," **(See June 16, 2021 email of Ms. Saks to Principal Henderson.)** Thereafter, Mr. Henderson responded via email ***(see attached)*** stating that her explanation was unacceptable and that if she was unable to fulfill her job responsibilities she should have asked to take a personal day or otherwise informed her supervisor. Ms. Saks was directed to make up the time but failed to follow up in a timely fashion **(see attached emails of July 12, 2021).**

SPECIFICATION 3: As demonstrated by the **attached December 21, 2021 email** from Principal Henderson, it then came to the administration's attention that Ms. Saks was *"telling students [she] was not in school Monday and Tuesday because another teacher reported [her] as suicidal."*

SPECIFICATION 4: Ms. Saks obtained a letter from a behavioral health center stating she had been screened and was cleared to return to work.

SPECIFICATION 5: On January 5, 2022 Principal Henderson documented by way of letter to Ms. Saks **(see attached January 5, 2022 Letter)** the incident of December 21, 2021 and describing a meeting of December 22, 2021 with Ms. Saks, Principal Henderson, Director Erin Lichtenwalner, and Association President Reid. It was memorialized that during this meeting Ms. Saks stated: *"I had some parents contact me that I am friends with and I told them the truth, which was I was kicked out of school for three days because I made an offhand comment that people usually say that was totally misinterpreted."* The letter further confirmed that *"several students were interviewed and confirmed that [Ms. Saks] told them [Ms. Saks] was not in school for two* days *because [Ms. Saks] reported* [as] *suicidal "* Principal Henderson's letter references District Policy #3281 and concludes: *"It is inappropriate to discuss personal matters of this nature with your students or their parents ...Please* refer to *[District] Policy 3281, in which you are in direct violation of and* refrain *from engaging students or parents in conversations beyond your professional responsibilities."* **(Attached to this letter was [District] Policy 3281, Inappropriate Staff Conduct, attached)**

SPECIFICATION 6: On February 10, 2022 Ms. Saks wrote a note during a work meeting, that she later classified as being humorous, which merely stated: *"I'm trying not to take a bunch of pills right now."* **(See attached February 10, 2022 note of Ms. Saks. See attached Certification of Mr. Hand.)**

SPECIFICATION 7: The standards have thus been met to proceed with tenure charges for unbecoming conduct against teacher Shari Saks for engaging in inappropriate and alarming communications with students, parents, and fellow staff.

ISSUE PRESENTED

Whether the Board has demonstrated by a preponderance of the credible evidence that the Respondent has engaged in conduct unbecoming a teaching staff member. If so, what shall be the penalty?

PROCEDURAL BACKGROUND

Prior to the hearing in this matter, I reviewed and ruled on several significant motions. Of particular note, Respondent raised three issues:

1. Production of IAIU File. Respondent asked me to issue an Order compelling production of the investigative file prepared by the new Jersey Department of Children and Families, Institutional Abuse Investigation Unit (IAIU) regarding the allegations in Charge I. I issued that Order on January 26, 2024 and received the file on March 5, 2024. Thereafter, I shared the file with counsel for both parties subject to my protective order that respects and safeguards the identity of minor, student witnesses. During the hearing, I limited the use of interviews found in those files to those related to the testimony of witnesses who appeared before me.

2. Barring testimony of undisclosed witnesses. Respondent filed with me on March 8, 2024 a Motion In Limine to bar the testimony of witnesses who were not timely disclosed. The parties briefed this matter, and I issued my ruling on March 22, 2024. I denied the motion in part: I permitted all witnesses who had been identified and named by the District in its various filings; any other witnesses the District wished to call would be allowed to testify only for impeachment purposes.

3. Barring testimony regarding Charge 3 – "Maskholes." Charge 3 concerns allegations that Respondent violated District policies by disclosing photos of students without their knowledge or consent on a Facebook page about compliance with Covid 19 masking protocols. The parties made me aware that these charges had already resulted

in discipline against Respondent in the form of denial of wage increments and is currently the subject of extensive litigation in various forums. Accordingly, I barred any testimony regarding this Charge, and I informed the parties that I will not make any findings regarding the sufficiency of proofs on Charge 3. However, I did not strike the Charge, since it might be relevant to the issue of penalty if other charges are sustained.

The hearing in this matter, then, was limited to proofs regarding four charges against Respondent; this decision will likewise be limited to those charges:

Charge 1 – that Respondent showed naked pictures and inappropriate text messages of a sexual nature to a minor student, and had inappropriate conversations regarding her own sexuality and private life; and that she referred to female students as "sluts" and "whores" for the way they dressed;

Charge 2 – that Respondent had an inappropriate relationship with a minor student that culminated in a physical relationship once the student reached the age of eighteen;

Charge 4 – that Respondent invited third parties onto school grounds without prior permission; and

Charge 5 – that Respondent failed to attend a mandatory faculty meeting, and that she discussed with students that she had suicidal thoughts and was considering self-harm.

FACTUAL BACKGROUND

The School District. These tenure charges were brought against Respondent, a tenured high school English teacher, employed by Pinelands Regional School District Board of Education, Ocean County (the District). Relevant to this proceeding, the

District operates a Junior High or Middle School and a High School, both located in Little Egg Harbor Township, New Jersey.

Respondent. Respondent grew up in the community serviced by the District. She attended the District's middle and high schools before attending Stockton College where she earned a bachelor's degree in literature. (Tr. 3 at 4-5)[2] Ultimately, she became a teacher with a certificate to teach English for grades 7 through 12. (Tr. 3 at 6) Respondent began her teaching career as a substitute teacher in 2004, became full-time in the District in 2004, and was certified in 2005. She has been continuously employed by the District since 2005. She taught 7th grade English at the middle school from 2005 until 2019 and then moved to the High School, where she taught 3 levels of English classes: Honors, college prep, and skills (a lower level) as well as the Gifted and Talented program (GATE). (Tr. 3 at 8)

In addition to her teaching responsibilities, Respondent was active in the school in a number of ways. She developed a program called "Bridging the Gap" to help students transition from the middle grades to high school. She also served as an advisor and coach to cross-curriculum and extra-curricular activities, including the High School's P.R.I.D.E. day, where students participated in community service and fundraising. She was an advisor to the English club, created and advised a dance club, and was advisor to the Gay Straight Alliance student group. (Tr. 3 at 9, 96) She also coached cheerleading and girls' volleyball, and both of those teams under her leadership went to state. And she worked on the high school's career day. (Tr. 3 at 9) Respondent received positive evaluations each year from 2005 through 2021 and was repeatedly

[2] I refer to the transcripts for the five days of testimony as Tr. 1, Tr. 2, etc.

commended for her energy, creativity and dedication to the student community. (R. Ex. 1-15)

In addition to living in the District as a member of the community, Respondent has a son who attended the District middle school and high school and was friends with a number of Respondent's students.

All three current student witnesses[3] acknowledged that they like Respondent and think she was a good teacher. (G. Tr. 1 at 101, ; S. Tr. 4 at 23; J. Tr. 4 at 87)

Sharing nude photo with students.

Student G., currently in her junior year in high school, testified that during her freshman year, she had Respondent for English honors. (Tr. 1 at 62) She and some of her friends would "hang out" in Respondent's classroom during another period: when Respondent did not have a class; she would allow students, both freshmen and upperclassmen to stay in her room, where they would do homework, eat lunch or talk with friends. G. said she would, at times, ask for a pass from her geometry teacher, Mr. Reid, particularly if she had already finished her math homework. She would then go down to Respondent's classroom and hang out with her friends. (Tr. 1 at 62-3) G. testified that during those periods, Respondent would usually sit at her desk looking at her phone or talking to the students. (Tr. 1 at 68)

On one particular day in the middle of the 2021-22 school year – before spring break or Christmas break – G. and her friend K. were in Respondent's classroom. She testified to the following:

> [Respondent] was talking about her female coworker and in the past she had talked about how her female coworker had made passes at her and flirted with

[3] I refer to each of the students by using initials – one if there is no duplicate – and two where there is a duplication.

> her, and she would tell [K] and I about that. And then one day she said that her female coworker sent her nude photos, and I only saw one photo. It was a photo of the woman's breasts and her nipples were pierced and she was laying in bed.

(Tr. 1 at 66, 149, 155) Respondent said this coworker didn't care that Respondent was already in a relationship, she still wanted to "hook up" with her. (Tr. 1 at 149)

G. testified that she and K. had been seated in front of Respondent's desk. For some reason, which G. does not recall, they walked up to Respondent's desk. Respondent told them that she was going to show them something. G. "thought it was messages from the coworker," but then Respondent asked if they wanted to see a photo. G. did not reply, but K. said, "yes."

> And then she flipped her phone for us to see it, and we saw a nude photograph of her coworker, and you could see it was her breasts and her nipples were pierced.

(Tr. 1 at 69)

G. said that Respondent was laughing while she showed the girls the photo. (Tr. 1 at 150) G. didn't know how to react. She said something like, "That was f-ing nasty" or "f-ing disgusting" and walked out of the room. (Tr. 1 at 70, 150) She did not report the incident to anyone at the time, although she did tell another friend, and she discussed the incident with K. (Tr. 1 at 125-6)

K. did not testify in this proceeding. However, there was evidence that she reported the matter in January 2022 to a social work intern named Brittany White, whom she was seeing as part of the school-based youth services program. Immediately after K. had spoken to her, the intern brought the matter to her supervisor, Janel Gonzales, Director of the school-based youth services program. Ms. Gonzalez is a licensed social worker with a master's degree in school counseling. She did testify in this proceeding.

Ms. Gonzalez testified that she and Ms. White notified Troy Henderson, the High School principal and the school's guidance counselor that same day. (Tr. 1 at 29) Mr. Henderson in turn reported the matter to District superintendent, Dr. Melissa McCooley. (Tr. 2 at 54)

Mr. Henderson testified that he called G. the following day; G. was not at school, so he called her home and spoke first to her and then to her mother. (Tr. 2 at 63) He recorded the conversation, and the recording was played during the hearing. A professional transcription of the recording was prepared after the hearing by the court reporter. (P. Ex. 24) G. told Mr. Henderson what she testified to in this proceeding:

> [Respondent] was talking about how this girl has been -- from her work has been like bugging her recently, and won't leave her alone, and she was saying that she sent, like explicit photos of herself and she showed them to myself and another classmate."

(Tr. 2 at 78, P. Ex. 24 at 3) G. told Mr. Henderson that Respondent shared just one photo along with text messages; G. did not read the texts. (P. 24 T 4-5) Principal Henderson spoke to G.'s mother and ascertained that the mother had overheard her daughter's conversation with him. (Tr. 2 at 78, P. 24 at 8-9)

Student J. testified. She is currently a Senior in the High School. She had Respondent as her English teacher in 9th grade. (Tr. 4 at 57) She was in the habit during the 2021-22 school year of going to Respondent's classroom to eat lunch, along with some of her friends. Often, G. and K. would be there as well. (Tr. 4 at 58) She recalled Respondent talking about a female co-worker who Respondent was physically attracted to, because she was "hot," but that Respondent would never be sexually involved with her because of her young age. (Tr. 4 at 65)

J. also recalled that Respondent asked some of the students who were gathered in her classroom about how to take a screen shot to save nude photos that someone sent her over Snapchat without the sender knowing she had taken the screen shot. (Tr. 4 at 65-6, 93) J. testified that she remembers G. getting up to look at something on Respondent's phone. (Tr. 4 at 67)

Respondent testified. She acknowledged that students would come into her room, sometimes to do their homework, "because they were able to concentrate better in my room," and sometimes to eat their lunch or to engage in peer tutoring. (Tr. 3 at 15-6) As long as students asked and had a pass from the teachers in their other classes, she would allow them to be in her room:

> I did what I could to make m[y classroom] feel safe for the students that were in there and that wanted to come in there when they felt they needed to go in there.

(Tr. 4 at 14) She testified that G. and K. were two of the students who asked and who she allowed to come to her classroom. (Tr. 4 at 18-20)

She testified unequivocally that the incident testified to by G. did not occur. (Tr. 3 at 42-3) She could not recall any time that she showed a picture on her phone to any student. (Tr. 3 at 43)

Commenting on personal relationships.

In addition to the conversations between Respondent and students described above, there was testimony about times when Respondent discussed with students aspects of her own intimate and relationship life and those of the students.

G. testified that she heard Respondent tell K. that her relationship with another student she was dating would not work out and they would break up in a month or so. (Tr. 1 at 73). She also testified that Respondent told her she should date her son. (Tr. 1 at 73)

J. testified that once when she was hanging out in Respondent's classroom, Respondent commented that she should "have gotten together" with S., one of her female friends. S. responded, that would be like getting with her own sister. At the time J. was getting ready to date one of her male classmates, who was present and heard these comments. (Tr. 4 at 60, 90). S. likewise testified that Respondent suggested, in front of other students, that she and J. should start dating. (Tr. 4 at 12-3)

J. testified additionally that one time Respondent talked with the students about how she was involved with a fellow teacher in an "open relationship." (Tr. 4 at 69, 71) Respondent explained that an open relationship was one in which each of the parties could bring other people in and it wouldn't be cheating, as long as the other partner agreed. All of the students knew that Respondent was in a relationship with another teacher, Mr. Steelman – and maybe once, Respondent showed the students photos a something they had done together. (Tr. 4 at 72) S. confirmed that she heard Respondent talk with students in her room about her "open relationship" and what that meant. (Tr. 4 at 14)

Respondent was asked in this hearing about whether she discussed her personal or dating life with students. She replied,

> I didn't just randomly start speaking about my dating life or anything like that. If a kid said, "I saw you out with Mr. Steelman," who is a teacher that I'm in a relationship with, "Are you guys dating," I would say, "Yeah, sure, let's go back to what we're doing...It wasn't like a focused topic of conversation, no."

(Tr. 3 at 90)

Respondent further testified that she never openly spoke about her own sexuality, but when students asked her questions – which usually was during meetings of the Gay Straight Alliance Club, which she advised – she would do her best to respond: "I would

try to clarify that people can choose whatever they want to be, as long as they're not hurting anybody else and they're happy with what they choose to be or who they are...." (Tr. 3 at 99) In her due process interview with Superintendent McCooley, Respondent was asked how students would know about her personal life. She responded:

> We're told to make connections with kids, so students find things out and talk to us. Plus, again, you guys know I have a ninth grader [E.], so these kids are friends with my kid. So they're in and out of my house; E. is in and out of their houses. Kids talk. It's not necessarily specifically relayed from me."

(P. Ex. 27, p. 4) Respondent repeated this in her testimony:

> Again, we were told to make connections with students. The kids would ask us questions. We would share—I would tell them minor, little things every once in a while. They knew I had more than one job. I mean most teachers do.

(Tr. 3 at 123)

Respondent was also asked if she ever talked to students about their dating lives. She responded that if students were to ask her an appropriate question, "I would do my best to answer them or lead them, like, in the correct area that they should go in...." (Tr. 3 at 92)

Commenting on female students' attire.[4]

G. testified to two times Respondent commented about the way G. was dressed that made her uncomfortable. The first was when G. was wearing red leggings. She testified that Respondent commented they were too tight and "accentuate my body," and "hug it, like tightly" and, "how would I know if I had 'camel toe'[5]?" (Tr. 1 at 75, 151) G. said that at least two other girls, J., K., and one boy, I., were in the vicinity and heard

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[4] There was some testimony and argument regarding comments Respondent allegedly made about a male student's socio-economic status. Because those comments are not part of the tenure charges, I do not address them in the Facts or Discussion sections of this Decision.

[5] G. explained in the hearing that this expression refers to clothing that slides up and shows the outline of someone's vagina. (Tr. 2 at 77)

Respondent's comment. Students J. and I. told Respondent that they were just pants and there was no issue with what G. was wearing. (Tr. 1 at 153)

The other comment was when G. was wearing a sweater and jeans, with the sweater, "tucked in a little so you could see a little bit of my stomach." According to G. Respondent told her, it made her "come off, like, whorish." (Tr. 1 at 77) She recalls that her friend, I., was present; he told Respondent that "it's just an outfit. It didn't give off any whorish vibes." G. said that Respondent's reaction was she "just laughed." (Tr. 1 at 132)

Principal Henderson testified that during his conversation with G. and her mother, G's mother told him that Respondent had "belittled" her daughter because she wore tights to school, "and she just made her feel really bad." The mother characterized the comment as "something really nasty, something that is inappropriate for a teacher, and she said it in front of all the kids...the entire class." (Tr. 2 at 65-6, P. 24 at 9-10)

J. testified that one time toward the end of her freshman year, when it was hot outside, she had biked to school in shorts and a tank top and walked into class late. J. commented that it was cold in the classroom, and Respondent said, "Well, you're half naked." The whole class looked at J. and she felt uncomfortable. (Tr. 4 at 73) S. also remembered this incident and testified to it. (Tr. 3 at 47)

J. also remembered and testified to being present when Respondent made a comment about how G. was dressed. G. was wearing a low-cut shirt, and she was more developed than some of the other girl students. A male student, I., was also there. Respondent asked him, "Do you see a problem with G.'s outfit?" I. said, no and G. "kind of just, you know ... shrugged," and Respondent said, "Of course you don't, you're a boy." (Tr. 4 at 75)

Respondent denied that she had used the term "whorish." (Tr. 3 at 380 She went on to emphasize:

> I am very staunch in my beliefs that women should be building up other women and girls and females. We don't need to call each other names like whore or whorish or anything along those lines. I don't use words like that So I would never say that she looked whorish or anything like that. So, no, I did not make that comment."

(Id.) Respondent also strongly denied ever using the term "camel toe;" she would never use such a term because it's "disgusting." (Tr. 4 at 39-40)

Respondent testified that she never commented on a female's clothing. She did not feel comfortable doing that. (Tr. 3 at 100) She would, however, occasionally comment on how male students were dressed: "If their pants were low, I would tell them to pull their pants up, yes." (If.)

"Grooming" a student for future sexual interactions.

Former student, I.B. testified to her interactions with Respondent, both while a student and after she graduated. She has known Respondent since she was in 7th grade. Although she was never assigned to Respondent's class, she audited for a while because her English teacher thought she would benefit from being exposed to more advanced classes. (Tr. 1 at 172) I.B. also knew Respondent because her mother was good friends with a number of teachers at the school. Her family would gather for social events with Respondent's family, and I.B. would go for trips to the beach or to Six Flags with Respondent. (Tr. 1 at 172-3, 176) Her parents were aware of these outings and were okay with them. (Tr. 1 at 218) I.B. also babysat for Respondent's son. (Tr. 1 at 173)

When I.B. was a high school student, she was active in the Gay Straight Alliance student group, where Respondent was an advisor. That was the height of I.B.'s interactions with Respondent in the school building. (Tr. 1 at 175)

During her sophomore year, I.B. entered a contest and won two free tickets to a Broadway show. The tickets had to be used that day. At the time her parents were away on vacation, so I.B. texted Respondent and told her the exciting news. Respondent offered to take her to the show. I.B. did not recall whether Respondent brought her son and her then wife to the city with them. (Tr. 1 at 179) I.B.'s parents gave permission for her to go to the city with Respondent. (Tr. 1 at 219)

I.B. went into the military after she finished high school and, at some point, returned to her home community. She grew close to Respondent and confided to her that she was sexually attracted to women. Respondent was "the only queer adult I knew." (Tr. 1 at 189) In approximately December of 2020, I.B. was at Respondent's house and expressed to her that she wanted to be with a woman, but that had never happened. I.B. testified that Respondent opened her computer and showed her pornography and photos of her and her ex-wife and ex-girlfriend. A few days, later, I.B. went over to Respondent's house to bring her a birthday present. I.B. had been drinking a little bit before; Respondent did not serve her alcohol. They ended up having a sexual encounter. (Tr. 1 at 194, P. Ex. 26, at p. 7-8)

A month or so later, I.B. was struggling emotionally and reached out to a family friend, Christina Calello, a social worker in the military, to seek advice. I.B. came out to Ms. Calello about her sexuality and told her about the encounter with Respondent. Ms. Calello reported the incident to the District; Dr. McCooley followed up and reached out and spoke to I.B. Dr. McCooley testified about their conversation, which she had recorded; a professional transcription of that interview was introduced into evidence as P. Ex. 26.

Respondent was asked about her interactions with I.B. after I.B. graduated from high school. Respondent testified that she never showed I.B. pictures of her ex-wife, or ex-girlfriend or any nude photos. (Tr. 3 at 120) The intimate sexual encounter testified to by I.B. did not occur. (Tr. 3 at 121) It never happened. (Tr. 3 at 129) Respondent does recall that I.B. wished her a happy birthday in 2022 and one year gave her as a birthday gift a book of quotations. (Tr. 3 at 121) Respondent testified that she was the first person I.B. came out to. (Id.)

Inviting outsiders into the high school without notice or approval.

Principal Henderson testified that he learned on May 11, 2021 that Respondent invited guest speakers to the school. Specifically, Respondent invited members of the Ocean County Prosecutor's Office to come into the school to meet with students, without notifying the administration or obtaining prior approval. (Tr. 2 at 21-24, P. Ex. 12)

Respondent acknowledged that she had arranged for the members of the Prosecutor's office to come to the high school to help students prepare for a presentation. Respondent had planned this event with another staff person, Sue Raylman, who had been the one to set her up with the Prosecutor's office; Respondent assumed that Ms. Raylman had informed the administration. (Tr. 3 at 87, P. Ex. 12) Ms. Raylman did not testify in this proceeding.

Failing to attend a mandatory faculty meeting.

Principal Henderson testified that Respondent failed to attend a mandatory faculty meeting on June 15, 2021. Principal Henderson sent an email to Respondent and others who had missed the meeting. (Tr. 2 at 27, P. Ex. 12) Respondent wrote back, explaining that she was upset because the administration took away her position

assisting students with "The Cat Eye," a school Facebook page. (Tr. 2 at 30-31) Respondent received a stipend for this work and enjoyed it very much. (Tr. 3 at 74)

In this hearing, Respondent confirmed that she had missed the meeting. She testified that as a coach she had missed meetings before, but never had to let the principal know. "I thought if I found out what happened, I'd be okay which I did...I didn't leave the building, I stayed in my classroom." (Tr. 3 at 74-5)

Telling students about threats of suicide.

In December 2021, Respondent was in her classroom, at around 6:45 a.m. She had bought a new lamp for her room:

> I was setting it up and plugging it in, and I blew the power in my classroom, and I started to freak out because I was scared to get in trouble, because I was already dealing with every else... I started to run around and try to find a maintenance person...As I was running out of my classroom, I passed a colleague, Jen Suralik, and she asked me if I was okay, and I said, just literally offhand, never was suicidal, 'I could just swallow a bottle of pills right now," just like running, because I was stressed. Never wanted to hurt myself or anything."

(Tr. 3 at 47-8) Evidently Ms. Suralik reported the comment, because the administration called Respondent in for a meeting at the end of the day and required her to get a mental health evaluation, which she did within a few days. Respondent testified that she never made any statement referencing self-harm or suicide in front of students. (Tr. 3 at 48-9)

Principal Henderson testified that a parent called him to say that Respondent had told the students she was out of school for two days because a teacher had reported her as being suicidal. (Tr. 2 at 43) Principal Henderson testified that he also spoke to more than one student, one at a time, and, although he made no notes of his conversations with the students, he followed up by calling Respondent in for a meeting. (Tr. 2 at 45-6) Present was another administrator and the Union president. Principal

Henderson memorialized that meeting in a letter to Respondent dated January 5, 2022. He wrote:

> During the meeting you stated 'I had some parents contact me that I am friends with and I told them the truth which was I was kicked out of school for three days because I made an off-hand comment that people usually say that was totally misinterpreted.' You also stated during the meeting 'I spoke to friends of mine that are parents within the community.'

(P. Ex. 17)

Student witness J. testified that when she was in Respondent's first period English class, Respondent told the class that she had attempted or thought about suicide in the past. (Tr. 4 at 78-79, 105)

POSITIONS OF THE PARTIES

The District argues that it has met its burden to prove the tenure charges by a preponderance of the credible evidence in that:

1. The District has proven the specifications of Charge 1: three current students, who were competent witnesses, testified truthfully and provided evidence of significant inappropriate conduct including making comments regarding topics such as sex, sexuality, nude photographs, students' dating relationships, students' personal appearances and suicide; the comments caused the students to feel uncomfortable and embarrassed and violated District policies; Respondent denied all of these charges, but her blanket denial is not credible, and she offered no evidence to prove bias or a motivation to lie on the part of the student witnesses;

2. One former student, testified credibly and truthfully about her relationship with Respondent, which began when she met Respondent in the school setting and culminated in a sexual relationship after that student had graduated and was an adult;

the evidence showed that Respondent blurred the lines with the students in her classroom, and that Respondent was ultimately looking for a sexual relationship with this student and likely with others;

3. It is Respondent's word against the word of four intelligent mature, smart, brave and genuine students who voluntarily put themselves through the stress of testifying; Respondent herself conceded that she knows of no reason for any of the four to lie; the students testified that some of them were better friends with one another at different times or simply knew one another – there is absolutely no evidence that these students joined forces to conspire against Respondent;

4. The District has proven that Respondent does not maintain the boundaries necessary when teaching young adults and does not take accountability for her actions; the District has demonstrated a pattern of blurring the lines, which created and will continue to open the door for more egregious conduct in the future if Respondent is not removed from her teaching position;

5. There can be no question that Respondent's proven actions constitute conduct unbecoming including: showing nude photos to students in a classroom setting; discussing Respondent's personal and sexual relationships; embarrassing and making students uncomfortable by demeaning their personal appearance; and discussing students' personal dating relationships in front of others; further, the fact that Respondent's conduct led to her having sex with a former student students elevates the concerns about her conduct to ones that absolutely warrant dismissal;

6. The District has proven the specifications of Charge 2 regarding former student I.B.; the evidence establishes that Respondent used her position as a teacher in the District to draw I.B. close to her when she was still a student, and used that

closeness to have a sexual relationship after I.B. had graduated and reached legal maturity; Respondent denied the sexual relationship, but admitted her closeness to I.B.; I.B. was a credible witness, with no reason to lie; the proven allegations are consistent with Respondent's lack of boundaries with students and constitute conduct unbecoming, warranting discharge;

7. The District has proven the specifications of Charge 4, that Respondent invited outsiders into the high school without reporting their visit or obtaining approval; indeed, Respondent admits that this occurred, excusing herself only by stating that she believed another teacher who participated in the planning of the event, had notified school authorities; while in itself, not a serious matter and not grounds for discharge, it is proven and fits within a pattern of Respondent's cavalier attitude toward District policies and procedures;

8. The District has proven the specifications of Charge 5, particularly the specifications that Respondent spoke about her own ideas of suicide loosely and with other individuals, and that students learned of this, all of which is conduct unbecoming; indeed, Respondent admits that she made joking remarks to a fellow teacher about self-harm, and that she told friends who were associated with the school that was the reason she was prevented from appearing at school for a few days; the testimony of Student J., while not about the particular incident charged, corroborates that in the past Respondent did talk loosely with students about her own ideas of suicide; this is all conduct unbecoming.

For all these reasons, the tenure charges should be sustained. Discharge is appropriate in this case in that Respondent has demonstrated a serious and repeated lack of respect for the boundaries that should exist between the private lives of teachers

and their students; this has caused harm to students and will continue to expose them to harm if Respondent is allowed to return to the classroom. Further, the reputation of the District if it allows Respondent to return to the classroom will be jeopardized.

On the other hand, Respondent argues that the District has not proven the charges against Respondent by a preponderance of the credible evidence; further, facts established on this record do not warrant Respondent's termination from her tenured teaching position:

1. The present charges were brought by the District in transparent retaliation against Respondent for her involvement in the "Maskholes" controversy in February 2021, which was included in the present action as Charge 3; was the basis of an increment withholding; and is the subject of 7 pending challenges in various forums; while the Arbitrator did not allow the parties to relitigate the matter in this proceeding, this incident should also be excluded from any consideration at the penalty phase, if there is one;

2. With respect to Charge One, the District has failed to prove the charge by a preponderance of competent, credible evidence:

   a. The District's investigation, undertaken only by Principal Henderson, was grossly deficient; the District needlessly waited for months to interview any further witnesses after the initial report, including waiting six months to interview Respondent; the delay in its investigation cannot be excused by a claim that it was waiting for law enforcement to charge Respondent, since, among other things, it knew by early February 2022 that she would not be facing criminal charges; it failed to interview other students or check the school's attendance logs or security

cameras to confirm or refute the testimony of the two principal accusers or to preserve critical evidence;

b. To the extent the charges were premised on the IAIU investigation, they are legally insufficient, since the terms of that investigation explicitly state that the Respondent has not been afforded the opportunity to challenge the results of the report and the report cannot be an independent basis for taking action against the person identified therein; this limitation is required not only by the terms of the IAIU report, but by federal judicial holdings;

c. The Board's witnesses and evidence were inconsistent and incredible:

   i. With respect to the "nude photograph incident," the student witnesses testified at various times that it took place: when only one student was present and when many students were present; during 1st period, 7th period and 5th periods; that only G and K saw the photos and that K did not but another student did; that only one photo was shown or more than one; class schedules of the student witnesses confirm that the tale told by the students was not credible;

   ii. With respect to the "nasty comments," again the student witnesses testified at various times that no such comments were made; that different students were present who could not have been, based on their class schedules; and that they occurred during different periods;

d. By contrast, Respondent's denial was consistent, candid, and credible:

   i. Her testimony was supported by the fact that students would not have come into her room when she was teaching and by the logistical improbabilities offered by the students' differing class schedules;

ii. Respondent was candid that she was forthcoming with students about benign aspects of her personal life, including who she was dating, that she had a second job, and that she was a queer female; it is not conduct unbecoming for a teacher to be open about their sexual identity;

iii. Respondent was forthcoming also in her acknowledgement that she knew of no reason why the students would be antagonistic toward her;

iv. Respondent's current partner testified credibly that they do not have an 'open' relationship, thus corroborating her testimony;

e. The rebuttal testimony of two additional students must be disregarded:

i. They introduced new allegations that are beyond the scope of the allegations in the Tenure Charges and consequently cannot be the basis for imposing discipline;

ii. Their testimony is not credible because they omitted these very allegations during their IAIU interviews, and their explanations for having done so and only coming up with their stories now strain credulity; their denial that they talked to one another about their testimony is contradicted by the coincidence that they testified to identical incidents; the only explanation for their testimony is that they were influenced by District leaders, including the principal and superintendent, with whom they met prior to testifying; they colluded with the District leadership and one another;

3. With respect to Charge 2, the District failed to prove that Respondent engaged in conduct unbecoming with IB:

a. All of the testimony about the interactions between IB and Respondent while IB was a student show there was no "grooming:"

i. IB's family was friendly with Respondent and the two families socialized together; IB babysat for Respondent's son;

ii. IB's family was aware and approved of IB's trips with Respondent, including the time Respondent took IB to the city so that she could see the show for which she had won tickets;

iii. There are no allegations, let alone proof, of any inappropriate sexual or other relationship during IB's school years;

b. The alleged sexual interaction between IB and Respondent occurred after IB had graduated, gone into the army and was an adult; it cannot be the basis for a charge of conduct unbecoming;

4. With respect to Charge 3, the "Maskholes" charge, as noted above, the Arbitrator has excluded this charge from consideration, and it should not be considered at all, including with regard to penalty;

5. With respect to Charge 4, there is no dispute that Respondent, along with another teacher, invited members of the Ocean County Prosecutor's Office Staff to the High School to meet with students in order to prepare them for a panel discussion; while this conduct may have violated the letter of the school's policy about getting permission before bringing visitors into the school, this incident does not constitute conduct unbecoming; in fact Respondent was recognized by the Prosecutor's office for her efforts on behalf of the students; Superintendent McCooley testified that no other staff has ever been disciplined for violating this policy;

6. With respect to Charge 5,

a. Respondent admits that she missed a faculty meeting; at the time, she explained to her principal the circumstances behind her absence, and she followed through, as he directed, to make up that meeting; this conduct does not rise to the level of conduct becoming a tenured teacher;

b. Respondent explained the circumstances leading to her saying, jokingly, to another teacher that she could "just swallow a bottle of pills right now:"

i. there was no evidence that any student heard that remark; no students were present; indeed, the District failed to put forth a residuum of competent, non-hearsay evidence in connection with the allegations in this Charge; there was only hearsay reported by Principal Henderson;

ii. the testimony of Student J. regarding Respondent's alleged discussion of suicide in a class must be disregarding because it is vague and unspecific; further, it relates to an alleged incident that may have occurred years ago, at an entirely different time and place than the incident included in the charges and does not prove those charges;

iii. further, Respondent complied with the District's directive and obtained clearance from her therapist, to return to work;

iv. Respondent's therapist testified on sur-rebuttal and verified that she has never heard Respondent say or report anything about self-harm or suicide, thus contradicting the one student witness who claimed that Respondent did talk with students about multiple suicide attempts.

7. Respondent has an excellent record of twenty years as a teacher for the District; she has received outstanding evaluations and observations; she has been active

and a positive force in the school by sponsoring student events and initiating programs and clubs that support students; her students all testified that she was a good teacher;

8. Termination would almost certainly be a death knell for Respondent's career as a teacher; teachers who engaged in much more egregious conduct have been allowed to continue teaching, in some cases after undergoing significant professional development; Respondent did not engage in grave or irredeemable misconduct and clearly does not fall into the category of one for whom termination is appropriate;

For all these reasons, the Board's tenure charges should be dismissed.

DISCUSSION

Both parties were ably represented by counsel in this proceeding and had full opportunity to present evidence and make arguments in support of their respective positions. In the preparation of this Opinion and Award, I have carefully considered the testimonial and documentary evidence, the legal authorities cited, and the positions and arguments set forth by the parties, whether referenced or not. For the reasons set forth below, I find the District has proven the conduct alleged in Charge I. That conduct was egregious, unprofessional and constituted conduct unbecoming a tenured teacher. For that proven charge alone, removal from her position and loss of tenure is the appropriate penalty.

With regard to Charge 2, the District has proven some of its allegations, though not all. This charge involves alleged misconduct over a period of years, culminating in conduct that occurred after the student involved had graduated and become an adult. I discuss this charge and its ramifications for Respondent below.

As to Charges 4 and 5, while many of the events alleged occurred, I find the District has failed to prove misconduct; certainly, those events do not constitute grounds for terminating Respondent's employment.

Finally, as noted above, I decline to consider Charge 3, since Respondent has already been punished for this alleged misconduct, and the matter is the subject of ongoing litigation. I also decline to consider Charge 3 with regard to the issue of penalty.

Charge 1

I find that the weight of credible evidence supports a finding that Respondent did, in fact, show one or more students at least one photo on her phone of a woman's bare breasts, while the students were in her classroom, although not during formal lesson time. Further, I find Respondent told students that the woman involved was pursuing a romantic or sexual relationship with her. Such conduct is completely inappropriate for a teacher: it violates the District's rules as well as the behavioral norms expected of our teaching faculty.

Respondent insists that this event never took place. But I find student G. was more credible than Respondent. Not only was she a credible witness, but also the student's testimony was supported by a considerable body of evidence, including (1) the testimony of Principal Henderson and the transcription of his interview with her over the telephone, while her mother was with her; (2) the conversations student K. had with Brittany White and Principal Henderson; and (3) the testimony of another student who heard Respondent asking students how she might download a naked photo sent to her without letting the sender know about it. Respondent herself testified that she is unaware of any animosity the student witnesses might bear toward her, or any other

motivation for student G. to fabricate such a story. Even without the testimony of the student K. who originally reported Respondent's conduct, this is sufficient to sustain the allegations of Charge 1.

It is clear that Respondent tried hard to relate to her students; to make them feel comfortable as they navigated the often-fraught experiences of adolescence and high school. Respondent told her superintendent, "We're told to make connections with kids." And in many ways, Respondent was very successful in making connections. The four students who testified all said they felt comfortable in her presence; three of the four liked to hang out in Respondent's classroom with their friends. But it is one thing to make connections with students and quite another to share details about one's private, sexual and dating life. That is not appropriate. Nor is it appropriate is to share one's interest in learning how to download nude photos. And less appropriate still is sharing nude photos one has received. Respondent crossed the line with her students when she engaged in such activity.

I also find that Respondent made degrading remarks to female students about their appearance in front of other students. Both G. and J. testified to being the subject of such comments and they also witnessed belittling comments to other students. Again, Respondent denied ever making degrading comments about female students, insisting that she is opposed to any conduct that belittles or embarrasses young women. However, the students' testimony was credible and corroborated by their interviews with school authorities. I credit the students' testimony.

Respondent urges me to discount the students' testimony – particularly that of J. and S. -- because there are inconsistencies between what they told the IAIU investigators and what they testified to in the hearing. However, it is not uncommon for

witnesses – even adults -- to have inconsistencies in what they tell authority figures at different times. In this case, the students were at different stages of their high school experience when they were questioned and I do not find the inconsistencies surprising or troublesome. In any case, there were other factors that supported the veracity of their testimony before me. Both J. and S. were candid when they did not remember particular details, and J. explained her thinking when she was younger of wanting to spare Respondent from more trouble. I found both J. and S. to be competent witnesses, and their testimony was appropriate as part of the District's rebuttal case. There is no evidence that they colluded with one another or with District officials to invent negative testimony against Respondent, and I reject that supposition.

Respondent also urges me to consider student classroom schedules as impeaching the credibility of the student witnesses: they could not have been with Respondent at the times and places and with the other students identified. But it is clear to me that these students and their friends were in and out of Respondent's classroom at different times of the day. I find it entirely credible that they would remember witnessing or being themselves the target of particular negative comments without remembering exactly when that happened or who else was present. Their testimony taken as a whole painted a picture of Respondent's classroom as a space where students came to hang out; there Respondent interacted with them in ways that were both appropriate and supportive and inappropriate and negative.

The remarks attributed to Respondent, including saying one female student looked "whorish" and another looked "naked," were inappropriate, particularly when said in front of other students. Equally inappropriate was Respondent's use of the term "camel toe" to a female student in front of other students. By embarrassing and

disparaging students in front of their peers, Respondent engaged in conduct unbecoming.

Respondent also urges me to find Charge 1 not sustained because of the duration and inadequacy of the District's investigation and because the District improperly relied on the IAIU's investigation. But I find the District acted within the scope of its discretion to bring this matter first to law enforcement and to state investigators before proceeding on its own. In good faith, the District, through Principal Henderson and Superintendent McCooley, interviewed key students and spoke with state administrative and law enforcement personnel. While the administrators were aware that the IAIU conducted interviews, it did not rely upon those interviews, and the District moved ahead on its own to bring these charges when official efforts were unresponsive. The proofs presented to me in this hearing, particularly the in-person testimony of student witnesses, were sufficient in themselves to sustain the charges.

Charge 2

Student I.B. testified credibly about the relationship she had with Respondent. It developed initially because her parents were good friends with I.B. and the two families socialized with one another, participating in such activities as going to the beach and to Six Flags. I find nothing inappropriate about the relationship as it developed over the years. One of the allegations against Respondent is that she took I.B. to the city to see a show. But, as I.B. testified, this was not an act of "grooming" and was in no way inappropriate: I.B. won show tickets in a lottery; her parents were away; and so Respondent took her to the city to see the show. I.B.'s parents were aware of this trip and approved it. This, too, was not an act of "grooming."

I credit I.B.'s testimony that she felt comfortable discussing her feelings about her own sexual identity with Respondent, largely stemming from their bond when Respondent was the faculty advisor and I.B. was a member of the Gay Straight Alliance. And I credit I.B.'s testimony that she turned to Respondent after she had reached maturity and had questions and wanted to explore her sexuality; Respondent was a gay adult whom I.B. knew and trusted. Respondent denies that she ever shared pornography with I.B. or had any sexual encounter with her. However, I.B. was the more credible of the two of them, and her testimony was corroborated by Superintendent McCooley' recorded interview of her.

While the evidence does not establish that Respondent "groomed" I.B. or otherwise acted inappropriately when I.B. was a student and a minor, yet it is also clear that Respondent's role as faculty advisor to the GSA gave her a unique position of trust with I.B. This trust I believe she violated by engaging with I.B. sexually when the former student was over 18. To that extent, I believe Respondent violated District rules and engaged in conduct unbecoming a teacher.

Respondent urged me in her Motion for Partial Dismissal of charges to dismiss Charge 2 because there was no evidence of any inappropriate interactions between Respondent and I.B. while I.B. was a student: the alleged sexual interactions took place between two consenting adults and thus could not be conduct unbecoming. As I discuss above, I agree that the relationship between Respondent and I.B. did not grow solely out of their teacher/student roles: I.B.'s family promoted a friendship with Respondent and her family. And I agree that Respondent did not engage in any impropriety with I.B. while she was a student. Nevertheless, I.B. turned to Respondent with questions about her own sexuality because she knew I.B. to be a "queer adult" and came to trust her

through their roles as sponsor and participant in the Gay Straight Alliance. But for that history, I find it hard to believe that I.B. would have confided in Respondent as she did. Respondent took advantage of the trust she had earned as teacher/sponsor with a younger, more impressionable student when she subsequently engaged in sexual activity; that activity I find to be conduct unbecoming.

Charge 4

While there is no dispute that Respondent, along with another teacher, invited members of the Ocean County Prosecutor's Office Staff to the High School to meet with students in order to prepare them for a panel discussion, there is nothing in this behavior that remotely amounts to conduct unbecoming. Yes, it was a technical violation of school policy, but there are at least three reasons why I find against the District as to these charges.

First, Respondent testified credibly that she planned the event that brought outside prosecutors into the school with another teacher. The District did not rebut that testimony; evidently it made no effort to talk to the other teacher. Second, the Respondent testified credibly, and, again, without contradiction, that the event was very successful and highly beneficial to District students. Respondent received accolades from the public prosecutor's office for this event. Consideration should be given to Respondent for facilitating this positive type of event. Third, there is no evidence that any other staff member has been penalized for violating this rule. Indeed, there is no evidence that the other teacher who participated with Respondent in planning and carrying out the event was ever talked to, much less penalized. I find the District has failed to prove this charge.

Charge 5

Charge 5 consists of two unrelated sets of allegations. The first has to do with Respondent missing a mandatory faculty meeting. As with the allegations in Charge 4, there is no dispute that Respondent did, in fact, miss a mandatory faculty meeting. However, I find the District has failed to prove that this instance amounted to conduct unbecoming. Respondent testified, credibly and without contradiction, that she has missed faculty meetings before when, for example, she was coaching a school team, without any ramifications. She also testified, credibly and without contradiction, that she obeyed the dictates of her principal and "made up" the meeting by conferring with the appropriate person in the administration. This had been sufficient previously and the District presented no evidence as to why it was insufficient in this instance. Finally, the District's witnesses admitted that no other staff person has ever been brought up on tenure charges – or otherwise penalized -- for missing a faculty meeting. Thus, I must rule against the District on this set of allegations.

The second set of allegations has to do with Respondent allegedly telling students that she had been prevented from returning to school because of a suicide threat. I find the District has failed to prove these allegations as well. First, while Respondent admitted that she made an offhand comment to a colleague about "swallowing a whole bottle of pills," her testimony was both credible and uncontradicted, that this was not done in front of students. In fact, Respondent did not admit to any discussion of suicide or suicidal thoughts with students. The only evidence the District produced in support of this set of allegations was based on hearsay, and as Respondent points out in her Motion for Partial Dismissal of Charges, under the residuum rule, this evidence is insufficient since the District produced no evidence that was not hearsay in support of

its charges. Nor are these allegations rescued by the vague testimony of Student J. that at some point, years ago, she thinks Respondent mentioned suicide in her English class. That testimony was unspecific, and, in any case, completely unrelated to the allegations in Charge 5. The District must prove the allegations as written.

Penalty

Respondent urges me to consider a penalty less than termination in this case. Termination will almost certainly end Respondent's career as a teacher, a career that she loves and has done with distinction, energy and creativity for almost 20 years. Respondent argues that other teachers, found guilty of more egregious misconduct than is alleged here, have been allowed to continue in their profession, sometimes with guidance from professional development.

While I am mindful of the many accolades for her teaching from both the administration and her students, I must concur with the District. The allegations as proven by the District show a troubling lack of appreciation for the boundaries that high school teachers must respect for the well-being of their students. It is one thing to make students comfortable and to create an atmosphere where they can relax and feel safe. It is quite another to bring up and share with students one's own dating and sexual relationships. And, it should go without saying that sharing nude photos of a potential partner with students is beyond the pale. Likewise, talking to students about their personal appearance and potential dating partners, particularly in front of other students, can obviously cause embarrassment at the least and possibly pain to those students. High school students are at a stage in their development where all of these topics are fraught – teachers are expected and, indeed, required to treat their students

with dignity and delicacy to help them come through these years with healthy self-esteem.

Three current students testified before me about a variety of incidents over more than one school year, where Respondent failed to honor those boundaries. Their testimony was supported by the report given by student K., who did not testify but whose conversations with District administrators brought these matters to their attention. From these sources, it is clear that Respondent not only discussed her own personal dating life with students, but also shared with them her interest in nude photos. And she talked to students about their personal appearance and social relationships in ways that embarrassed or humiliated them. The testimony of former student I.B. adds a further dimension to this picture: I.B. grew to trust and confide in Respondent in large measure because Respondent advised the Gay Straight Alliance. Respondent subsequently abused that trust and confidence by engaging in a sexual relationship which confused and troubled I.B.

These are serious allegations. I find discharge to be the appropriate penalty for the conduct charged and proven by the District.

AWARD

For the foregoing reasons, I find with respect to the tenure charges:

Charges One and Two. I find that Respondent violated District policies and engaged in conduct unbecoming as alleged in Charge One and Two. Those charges are sustained.

Charges Four and Five. I find that Respondent did not violate District policies or engage in conduct unbecoming as alleged in Charges Four and Five. Those charges are not sustained.

I sustain the District's decision to discharge Respondent.

Ruth Moscovitch, Arbitrator

Date: July 25, 2024

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On July 25, 2024, RUTH MOSCOVITCH, whom I know, came before me and acknowledged that she executed the foregoing as and for her Opinion and Award in the above-captioned matter.

TAREK M ELBARKATAWY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01EL6413650
Qualified in New York County
My Commission Expires 02-01-2025

Notary Public
My Commission expires

279-24
OAL Dkt. No. EDU 10181-22
Agency Dkt. No. 294-11/22

New Jersey Commissioner of Education

Final Decision

A.S. and J.S., on behalf of minor child, L.S.,

Petitioner,

v.

Board of Education of the Borough of Hasbrouck Heights, Bergen County,

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 26, 2024
Date of Mailing: July 31, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 10181-22
AGENCY DKT. NO. 294-11/22

A.S. AND J.S. ON BEHALF MINOR CHILD, L.S.,
Petitioners,
v.
BOARD OF EDUCATION OF THE BOROUGH OF HASBROUCK HEIGHTS, BERGEN COUNTY,
Respondents.

Larry Katz, Esq. for petitioners

Eric Harrison, Esq., for respondent (Methfessel and Werbel, P.C., attorneys)

Jessika Kleen, Esq., co-counsel for respondent (Machado Law Group, attorneys)

Record Closed: June 14, 2024 Decided: June 19, 2024

BEFORE **JOHN P. SCOLLO**, ALJ:

The New Jersey Department of Education transmitted to the Office of Administrative Law for determination as a contested case on November 15, 2022, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The parties have settled this matter and have filed a General Release and Settlement setting forth the terms of their settlement.

Having reviewed the General Release and Settlement, I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by the signatures of the parties and/or their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that the stipulation of settlement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the stipulation of settlement and, therefore, **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

John P Scollo

June 19, 2024

DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency: June 20, 2024

Date Mailed to Parties: June 20, 2024

db

Batista, Diana [OAL]

From:	Jessika Kleen <jkleen@machadolawgroup.com>
Sent:	Friday, June 14, 2024 11:53 AM
To:	Larry Katz; Batista, Diana [OAL]; Katharine A. Rubin; Christina Michelson; Eric Harrison; Raina M. Pitts
Cc:	Anisa K. Ali
Subject:	[EXTERNAL] RE: EDU 10181-22 A.S. AND J.S. O/B/O L.S. VS. HASBROUCK HEIGHTS BOE (Lento 1907)
Attachments:	LS executed settlement.pdf

Attached please find the fully executed settlement agreement.

Jessika Kleen, Esq.
Partner
Machado Law Group
One Cleveland Place
Springfield, New Jersey 07081
jkleen@machadolawgroup.com
Phone: 973-232-5291
FAX: 973-232-6261

From: Larry Katz <lakatz@lentolawgroup.com>
Sent: Friday, June 14, 2024 10:01 AM
To: Batista, Diana [OAL] <Diana.Batista@oal.nj.gov>; Katharine A. Rubin <rubin@methwerb.com>; Christina Michelson <michelson@methwerb.com>; Eric Harrison <harrison@methwerb.com>; Jessika Kleen <jkleen@machadolawgroup.com>; Raina M. Pitts <Pitts@methwerb.com>
Cc: Anisa K. Ali <ali@methwerb.com>
Subject: RE: EDU 10181-22 A.S. AND J.S. O/B/O L.S. VS. HASBROUCK HEIGHTS BOE (Lento 1907)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Your Honor:

I apologize for not also responding. Mr. Harrison is accurate. The Release language has been resolved and a signed Release has been returned to MR. Harrison.

Respectfully,

Larry Katz

GENERAL RELEASE AND SETTLEMENT AGREEMENT

THIS GENERAL RELEASE AND SETTLEMENT AGREEMENT (hereinafter referred to as the "Release") is made by Releasors A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR (hereinafter referred to as "A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR" or "Releasor" (includes themselves and their legal representatives and agents), for the benefit of the HASBROUCK HEIGHTS BOARD OF EDUCATION, its Elected Officials, Agents, Employees and Representatives and FRANK D'AMICO, JOSEPH MASTROPIETRO, DAWN JOHNSON, and DR. MATTHEW HELFANT (hereinafter collectively referred to as "the BOARD OF EDUCATION" including its administrators, officers, agents and employees) for the following purposes and with reference to the following background.

BACKGROUND

A. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR filed a complaint with the United States District Court for New Jersey; Civil Action No. 1:23-cv-21200 claiming constitutional and common law violations; and

B. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR filed a petition of appeal with the Commissioner of Education, OAL Docket No. EDU 10181-22 claiming violations of the Anti-bullying Bill of Rights Act, N.J.S.A. §18A:37-14, and common law violations; and

C. The BOARD OF EDUCATION has denied, and continues to deny, any and all liability for all the claims alleged by A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR and deny that the BOARD OF EDUCATION violated any laws or engaged in any unlawful or wrongful conduct, or discriminated or retaliated against

A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR or deprived them of any of their rights in any manner; and

C. The Parties desire to make a full and final settlement of any and all of A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR's claims and potential claims against the BOARD OF EDUCATION, known or unknown, asserted or unasserted, based on any facts, events, acts or omissions, whether now known or unknown, occurring on or before the effective date of this Release, without any judicial, administrative, or arbitral resolution of them and without any admission with respect to any issues presented or capable of being presented.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, and intending to be legally bound, the undersigned parties agree as follows:

1. Non-Admission. This Release is not, and shall not in any way be considered or construed as, an admission by the BOARD OF EDUCATION of any tortious conduct, or of any violation of any law, common law, or federal, state or local statute or regulation, or of any alleged duty owed by the BOARD OF EDUCATION to A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR, or of any unlawful or wrongful acts whatsoever by the BOARD OF EDUCATION. The payment hereunder is made solely to avoid the inconvenience and cost of litigation and to resolve completely all of A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR's claims against the BOARD OF EDUCATION, known or unknown, asserted or unasserted, as more fully detailed in Paragraph 9, below.

2. Cooperation. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR and the Board of Education agree to cooperate fully in connection with any steps required to be taken as part of their obligations under this Release.

3. Withdrawal and Dismissal of Lawsuit and Promise Not to Sue A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR understands that this Release extinguishes any claims or potential claims as to the HASBROUCK HEIGHTS BOARD OF EDUCATION, FRANK D'AMICO, JOSEPH MASTROPIETRO, DAWN JOHNSON, and DR. MATTHEW HELFANT, and agrees not to file, revive any claims, or open a lawsuit in any way. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR further agrees not to file any other Charges with any state or federal agency against the BOARD OF EDUCATION and/or any of its current or former elected officials, employees, agents or administrators. This paragraph is limited to incidents occurring before the date the agreement is signed.

A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR further agrees that neither they, nor any person, organization, agency, or other entity on their behalf, will file, charge, claim or sue, or cause to be filed, charged, claimed or sued, any lawsuit, legal proceeding, action, or claim of any nature with any court or agency (including any action for damages, attorneys fees, injunction, declaratory, monetary, equitable or other relief) against the BOARD OF EDUCATION, based on any matter, fact or event occurring prior to the effective date of this Release, whether now known or unknown, or involving any continuing effects of any acts or practices which may have arisen or occurred prior to the effective date of this Release, whether now known or unknown.

A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR understands and agrees that they will not be considered a prevailing party under any statute, common law, or otherwise as a result of this Release.

4. Payments And Other Consideration. In exchange for the promises, Releases, and legal releases stated herein, and other good and valuable consideration, the Board's insurance carrier will make payments totaling One Hundred Thousand Dollars ($100,000.00) to A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR, who acknowledge that the monies will be distributed in accordance with a Court Order and in compliance with New Jersey Court Directive #09-08 regarding "Friendly Settlement." The effective date of this Release shall be the latest of the dates upon which the BOARD OF EDUCATION receives A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR's signed and notarized General Release and Settlement Agreement; W-9 form; a child support search report from their attorney and the Court Order for the Friendly Settlement is filed. BOARD OF EDUCATION does further agree to reverse any HIB findings made against L.S., to fully expunge L.S.'s educational and other records of those HIB findings, and to provide written assurance, on letterhead from counsel, to A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR'S COUNSEL, that the reversals and expungements have been accomplished. This will be done within 60 days after the Court Order for the Friendly Settlement is filed.

5. It is agreed and understood by the Parties that all monies paid as part of this settlement are for non-economic damages and that no monies are paid for loss of income, wage loss, and any other economic damage.

6. Non-Disparagement. The Parties understand and agree that they will not engage in any activity or make any statement – written, oral, electronic or otherwise – that may disparage or reflect negatively on each other, their agents, employees, officials, officers, board members, directors or employees or which would otherwise encourage any adverse action against either Party.

7. Confidentiality and Non-Disclosure. Except as otherwise required by law, the terms of the Agreement are strictly confidential. The Parties agree that they shall not disclose to any third party (other than tax advisors and retained counsel) any details regarding the settlement of this matter or the Agreement except as required by law and/or in connection with an action to challenge or enforce the Agreement. The Parties acknowledge that should they disclose the terms of this Agreement to any other third party other than third parties to whom they are expressly permitted by this paragraph or required by law to disclose its terms, they take full responsibility for any breach of confidentiality by such third party, including but not limited to, their spouses, significant others, family members, or any other individual who disclosed any provision of this Agreement through any information received from that Party, and that a breach of the Agreement by such an individual shall constitute a breach of agreement by the Party herself or itself. The facts, amounts, circumstances and documents underlying this resolution shall not be disclosed or admissible in any litigation or proceeding in any forum for any purpose other than to enforce or challenge the terms and conditions of the Agreement, except as otherwise required by law, court order or legal process. Neither the Parties, nor their representatives, shall communicate with the media or members of the media regarding the terms of the Agreement. If contacted by any media source, the

Parties agree that their statement will be limited to: "The matter has been resolved." No party to the Agreement, or a party's representative, shall take any steps to place any information concerning this Agreement or the allegations contained in this Action on any form of social media, or on the Internet in any manner. Nothing in this paragraph shall prevent Releasors from informing L.S.'s medical or emotional/psychological providers that the HIB investigation ultimately found that L.S. did not commit a HIB.

8. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR's Tax Indemnification. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR agrees to indemnify and hold the BOARD OF EDUCATION harmless from any and all federal, state, and local tax liabilities, deficiencies, levies, interest, and penalties that may be assessed as a result of not withholding income and payroll taxes on the monies paid pursuant to this Release if they fail to properly pay any taxes to which their settlement may be subject.

9. Full and Complete Settlement. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR agrees that the payment described in paragraph 4 will be received by A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR in full and complete settlement, as more fully detailed in paragraph 9, below, of all known or unknown claims, asserted or unasserted, of A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR allegedly arising out of any and all conduct or actions of the BOARD OF EDUCATION and/or relationship with the BOARD OF EDUCATION, as more fully detailed in Paragraph 9, below.

10. General Release and Waiver of all Claims. In consideration for the payment and promises described in paragraph 4, and elsewhere in this Agreement, A.S.

AND J.S. AS PARENTS AND O/B/O L.S., A MINOR fully releases and forever discharges the BOARD OF EDUCATION, FRANK D'AMICO, JOSEPH MASTROPIETRO, DAWN JOHNSON, and DR. MATTHEW HELFANT, and all of the BOARD OF EDUCATION's former or current elected officials, directors, officers, administrators, trustees, shareholders, agents, supervisors, employees, attorneys, legal representatives, servants, insurers, any and all benefit plans, and successors and assigns, and each of them (herein collectively "the BOARD OF EDUCATION" and/or "Released Parties") of and from any and all claims, actions, causes of action, back pay, front pay, contracts, agreements, compensation, pay, promises, charges, judgments, grievances, obligations, rights, demands, debts, sums of money, salaries, wages, benefits, physical injury, pain, suffering, emotional distress, compensatory damages, punitive damages, attorneys' fees, expenses, costs, losses liabilities, damages, or accountings of whatever nature, whether known or unknown, disclosed or undisclosed, asserted or unasserted, in law or equity, contract or tort or otherwise (herein collectively designated "Claim" or "Claims"), through the effective date of this Agreement, including, but not limited to, any and all Claims of race, gender, sex, age and national origin discrimination, retaliation, and any and all tort Claims or contract Claims or Claims for general damages, and any and all Claims arising under, made, regarding, or involving: any federal, state or local laws or under the common law; violations of any federal, state or local fair employment practices or civil rights laws or ordinances; Claims for personal injury, defamation, wrongful conduct, or wrongful discharge; the Civil Rights Acts of 1866 and 1871, as amended, 42 U.S.C. §1981; 42 U.S.C. §1983, as amended; the Civil Rights Act of 1964, as amended, including Title VII; the Americans with Disabilities Act; the Age

Discrimination in Employment Act, as amended; the Older Workers Benefit Protection Act; the Employee Retirement Income Security Act; the Fair Labor Standards Act; the Rehabilitation Act of 1973; Executive Order 11246; the federal Family and Medical Leave Act; state Family and Medical Leave Acts; Claims alleging retaliation under the Worker's Compensation Act; the Unemployment Compensation Law; the National Labor Relations Act, as amended; any and all state wage payment and collection laws; the Anti-bullying Bill of Rights Act, N.J.S.A. §18A:37-14, Pickering's policies, practices, collective bargaining agreements, contracts, benefits or understandings; any Claims arising out of any relationship or duty, between or among, A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR and the Released Parties predating the effective date of this Agreement; any and all grievances, or demands for mediation or arbitration, or Claims or demands under the BOARD OF EDUCATION's policies and procedures; and any and all Claims asserted, or which could have been asserted, in a state or Federal court Lawsuit referenced above, including any Claims against any current or former agents or employees of the BOARD OF EDUCATION .

A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR hereby specifically waives, releases and gives up all Claims and rights, as described in the preceding paragraph, whether now known or unknown, which they have or may have, against the BOARD OF EDUCATION and the Released Parties, based on any fact, act, event, or omission, whether now known or unknown, occurring before the Effective Date of this Agreement. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR understands that they are waiving, releasing and giving up all Claims and rights that they know about

and all Claims and rights that they may not know about. This release does not apply to Claims based on facts occurring after the Effective Date of this Agreement.

11. Liens. It is further understood that as a condition of this settlement, all claims and/or liens, past, current and/or future arising out of this settlement or asserted against the proceeds of this settlement are to be satisfied by A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR (herein "Releasor") and/or their Attorneys, including but not limited to any Medicare or Medicaid claims and/or liens, Worker's Compensation claims and/or liens, Social Security claims and/or liens, hospital/healthcare insurer claims and/or liens, physician or attorney claims and/or liens, or any of the statutory, equitable, common law or judgment claims and/or liens, including but not limited to claim based on subrogation or any other legal or equitable theory. Releasor therefore agrees, upon prompt presentation of any such claims and/or liens, to defend the Release Parties against any such claims and/or liens, and to indemnify and hold the Released Parties harmless against any judgment entered against the Released Parties based on such claims and/or liens, including the payment of any fines, charges and attorneys fees incurred as a result of any such lien. Failure to satisfy any such lien shall be considered a breach of this Agreement and Releasor and their Attorneys agree to pay all costs, interest and attorneys fees relative to any such lien.

12. Attorneys' Fees, Costs, and Expenses. Each party shall be responsible solely for its or their own attorneys' fees, costs and expenses. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR specifically waives all claims to attorneys' fees, costs, and expenses from the BOARD OF EDUCATION including all claims for reimbursement to the BOARD OF EDUCATION or their attorneys, agents, or family

members, of any attorneys' fees, costs, and expenses they have incurred or paid, or which were paid on their behalf.

13. Applicable Law and Severability. This Release shall be governed by and construed in accordance with the laws of New Jersey, except where federal law controls. Should any provision of this Release be declared or determined by any Court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Release.

14. Entire Release. This Release sets forth the entire Release between the parties and fully supersedes any and all prior Releases or understandings between the parties.

15. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR's Certification. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR agrees, certifies, acknowledges, and represents: (a) that they have been and is hereby advised in writing to consult with an attorney of their choice and at their expense, prior to signing this Release; (b) that they have had adequate time and opportunity to review and discuss, and has reviewed and discussed, all of the terms and sections of this Release thoroughly with their attorney; (c) that their attorney has explained this entire Release to him; (d) that they do not waive any rights or claims that may arise after the date this Release becomes effective; (e) that they shall have and was given at least twenty-one (21) days to consider the terms and conditions of this Relcase before signing it; (f) that their waiver of Claims and this General Release shall not become effective until the effective date of this Release.

If A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR decides to sign this Release before the expiration of the 21-day period, A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR specifically acknowledges that they have had sufficient time and opportunity to review and understand the terms of this Release and specifically waives and gives up any rights for additional time or opportunity to review it.

A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR FURTHER CERTIFIES, ACKNOWLEDGES, AND REPRESENTS THAT THEY ARE ABLE TO READ AND UNDERSTAND ENGLISH, THAT THEY UNDERSTAND ALL OF THE PROVISIONS HEREIN, WITH THE ADVICE AND ASSISTANCE OF THEIR ATTORNEY, AND THAT THEY MAKE THIS RELEASE KNOWLINGLY AND VOLUNTARILY. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR ACKNOWLEDGES THAT THEY HAVE NO PHYSICAL OR MENTAL PROBLEM, CONDITION, OR IMPAIRMENT OF ANY KIND WHICH HAS INTERFERED WITH THEIR ABILITY TO READ AND UNDERSTAND THE MEANING OF THIS RELEASE OR ITS TERMS. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR FURTHER REPESENTS THAT IN SIGNING THIS RELEASE, THEY DO NOT RELY ON ANY PROMISES OR REPRESENTATIONS MADE BY ANYONE OTHER THAN THOSE STATED SPECIFICALLY HEREIN.

16. Full Knowledge. A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR further warrants, represents, and agrees that in signing this Release, they do so with full knowledge of any and all rights which they may have with respect to the BOARD OF EDUCATION and other Released Parties, or the Lawsuit.

17. Headings. The headings of the paragraphs in this Release are for convenience only and shall not control or affect the meaning or construction of, or limit the scope or intent of, any of the provisions of this Release.

18. Effective Date. The effective date of this Release shall be the latest of the dates upon which the BOARD OF EDUCATION receives A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR's signed and notarized General Release and Settlement Agreement; W-9 form; a child support search report from their attorney, and the Court Order for the Friendly Settlement is filed.

IN WITNESS WHEREOF, and intending to be legally bound, A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR has executed this Release as of the dates set forth below.

By: A.S. AS PARENTS AND O/B/O L.S., A MINOR

By _____
(Signature)

Annmarie Stewart
(Type or Print Name)

Dated: 6/11/24

STATE OF NEW JERSEY, COUNTY OF Bergen :

I CERTIFY that on June 11, 2024, A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

6/11/2024
(Notary Public) Carlos Mercado (Raised seal)

CARLOS S MERCADO-ALVARADO
Commission # 50214654
Notary Public, State of New Jersey
My Commission Expires
October 08, 2028

By: J.S. AS PARENTS AND O/B/O L.S., A MINOR

By _____
(Signature)

JOHN STAVASH Dated: 6/11/24
(Type or Print Name)

STATE OF NEW JERSEY, COUNTY OF Bergen :

I CERTIFY that on June 11, 2024, A.S. AND J.S. AS PARENTS AND O/B/O L.S., A MINOR personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

6/11/2024
(Notary Public) Carlos Mercado (Raised seal)

CARLOS S MERCADO-ALVARADO
Commission # 50214654
Notary Public, State of New Jersey
My Commission Expires
October 08, 2028

Hasbrouck Heights Board of Education

Lori Citron
Board President

Dated:

280-24
OAL Dkt. No. EDU 03895-23
Agency Dkt. No. 38-2/23

New Jersey Commissioner of Education

Decision

Board of Education of the Borough of Bloomsbury, Hunterdon County,

Petitioner,

v.

Board of Education of the Town of Phillipsburg, Warren County,

Respondent.

The record of this matter, the proposed settlement Agreement and the Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the Agreement to the extent that it indicates that respondent Phillipsburg Board of Education (Phillipsburg) will not contest the Bloomsbury Board of Education's (Bloomsbury) petition to sever Bloomsbury's sending-receiving relationship with Phillipsburg and to form a new sending-receiving relationship with the North Hunterdon-Voorhees Regional High School District Board of Education. The Commissioner further approves the return of the case from the OAL to the agency, as it is no longer a contested case.

However, to the extent that the Agreement includes substantive terms regarding the severance of the current sending-receiving relationship and institution of a new sending-receiving relationship – such as effective dates, the eligibility of Bloomsbury students to continue to attend school in Phillipsburg, and the payment of tuition – the Commissioner is unable to approve such

terms at this time. When a request for the severance of a sending-receiving relationship is uncontested, *N.J.A.C.* 6A:3-6.1(b) requires the parties to engage in specific procedures, including, but not limited to, a public comment period and the submission of the parties' reply to any comments. Upon the review of the record, the Commissioner must determine whether severance of the relationship is appropriate in light of the criteria listed in *N.J.S.A.* 18A:38-13.

By correspondence dated July 3, 2024, the Office of Controversies and Disputes directed the parties to announce a public comment period at their next public meetings. Following the close of the comment period and the submission of the parties' replies to any comments, the Commissioner will determine whether the request for severance will be granted under *N.J.S.A.* 18A:38-13 and any other applicable law. Any issues related to the severance of the existing sending-receiving relationship are reserved until that time.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 26, 2024
Date of Mailing: July 31, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 03895-23
AGY. DKT. NO. 38-2/23

BOROUGH OF BLOOMSBURY BOARD OF EDUCATION, HUNTERDON COUNTY,
Petitioner,
vs.
TOWN OF PHILLIPSBURG BOARD OF EDUCATION, WARREN COUNTY,
Respondent.

Vito A. Gagliardi, Jr., Esq. for petitioner (Porzio, Bromberg & Newman, P.C., attorneys)

Elizabeth H. Marcon, Esq., for respondent (Florio, Perrucci Steinhardt, Cappelli, Tipton & Taylor, LLC, attorneys)

Record Closed: June 17, 2024 Closed: June 20, 2024

BEFORE **THOMAS R. BETANCOURT,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Board seeks termination of the send/receive agreement with respondent Board.

Petitioner filed Verified Petition of appeal with the Office of Controversies and Disputes in the New Jersey Department of Education on February 14, 2023.

Respondent filed its Answer on May 1, 2023.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on May 4, 2023, as a contested case.

A prehearing conference was held on June 1, 2023, and a Prehearing Order was entered on the same date.

A Consent Order Regarding Prehearing Deadlines was entered on January 3, 2024.

Respondent Board filed the following pre-hearing motions:

1. Motion for Summary Decision dated April 9, 2024;
2. Motion in Limine to Preclude Prejudicial Testimony dated April 15, 2024;
3. Motion in Limine to Preclude Cumulative Testimony.

Petitioner Board filed the following pre-hearing motions:

1. Motion in Limine to Strike Proposed Expert Report and Testimony;
2. Motion in Limine to Preclude testimony of Mark Magyar;
3. Motion in Limine to Strike Segments of Expert Report and Preclude Testimony.

All of the above noted motions were addressed on the record during the fist day hearing, May 10, 2024, and disposed of as follows: All of respondent's motions were denied for the reasons set forth on the record by the undersigned.

Petitioner's Motion in Limine to Strike Segments of respondent's expert report and preclude certain testimony regarding the proposed expert report was granted for the reasons set forth on the record. The remaining motions filed by petitioner were

denied, except for the Motion to Preclude testimony of Mark Magyar, as that motion was rendered moot as respondent indicated that Mr. Magyar would not be called to testify.

The matter proceeded to hearing on May 15, 2024, whereupon the parties advised the undersigned they would utilize most of the hearing date to engage in settlement discussions. The undersigned was notified that the matter was settled in principle.

Counsel for the parties have advised via emails that their respective Boards have approved the agreement.

The undersigned received a fully executed settlement agreement on June 17, 2024, which is attached hereto. I have reviewed the settlement agreement and find that it fully comports with the law and regulations pertaining to send/receive districts. It is attached hereto as OAL-1. Accordingly, the matter should be returned to the Commissioner of the Department of Education for further proceedings in accordance with N.J.A.C. 6A:3-6.1.

ORDER

It is hereby **ORDERED** that above referenced matter is hereby being returned to the Commissioner of the Department of Education for further proceedings in accordance with N.J.A.C. 6A:3-6.1.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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.

June 20, 2024

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: June 20, 2024

Date Mailed to Parties: June 20, 2024

Db

OAL-1

AGREEMENT

This Agreement is entered into by and between the **Bloomsbury Board of Education**, with its principal office located at 20 Main Street, Bloomsbury, New Jersey 08804 ("Bloomsbury"), and the **Phillipsburg Board of Education,** with its principal office located at 50 Sargent Avenue, Phillipsburg, New Jersey 08865 ("Phillipsburg") (collectively referred to as the "Parties").

WHEREAS, Bloomsbury filed a Petition with the Commissioner of Education on or about February 14, 2023 to terminate its current sending-receiving relationship with Phillipsburg ("Petition"); and

WHEREAS, Phillipsburg filed an Answer to the Petition on or about May 1, 2024; and

WHEREAS, the matter, titled *Bloomsbury Board of Education v. Phillipsburg Board of Education,* Administrative Law Division, Agency Docket No. EDU-03895-23 ("OAL action"), was transferred to the Office of Administrative Law for a hearing; and

WHEREAS, the Parties desire to amicably resolve their differences and avoid the uncertainty and expense of legal action, thereby allowing the Petition to proceed uncontested,

NOW, THEREFORE, in consideration of the promises and obligations set forth in this Agreement, the Parties agree as follows:

1. Phillipsburg will agree not to contest Bloomsbury's Petition to sever its existing sending-receiving relationship with Phillipsburg and form a new sending-receiving relationship with the North Hunterdon-Voorhees Regional High School District Board of Education, as provided by N.J.A.C. 6A:3-6.1.

2. As of September 2025, students from Bloomsbury who completed the 8th grade and therefore would be eligible to enroll in the 9th Grade, will attend North Hunterdon High School or any such other schools as may be arranged by Bloomsbury. All Bloomsbury students eligible to enroll in grades 10, 11, and 12 as of September 2025 shall continue to attend school at Phillipsburg High School until their graduation. Bloomsbury shall pay Phillipsburg a tuition rate per student at the Prevailing Rate (prevailing rate is defined as the rate being charged to all sending districts.)

3. The Parties acknowledge that Bloomsbury will seek to become a constituent member of the North Hunterdon-Voorhees Regional High School District as provided by law.

Furthermore, the parties agree that this Agreement is not contingent upon Bloomsbury becoming a constituent member of the North Hunterdon-Voorhees Regional High School District, nor shall its terms be otherwise impacted should Bloomsbury not become a constituent member of the North Hunterdon-Voorhees Regional High School District.

4. This proposed settlement shall be subject to review and approval by the Hon. Thomas Betancourt, A.L.J. and subject to review and approval by the Commissioner of Education. Upon approval by the Commissioner of Education, this settlement will constitute full and final settlement of the litigation entitled *Bloomsbury Board of Education v. Phillipsburg Board of Education*, Agency Docket No. EDU-03895-23 ("OAL action"). The Parties agree that, pending approval of the settlement, further litigation of the OAL action is stayed. Upon approval of the settlement by the Commissioner of Education, the Parties will execute and file a stipulation of dismissal with prejudice as to the OAL action.

5. The withdrawal of Phillipsburg's objection to Bloomsbury's Petition, dated February 14, 2023, is contingent upon approval by the Commissioner of Education of this settlement. In the event that this settlement is not approved by the Commissioner of Education, Phillipsburg's objection to the Petition will remain in effect and the Parties will complete the litigation of the OAL action before the Hon. Thomas Betancourt, A.L.J., from the point where it was stayed pending approval of the settlement.

6. Bloomsbury and Phillipsburg agree to open the public comment period, in accordance with N.J.A.C. 6A:3-6.1, and formally announce the following:

> On or about February 14, 2023, the Bloomsbury Board of Education filed a petition with the Commissioner of Education seeking to terminate its current sending-receiving for its high school students with the Phillipsburg Board of Education and enter into a new sending-receiving relationship with the North Hunterdon-Voorhees Regional High School District Board of Education to educate Bloomsbury's students in grades 9-12, and thereafter seek to become a constituent member of the North Hunterdon-Voorhees Regional High School District through the regionalization process as provided by law.
>
> The record for public comment will be open for twenty days from today. Comments should be addressed to the Commissioner of Education, c/o Director, Office of Controversies and Disputes, New Jersey Department of Education, 100 River View Plaza, PO Box 500, Trenton, New Jersey 08625-0500. Comments shall not exceed 10 pages in length, shall be served on all parties to the case, shall include proof of such service when filed with the Commissioner, and shall

specifically address the following statutory standard for the Commissioner's review of applications for change in designation, allocation, or apportionment: "Comments shall address the question of whether the proposed change in designation, allocation, or apportionment will result in a substantial negative impact in any of the affected school districts in one or more of the following areas: educational and financial implications; quality of education received by students; and racial composition of the student populations." Comments must be served on the Commissioner of Education as set forth above, the Bloomsbury Board of Education and the Phillipsburg Board of Education, in person or by mail in accordance with N.J.A.C. 6A:3-1.2 and 1.3.

7. Phillipsburg agrees that it shall not oppose, hinder, or in any way obstruct any effort by Bloomsbury to terminate its existing sending-receiving relationship with Phillipsburg and create a new sending-receiving relationship with the North Hunterdon-Voorhees Regional High School Board of Education, consistent with the terms set forth herein. This includes, but is not limited to, submitting any comments or documents to the Commissioner of Education, that otherwise oppose or hinder Bloomsbury's efforts to terminate its existing sending-receiving relationship, or otherwise encouraging members of its community or others communities to submit comments in opposition to Bloomsbury's efforts.

8. All provisions of the Sending-Receiving Agreement between the Parties shall remain in full force and effect except as modified by this Settlement. This Agreement will become effective as of the last date on which it was approved by the Parties.

9. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any of its provisions shall be held invalid, illegal or unenforceable, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the Parties shall be construed and enforced accordingly. On a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible. In the event the Parties are unable to reach an agreement, the court may modify this Agreement to give effect to the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

10. This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by and construed in accordance with the laws of New Jersey, without regard to any conflicts of laws principles that would require the laws of any other jurisdiction to apply.

11. Unless specifically provided herein, this Agreement contains all of the understandings and representations between the Parties relating to the subject matter hereof and supersedes all prior and contemporaneous understandings, discussions, agreements, representations, and warranties, both written and oral, regarding such subject matter. No provision of this Agreement may be amended or modified unless the amendment or modification is agreed to in writing and signed by both Parties. No waiver by any Party of any breach by any other Party of any condition or provision of this Agreement to be performed by any other party shall be deemed a waiver of any other provision or condition, nor shall the failure of or delay by any Party in exercising any right, power, or privilege under this Agreement operate as a waiver to preclude any other or further exercise of any right, power, or privilege.

12. This Agreement is subject to approval by the respective Boards before taking effect. The Parties to this Agreement hereby confirm that the signatories are respectively authorized to bind them hereto and execute this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

PORZIO
Bromberg & Newman

MORRISTOWN, NJ • NEW YORK, NY • OCEAN CITY, NJ • PHILADELPHIA, PA
SAN JUAN, PR • TRENTON, NJ • WESTBOROUGH, MA • WILMINGTON, DE

VITO A. GAGLIARDI, JR.
MEMBER, NJ BAR
CERTIFIED BY THE SUPREME COURT OF
NEW JERSEY AS A CIVIL TRIAL ATTORNEY
DIRECT DIAL NO.: 973-889-4151
E-MAIL ADDRESS: VAGAGLIARDI@PBNLAW.COM

June 17, 2024

VIA ELECTRONIC MAIL

Honorable Thomas Betancourt, A.L.J.
Office of Administrative Law
33 Washington Street
Newark, New Jersey 07102

Re: *Bloomsbury Board of Education v. Phillipsburg Board of Education*
OAL Docket No.: EDU-03895-23

Dear Judge Betancourt:

As Your Honor is aware, we are counsel to the Bloomsbury Board of Education in the above-referenced matter. As a follow up to our June 5 correspondence, we enclose for Your Honor's approval a fully signed settlement agreement to Your Honor for approval. We respectfully request that Your Honor issue an Order approving that the settlement agreement has transformed this case into an uncontested matter, and forwarding same to the Commissioner of Education in order for further proceedings to be undertaken by the parties pursuant to *N.J.A.C.* 6A:3-6.1.

We appreciate Your Honor's kind attention and courtesies in this matter.

Respectfully,

Vito A. Gagliardi, Jr.

VAG/jac
Encl.
cc: Brian Tipton, Esq.
Douglas Steinhardt, Esq.
Elizabeth Marcon, Esq.,

PORZIO, BROMBERG & NEWMAN, P.C.
100 Southgate Parkway
Morristown, NJ 07962-1997
(973) 538-4006
Attorneys for Petitioner Bloomsbury Board of Education

Bloomsbury Board of Education, Petitioner, v. Phillipsburg Board of Education, Respondent.	BEFORE THE COMMISSIONER OF EDUCATION AGENCY NO. DOCKET NO. EDU 03895-23 **CONSENT ORDER REGARDING PREHEARING DEADLINES**

This matter, having come before the Court upon the joint request of all parties seeking an Order outlining the prehearing deadlines, and the Court having considered the submissions of the parties, and for good cause shown,

IT IS on this 3RD day of January 2024,

ORDERED, that the following prehearing discovery schedule will be in place in the above matter:

- December 29,2023: Deadline for parties to exchange expert reports;
- April 4, 2024: Deadline for parties to exchange witness lists;
- April 8, 2024: Deadline for parties to exchange exhibit lists and proposed exhibits:
- April 15, 2024: Deadline to file all prehearing motions, including but not limited to prehearing briefs and motions in limine;
- May 1, 2024: Deadline to file opposition to prehearing motions, including but not limited to prehearing briefs and motions in limine; and
- May 7, 2024: Deadline for submission of joint exhibit list.

Honorable Thomas Betancourt, A.L.J.

281-24

New Jersey Commissioner of Education

Final Decision

Mark Hoyt,

Petitioner,

v.

Board of Education of the Township of Union,
Union County,
Respondent.

Synopsis

Petitioner has been employed in respondent Board's school district since 2007. From 2016 until 2019, he served as principal at Battle Hill Elementary School. In July 2019, petitioner was appointed as Interim Principal of Union High School, and the Board approved payment of an $8,000 stipend associated with the high school position. In September 2022, petitioner received notice that the Board intended to discuss the terms and conditions of his employment at a meeting scheduled for September 13, 2022. On that date, the Board conducted its meeting and elected to appoint a new high school principal, transfer petitioner to an elementary school, and eliminate the stipend payment associated with petitioner's former interim position at Union High School. Thereafter, on July 18, 2023, petitioner filed the within petition challenging the Board's removal of the $8,000 stipend he had previously received. The Board counter claimed for summary decision and sought to have the petition dismissed with prejudice.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; under *N.J.A.C.* 6A:3-1.3(d), a petitioner must file an appeal 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 contested case; here, the removal of petitioner's stipend took place at a September 2022 meeting for which petitioner received a Rice notice; although the notice was lengthy, the papers did inform petitioner that the stipend would be discussed on September 2022; notes from that meeting became publicly available on November 22, 2022, and reflected the Board's decision to remove the stipend from petitioner's salary. Thereafter, the decrease was reflected in petitioner's income statements. Petitioner, however, failed to file his challenge to the Board's action until July 18, 2023. Accordingly, ALJ dismissed petitioner's motion for summary decision, and granted the Board's motion for summary decision with prejudice.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ's findings and conclusions and adopted the Initial Decision as the final decision in this matter. Accordingly, the Board's motion for summary decision was granted and the petition was dismissed.

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.

281-24
OAL Dkt. No. EDU 08533-23
Agency Dkt. No. 190-7/23

New Jersey Commissioner of Education

Final Decision

Mark Hoyt,

Petitioner,

v.

Board of Education of the Township of Union, Union County,

Respondent.

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 failed to file the petition of appeal within the time period required by *N.J.A.C.* 6A:3-1.3(i). Additionally, the Commissioner concurs with the ALJ that petitioner failed to demonstrate that the case presents a substantial constitutional issue or matter of significant public import that would justify relaxation of the 90-day filing requirement.

Accordingly, the Initial Decision is adopted as the final decision in this matter, respondent's cross-motion for summary decision is granted, petitioner's motion for summary decision is denied, and the petition of appeal is hereby dismissed as untimely.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 26, 2024
Date of Mailing: July 31, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 08533-23
AGENCY DKT. NO. 190-7/23

MARK HOYT,

Petitioner,

v.

TOWNSHIP OF UNION
BOARD OF EDUCATION, UNION COUNTY,

Respondent.

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

Christopher J. Buggy, Esq., for respondent (Taylor Law Group, LLC, attorneys)

Record Closed: January 8, 2024 Decided: June 28, 2024

BEFORE **WILLIAM COURTNEY**, ALJ:

PROCEDURAL HISTORY

On July 18, 2023, petitioner Mark Hoyt, who is currently the Principal of the Hannah Caldwell Elementary School initiated this action which challenges the removal by respondent Township of Union Board of Education ("Board") of an annual $8,000.00

stipend he had been receiving while he was Principal of Union High School. The matter was transferred to the Office of Administrative Law on August 30, 2023. Upon completion of discovery, cross motions for summary decision were filed.

STATEMENT OF THE CASE

In this matter, Petitioner seeks a summary decision finding that an $8,000 stipend he received as part of his compensation from 2019-2022 was improperly removed thereafter in violation of N.J.S.A. 18A:28-5. The Board seeks an order granting summary decision in its favor and dismissing the Petition with prejudice.

ISSUES PRESENTED

There are two issues presented in the cross motions for summary decision: (1) is the action time-barred by N.J.A.C. 6A:3-1.3, and (2) was the reduction of Petitioner's salary in violation of the tenure statute N.J.S.A. 18A:28-5.

FACTUAL SUMMARY

Petitioner began employment with the District of Union Township Public Schools on or about January 1, 2007. From 2016 until 2019, Petitioner served as the principal for Battle Hill Elementary School. On July 16, 2019, the Board approved Petitioner's appointment as the interim Principal of Union High School. The Board also approved payment of an $8,000 stipend associated with the Union High School principal position.

On September 9, 2022, Petitioner was served with a Rice notice advising him that the Board intended to discuss the terms and conditions of his employment at a meeting on September 13, 2022. The notice was extensive but did contain information regarding the stipend.

On September 13, 2022, the Board conducted its meeting electing to appoint a new principal, transfer petitioner to an elementary school, and eliminate the stipend payment associated with petitioner's Union High School position. The minutes from September 13 meeting were approved at a second public meeting in November 2022. Thereafter, the reduction of the stipend was reflected in petitioner's paychecks. Petitioner did not initiate this action challenging the reduction in his compensation until July 18, 2023.

LEGAL ANALYSIS

Pursuant to N.J.A.C. 1:1-12.5(b), a summary decision "may 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." This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

> [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 fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The 'judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial'.
>
> [Brill, supra, 142 N.J. at 540 (citations omitted).]

After a thorough review of the submissions of the parties, I **FIND** that there are no disputes as to any material fact and for the reasons set forth below, I grant respondent's motion for summary decision and dismiss the petition filed by Mr. Hoyt for failing to file said petition within the time period required by N.J.A.C. 6A:3-1.3(i).

As respondent highlights in its motion for summary decision, N.J.A.C. 6A:3-1.3(i), provides that petitioners must "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." In general, the 90-day rule is strictly construed unless the case presents a substantial constitutional issue or a matter of significant public import. Kenny v. Board of Education of the Borough of Moonachie, Bergen County, EDU 09284-14, initial decision, (Aug. 17, 2017), https://njlaw.rutgers.edu/collections/oal/html/initial/edu09284-17_1.html.

The seminal case on what constitutes adequate notice for the purpose of N.J.A.C. 6A:3-1.3(i) is Kaprow v. Board of Education of Berkeley Township, 131 N.J. 572 (1993). There, the New Jersey Supreme Court held that even though the petitioner's notice was "unofficial and informal," it was still sufficient to apprise the petitioner of the "state of facts that would enable him to file a timely claim," and therefore the 90-day limitation tolled. Id. at 588-89.

Here, the removal of petitioner's stipend took place at a September 2022 meeting for which petitioner received a Rice notice. Although admittedly a long notice, the papers did inform petitioner that the stipend would be discussed at the meeting. On November 22, 2022, the notes from said meeting became publicly available and reflected the Board's decision to remove the stipend from petitioner's salary. Thereafter, the decrease was reflected in petitioner's income statements. Petitioner, however, did not file his Petition challenging the reduction in salary until July 18, 2023.

Petitioner argues that the only mention of the stipend was "buried" within the Rice notice, and it was not clear from his pay checks that the stipend had been removed. As

a result, Petitioner concludes, he never received adequate notice to begin tolling the 90-day limitation.

Under Kaprow, petitioner's argument fails. Even though petitioner never received a document dedicated solely to informing him the stipend had been removed, it is reasonable to conclude that he was aware, or should have been aware, of the state of facts giving rise to his cause of action well before July 18, 2023. Between the Rice notice, the public minutes, and the fact that his monthly salary was actually decreased, petitioner should have known the stipend had been removed by the end of 2022. His failure to bring this action for another seven months clearly puts this case outside of the 90-day limitation period.

Petitioner cites Stockton v. Board of Education, 210 N.J. Super. 150 (App. Div. 1986), in arguing that the petition is not untimely. However, Stockton is distinguishable from the facts at hand. There, the Court held that "receipt of a salary check for less of an increase than one anticipates cannot provide notice that a decision has been made to correct an error allegedly made three years before." Id. at 157. Here, the reduction in Petitioner's paycheck over many months is only part of the Board's argument for proper notice. There was also a Rice notice and the publication of public minutes, making Stockton inapposite.

In petitioner's main argument for summary decision, he relies on N.J.S.A. 18A:28-5 ("Tenure Law") which states tenured teaching staff "shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member." Here, there is no allegation of inefficiency, incapacity or conduct unbecoming. Rather, the issue raised by petitioner is whether removal of a "stipend" qualifies as a "[reduc[tion] in compensation" which is prohibited under N.J.S.A. 18A:28-5. Petitioner's reliance on the Tenure Law, however, cannot salvage an untimely petition from dismissal. See Nissman V. Bd. of Educ., Twp. of Long Beach Island, 272 N.J. Super. 373, 381(App. Div. 1994) and Scheffler v. Bd. of Trs. Charter Sch. For Tec., 2023 N.J. Super. Unpub. LEXIS 534 (rejecting petitioner's argument that the Tenure Law

superseded the 90-day time limit to file a petition); see also Salazar-Linden, 2009 N.J. Super. Unpub. LEXIS 2713(rejecting argument that the 90-day time limit undermines tenure rights).[1]

For the reasons stated, I **FIND** that petitioner failed to file his petition challenging his claimed reduction in salary within the required 90-day deadline set forth in N.J.A.C. 6A:3-1.3(i) . I Further **FIND** that petitioner has failed to provide any credible evidence that the case presents a substantial constitutional issue or is a matter of significant public import that would justify relaxation of strict 90-day filing requirement or that the Tenure Law negates its application. I, therefor, **CONCLUDE** that petitioner's motion for summary decision must be denied and respondent's motion for summary decision must be granted.

ORDER

It is **ORDERED** that:

1. Petitioners motion for summary decision is **DENIED**; and
2. Respondent's motion for summary decision is **GRANTED.**

This decision resolves all outstanding issues before this tribunal.

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

---

[1] While R. 1:36-3 precludes a court's consideration of unpublished decisions, the OAL is not a court. See 37 New Jersey Practice, Administrative Law and Practice s.250, at Supp. p. 89, (Steven L. LeFelt) (1995) (noting that the U.A.P.R. contains no restrictions on the use of unreported Appellate Division cases and that "any authority by a court, even if contained within an unreported case, should be carefully considered by ALJs."). Further, this tribunal is unaware of any contrary authority to the case cited.

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.

June 28, 2024

DATE

WILLIAM J. COURTNEY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

List of Moving Papers

Petitioner's Submissions Considered

1. Petitioner's November 14, 2023 Brief in Support of Motion for Summary Decision with Exhibits 1-18.

2. Petitioner's January 5, 2024 Brief in Further Support of Petitioner's Motion for Summary Decision and In Opposition to Respondent's Cross-Motion with Exhibits 19, 20 & 21.

Respondent's Submissions Considered

December 18, 2023 Certification of Christopher J. Buggy with attached Exhibits 1-13.

282-24
OAL Dkt. No. EDU 01882-24
Agency Dkt. No. 330-12/23

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificate of Alyssa Hollick, Board of Education of the Township of North Hanover, Burlington County.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 26, 2024
Date of Mailing: July 29, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 01882-24
AGENCY DKT. NO. 330-12/23

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATE OF ALYSSA HOLLICK, BOARD OF EDUCATION OF THE TOWNSHIP OF NORTH HANOVER, BURLINGTON COUNTY.

Arsen Zartarian, Esq., for appellant, (Cleary Giacobbe Alfieri & Jacobs, LLC, attorneys)

Alyssa Hollick, respondent, pro se

Record Closed: June 20, 2024 Decided: June 20, 2024

BEFORE **GAURI SHIRALI SHAH**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties, however, have settled this case without the need for a hearing. Their settlement agreement is attached to this decision.

Having reviewed the terms of their settlement agreement, I have determined that the settlement is made voluntarily, consistent with the law, and fully dispositive of all issues in controversy between the parties.

I **ORDER** that the parties comply with the terms of their settlement agreement.

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

This recommended decision may be adopted, modified or rejected by the **ACTING 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.

June 20, 2024
DATE

GAURI SHIRALI SHAH, ALJ

Date Received at Agency: June 20, 2024

Date Mailed to Parties: June 20, 2024

GSS/kl

APPENDIX

EXHIBIT

Jointly submitted:

J-1 Settlement Agreement

Arsen Zartarian, Esq. (ID No. 029951990)
CLEARY GIACOBBE ALFIERI & JACOBS, LLC
169 Ramapo Valley Road
Upper Level, Suite 105
Oakland, New Jersey 07436
Telephone: 973-845-6700
Facsimile: 201-644-7601
Attorneys for Petitioner, North Hanover Board of Education

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATE OF ALYSSA HOLLICK, NORTH HANOVER BOARD OF EDUCATION, BURLINGTON COUNTY.	BEFORE THE COMMISSIONER OF EDUCATION OF NEW JERSEY **SETTLEMENT AGREEMENT** Agency Ref No. 330-12/23 OAL Docket No. EDU-01882-2024S

WHEREAS, on or about November 28, 2023, this matter was initiated by Order to Show Cause filed by North Hanover Board of Education ("Board"), seeking the suspension of the teaching certificate of Alyssa Hollick (Ms. Hollick") for a period of one year pursuant to N.J.S.A. 18A:26-19, for cessation of her duties before the term of her employment contract;

WHEREAS, the parties exchanged discovery and a plenary hearing date was scheduled for May 30, 2024;

WHEREAS, the parties have agreed to amicably resolve their differences and have determined that a settlement is in their best interest;

NOW THEREFORE, the parties agree as follows:

1. Ms. Hollick agrees to accept the a one-year suspension of her teaching license, retroactive to October 15, 2023.

2. Ms. Hollick hereby releases the Board, its past and present Board Members, officers, directors, employees, agents, successors and assigns, from all actions, suits, claims and demands in law or equity, resulting from anything which has happened up until now, including but not limited to, any matter, cause or claims relating in any way to her employment relationship or the cessation of her employment relationship with the Board, including, but not limited to, any claims arising under the New Jersey School Laws, New Jersey Conscientious Employee Protection Act, New Jersey Law Against Discrimination, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the federal Age Discrimination in Employment Act of 1967 ("ADEA"), the Older Workers Benefit Protection Act ("OWBPA"), the federal Equal Pay Act, the New Jersey Wage Payment Law, the United States Constitution, the New Jersey State Constitution, the federal Americans With Disabilities Act, the Families First Coronavirus Response Act, the Family and Medical Leave Act, New Jersey Family Leave Act, the Equal Pay Law, the Equal Rights Act, any other federal, state or local law or ordinances,

and/or any common law claims under tort, contract (including any collective bargaining agreement he is subject to or part of) or any other theories now or hereafter recognized, and any rights she may have under her collective bargaining agreement regarding benefit payouts, as applicable.

3. Ms. Hollick agrees that she is entering into this Settlement Agreement voluntarily, without coercion, and of her own free will.

NORTH HANOVER BOARD OF EDUCATION

By: _____

Dated: 6/3/24

ALYSSA HOLLICK

By: _____

Dated: 05/29/24

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 01882-24
AGENCY DKT. NO. 330-12/23

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATE OF ALYSSA HOLLICK, BOARD OF EDUCATION OF THE TOWNSHIP OF NORTH HANOVER, BURLINGTON COUNTY.

Arsen Zartarian, Esq., for appellant, (Cleary Giacobbe Alfieri & Jacobs, LLC, attorneys)

Alyssa Hollick, respondent, pro se

Record Closed: June 20, 2024 Decided: June 20, 2024

BEFORE **GAURI SHIRALI SHAH**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties, however, have settled this case without the need for a hearing. Their settlement agreement is attached to this decision.

Having reviewed the terms of their settlement agreement, I have determined that the settlement is made voluntarily, consistent with the law, and fully dispositive of all issues in controversy between the parties.

I **ORDER** that the parties comply with the terms of their settlement agreement.

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

This recommended decision may be adopted, modified or rejected by the **ACTING 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.

June 20, 2024
DATE

GAURI SHIRALI SHAH, ALJ

Date Received at Agency: June 20, 2024

Date Mailed to Parties: June 20, 2024

GSS/kl

APPENDIX

EXHIBIT

Jointly submitted:

J-1 Settlement Agreement

Arsen Zartarian, Esq. (ID No. 029951990)
CLEARY GIACOBBE ALFIERI & JACOBS, LLC
169 Ramapo Valley Road
Upper Level, Suite 105
Oakland, New Jersey 07436
Telephone: 973-845-6700
Facsimile: 201-644-7601
Attorneys for Petitioner, North Hanover Board of Education

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATE OF ALYSSA HOLLICK, NORTH HANOVER BOARD OF EDUCATION, BURLINGTON COUNTY.	BEFORE THE COMMISSIONER OF EDUCATION OF NEW JERSEY **SETTLEMENT AGREEMENT** Agency Ref No. 330-12/23 OAL Docket No. EDU-01882-2024S

WHEREAS, on or about November 28, 2023, this matter was initiated by Order to Show Cause filed by North Hanover Board of Education ("Board"), seeking the suspension of the teaching certificate of Alyssa Hollick (Ms. Hollick") for a period of one year pursuant to N.J.S.A. 18A:26-19, for cessation of her duties before the term of her employment contract;

WHEREAS, the parties exchanged discovery and a plenary hearing date was scheduled for May 30, 2024;

WHEREAS, the parties have agreed to amicably resolve their differences and have determined that a settlement is in their best interest;

NOW THEREFORE, the parties agree as follows:

1. Ms. Hollick agrees to accept the a one-year suspension of her teaching license, retroactive to October 15, 2023.

2. Ms. Hollick hereby releases the Board, its past and present Board Members, officers, directors, employees, agents, successors and assigns, from all actions, suits, claims and demands in law or equity, resulting from anything which has happened up until now, including but not limited to, any matter, cause or claims relating in any way to her employment relationship or the cessation of her employment relationship with the Board, including, but not limited to, any claims arising under the New Jersey School Laws, New Jersey Conscientious Employee Protection Act, New Jersey Law Against Discrimination, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the federal Age Discrimination in Employment Act of 1967 ("ADEA"), the Older Workers Benefit Protection Act ("OWBPA"), the federal Equal Pay Act, the New Jersey Wage Payment Law, the United States Constitution, the New Jersey State Constitution, the federal Americans With Disabilities Act, the Families First Coronavirus Response Act, the Family and Medical Leave Act, New Jersey Family Leave Act, the Equal Pay Law, the Equal Rights Act, any other federal, state or local law or ordinances,

and/or any common law claims under tort, contract (including any collective bargaining agreement he is subject to or part of) or any other theories now or hereafter recognized, and any rights she may have under her collective bargaining agreement regarding benefit payouts, as applicable.

3. Ms. Hollick agrees that she is entering into this Settlement Agreement voluntarily, without coercion, and of her own free will.

NORTH HANOVER BOARD OF EDUCATION

By: _____

Dated: 6/3/24

ALYSSA HOLLICK

By: _____

Dated: 05/29/24

283-24SEC

New Jersey Commissioner of Education

Final Decision

Lisa J. Guzik,

Complainant,

v.

Ryan Campbell, Mantua Township Board of Education, Gloucester County,

Respondent.

Synopsis

Complainant alleged that respondent Ryan Campbell, a member of the Mantua Township Board of Education (Board), violated *N.J.S.A.* 18A:12-24.1(e) of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, when he called her employer, identified himself as a Board member, and complained about her actions during Board meetings. As the respondent failed to submit a Written Statement and/or Statement of Reasons, the allegations in the Complaint were undisputed. Accordingly, following a full review of the matter, the School Ethics Commission (SEC) determined that the respondent's actions violated *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members and recommended a penalty of censure.

The case was forwarded to the Commissioner for final determination of the appropriate penalty in this matter. Upon review, the Commissioner concurred with the penalty recommendation of the SEC. Accordingly, the respondent shall be censured as a school official found to have violated the School Ethics Act.

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.

283-24SEC
SEC Dkt. No. C45-23
Agency Dkt. No. 198-6/24

New Jersey Commissioner of Education

Final Decision

Lisa J. Guzik,

Complainant,

v.

Ryan Campbell, Mantua Township Board of Education, Gloucester County,

Respondent.

The Commissioner has reviewed the record of this matter and the June 17, 2024 decision of the School Ethics Commission (SEC). The SEC found that respondent Ryan Campbell, a member of the Mantua Township Board of Education (Board), violated *N.J.S.A.* 18A:12-24.1(e) of the School Ethics Act. The SEC recommended a penalty of censure for the violation. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). Respondent neither filed exceptions to the recommended penalty nor instituted an appeal, pursuant to *N.J.A.C.* 6A:4-1 *et seq.*, of the SEC's underlying finding of violation.

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's actions in contacting complainant's supervisor, representing himself as a member of the Board, and complaining about actions complainant took as a private citizen at a Board meeting.

Accordingly, respondent is hereby censured as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 26, 2024
Date of Mailing: July 31, 2024

[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.

Before the School Ethics Commission
Docket No.: C45-23
Final Decision
Summary Disposition

Lisa J. Guzik,
Complainant

v.

Ryan Campbell,
Mantua Township Board of Education, Gloucester County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on April 19, 2023, by Lisa J. Guzik (Complainant), alleging that Ryan Campbell (Respondent), a member of the Mantua Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq*. More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code).

When Respondent failed to file a Written Statement, the Commission, in accordance with *N.J.A.C.* 6A:28-7.3(b), issued a notice, dated May 16, 2023, and again on June 21, 2023, informing Respondent that he had 10 additional days to file a Written Statement or each allegation in the Complaint would be deemed admitted, and the Commission may decide the matter on a summary basis. Despite these notices, Respondent did not file a Written Statement.

At its meeting on January 23, 2024, the Commission considered the filings, and at its meeting on February 27, 2024, the Commission adopted a decision finding that there are sufficient facts and circumstances pled in the Complaint[1] to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(e) was violated as set forth in the Complaint. Additionally, the Commission voted to decide the above-captioned matter by summary decision, in accordance with *N.J.A.C.* 6A:28-9.8(c), and directed Respondent to file a statement setting forth the reasons (Statement of Reasons) he should not be found in violation of the Act. Respondent was advised that if he disputes any of the facts determined by the Commission to be both material and undisputed, he should set forth the facts with which he disagrees, and why they are material to the case. Finally, Respondent was advised that the Commission may then make a determination of a violation on a summary basis.

---

[1] As Respondent did not file a Written Statement, the Commission's review of this matter was limited solely to the Complaint.

The Commission sent a notice on April 2, 2024, when Respondent failed to file a Statement of Reasons, and then again on April 23, 2024, informing Respondent that if he failed to file a Statement of Reasons within 10 days, the matter would be decided on a summary basis without his Statement of Reasons. Despite these notices, Respondent did not file a Statement of Reasons.

Consequently, at its meeting on May 21, 2024, the Commission reviewed the record in this matter and, at its special meeting on June 17, 2024, adopted a decision finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and recommending a penalty of censure for Respondent's violation of the Act.

II. Summary of the Pleadings

The Complaint

Complainant asserts that on April 4, 2023, Respondent contacted the principal of the school where Complainant works and that during the conversation with the principal, Respondent identified himself as a Board member. Complainant contends that Respondent informed the principal that Complainant "personally attack[s] him" at Board meetings and he believes the "attacks began because of his opposition to gender neutral bathrooms." Complainant attached an email to the Complaint that appears to be from her supervisor, stating:

> I received a message from a Ryan Campbell to give him a call. I did call him back . . . and [he] wanted to inform me that:
>
> - He is a school board member in Mantua.
> - Ms. Guzik personally attacks him at the [B]oard meetings with unfounded claims.
> - He is preparing to sue Ms. Guzik over her unfounded claims.
> - He believes the attacks began because of his opposition to gender neutral bathrooms.
>
> I did express my concern over the purpose of the call and this matter is not a School or District related matter. It was an unusual phone call from someone claiming to be Ryan Campbell.

Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because "[h]is actions were an attempt to silence [Complainant's] speaking out at the . . . Board meetings" and Respondent "identified himself as a school board member in a private matter for his own perceived personal gain," which questions the "integrity and authority" of the Board.

III. Findings of Fact

Based on its thorough and independent review of the record, the Commission finds the following facts to be undisputed:

1. Respondent was a Board member in the Mantua Township School District (District). *Complaint* at page 1.

2. Complainant works at a school and reports to a principal. *Complaint* at page 1.

3. On April 4, 2023, Respondent called the principal of the school where Respondent works and asserted that Respondent "personally attack[s] him" at Board meetings and that he believed that the "attacks began because of his opposition to gender neutral bathrooms." *Complaint* at page 1.

4. Complainant received an email from the principal of the school where she works, stating:

> I received a message from a Ryan Campbell to give him a call. I did call him back . . . and [he] wanted to inform me that:
>
> - He is a school board member in Mantua.
> - Ms. Guzik personally attacks him at the [B]oard meetings with unfounded claims.
> - He is preparing to sue Ms. Guzik over her unfounded claims.
> - He believes the attacks began because of his opposition to gender neutral bathrooms.
>
> I did express my concern over the purpose of the call and this matter is not a School or District related matter. It was an unusual phone call from someone claiming to be Ryan Campbell.

Complaint at page 1; *Exhibit to Complaint*.

IV. Analysis and Conclusions of Law

Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(e) when he called her employer, identified himself as a Board member, and complained about her actions during Board meetings. This provision of the Code states:

> e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

Pursuant to *N.J.A.C.* 6A:28-9.8(a)(3), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board.

Respondent failed to submit a Written Statement and/or Statement of Reasons, and as such, the allegations in the Complaint are undisputed.

With the above in mind, the Commission finds that Respondent acted beyond the scope of his duties as a Board member when he called Complainant's supervisor, represented himself as a member of the Board, and complained about actions that she took as a private citizen at a Board meeting. Respondent's behavior certainly has the potential to compromise the Board, as it undermines the integrity of the Board for its members to attempt to silence members of the public and/or encourage them not to attend future Board meetings by calling their employers in an apparent attempt to get them into trouble in the workplace. Accordingly, and based on the undisputed evidence as set forth herein, the Commission finds Respondent violated *N.J.S.A.* 18A:12-24.1(e) when he called Complainant's employer regarding "attacks" she made at a Board meeting.

V. Recommended Penalty

Having found that Respondent violated *N.J.S.A.* 18A:12-24.1(e), the Commission is authorized to recommend to the Commissioner of Education (Commissioner) an appropriate penalty, which may range from reprimand to removal. *N.J.S.A.* 18A:12-29(c).

In its review, the Commission finds that **censure** is the most appropriate penalty. In reaching this determination, the Commission finds that, based on the record, Respondent deliberately used his position as a Board member to intimidate Complainant because she had a different opinion on the issue of gender neutral bathrooms and spoke publicly at Board meetings. Whether Respondent believed that he was being attacked, he acted inappropriately by contacting a constituent's supervisor regarding action taken in a personal capacity at a Board meeting and which has no bearing on her employment.

VI. Decision

For the reasons set forth above, the Commission recommends that the Commissioner impose a penalty of **censure** for the violation of *N.J.S.A.* 18A:12-24.1(e).

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but ***not disputing*** the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding

the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of a violation ***must*** file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* **within thirty (30) days** of the filing date of the decision. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated in the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: June 17, 2024

Resolution Adopting Decision in Connection with C45-23

Whereas, at its meeting on May 21, 2024, the School Ethics Commission (Commission) considered the entirety of the record in this matter; and

Whereas, at its meeting on May 21, 2024, the Commission discussed finding a violation of *N.J.S.A.* 18A:12-24.1(e); and

Whereas, at its meeting on May 21, 2024, the Commission discussed recommending a penalty of censure for the violation of *N.J.S.A.* 18A:12-24.1(e); and

Whereas, at its special meeting on June 17, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on May 21, 2024; and

Now Therefore Be It Resolved, that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its special meeting on June 17, 2024.

Brigid C. Martens, Director
School Ethics Commission

284-24
OAL Dkt. No. 01780-23
Agency Dkt. No. 46-2/23

New Jersey Commissioner of Education

Final Decision

T.M., on behalf of minor children, J.M. and M.M.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

By settlement agreement dated May 15, 2024, petitioner T.M. agreed to pay the Elizabeth Board of Education (Board) $2,400 for tuition owed for the ineligible attendance of J.M. and M.M. in the Elizabeth school district during the 2022-2023 school year.

Following respondents' failure to comply with the terms of the settlement, the Board requested that the Commissioner seek entry of the assessment on the judgment docket of the Superior Court pursuant to *N.J.S.A.* 2A:58-10. T.M. offered no reasons why the judgment against her should not be so docketed, although given an opportunity by this agency to do so. Accordingly, pursuant to *N.J.S.A.* 2A:58-10, Tashay McCall is now subject to entry of a judgment by the court in the amount of $2,400, which represents the payment agreed to by the petitioner, with interest to accrue as provided by law.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 29, 2024
Date of Mailing: August 1, 2024

285-24
OAL Dkt. No. EDU 04369-23
Agency Dkt. No. 91-4/23

New Jersey Commissioner of Education

Final Decision

C.S., on behalf of minor children, M.S. and Z.S.,

Petitioner,

v.

Board of Education of the Borough of Mount Ephraim, Camden County,

Respondent.

The record of this matter, the proposed Settlement and Mutual Release Agreement (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 4 of the Agreement references actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement. Further, the Commissioner notes that paragraph 12 of the Agreement includes a confidentiality clause. The parties are reminded that the Board must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* in regard to information concerning this matter, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed

upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 29, 2024
Date of Mailing: August 1, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 04369-2023
AGENCY DKT. NO. 91-4/23

C.S., ON BEHALF OF MINOR CHILDREN, M.S. AND Z.S.,

Petitioners,

v.

BOROUGH OF MOUNT EPHRIAM BOARD OF EDUCATION, CAMDEN COUNTY,

Respondent.

Joseph Basso, Esq. for petitioners (Law Office of Joseph Basso, attorneys)

Michael A. Pattanite, Jr., Esq. for respondent (Lenox, Socey, Formidoni, Giordano, Cooley, Lang & Casey, Counselors at Law, attorneys)

Record Closed: June 24, 2024 Decided: June 26, 2024

BEFORE **CARL V. BUCK, III.** ALJ:

On May 16, 2024, the Commissioner of the Department of Education transmitted this case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

A copy of their settlement agreement is attached to this decision. Having reviewed the terms of the settlement agreement, I **FIND** that the parties have entered into their settlement voluntarily, as evidenced by their signatures, the signatures of their representatives, or both on the agreement.

Moreover, I **CONCLUDE** that the settlement agreement is consistent with the law, is fully dispositive of all issues in controversy between the parties, and is otherwise consistent with the requirements of N.J.A.C. 1:1-19.1.

Therefore, given my findings of fact and conclusions of law, I **ORDER** that the parties comply with the terms of their settlement, and that these proceedings are now closed.

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 case. 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 under N.J.S.A. 52:14B-10.

June 26, 2024
DATE

CARL V. BUCK III, ALJ

Date Received at Agency: 7/2/2024

Date Mailed to Parties: 7/2/2024

/tat

SETTLEMENT & MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement ("Agreement" "is made on this day of May _____, 2024 by and among the BOROUGH OF MOUNT EPHIRAIM BOARD OF EDUCATION, CAMDEN CO. (hereinafter "Board") and C.S. (hereinafter "Respondent") on behalf of the minors M.S and Z.S., in reference to OAL Docket No.: EDU 04369-2023S and Agency Ref. No. 91-4/23.

NOW THEREFORE the undersigned parties hereby agree as follows:

1. This agreement and release of claims relates to the Board's determination that the Respondent, minors, M.S and Z.S., were ineligible to attend Borough of Mount Ephraim School District free of charge.

2. As fully set forth in the Petition filed before the New Jersey Office of Administrative Law, docketed as EDU 04369-2023S and Agency Ref. No. 91-4/23 tuition is owed from March 20, 2023, through June 15, 2023, the time that M.S. and Z.S attended the Borough of Mount Ephraim Board of Education while ineligible.

3. The Board has agreed to accept the amount of $2,000.00 to resolve the claim for both students.

4. The Respondent has agreed to pay the sum of $2,000.00, over four (4) months through equal $500.00 payments beginning on July 1, 2024, and ending on October 1, 2024.

5. The Respondent agrees that the payment will be received by the Board by the 1st of each month.

6. The payment will be made to: Borough of Mount Ephraim Board of Education, c/o Christopher Eberly, Business Administrator, 125 S Black Horse Pike, Mount Ephraim, NJ 08059.

7. The Respondent acknowledges that the full amount sought in the Petition before the New Jersey Office of Administrative Law is $10647.60. The cost of $16812.00 per pupil divided by 180 school days generates the per pupil per diem value of $93.40, $93.40 multiplied by 57 school days from March 20th to June 15th equals $5,323.80. The total for two students will be $10647.60. The Board is accepting a reduced amount by the Respondent's agreement to strict adherence to the terms of payment as set forth above.

8. If Respondent defaults, and does not perform any of the conditions set forth above, Respondent consents to the entry of judgment for the entire amount of $10647.60 less any payments made, and to include all attorney's fees expended in connection with the collection efforts necessitated by the default plus statutory prejudgment and post judgment interest.

9. The Board waives any and all rights to seek back tuition or any other payments from Respondent arising from his minor children, M.S and Z.S.'s attendance in the District. More specifically, but not by limitation, the parties mutually agree to RELEASE, WAIVE AND FOREVER DISCHARGE each other from any and all claims and causes of action, in law or in equity, whether known or unknown, whether asserted or unasserted, contingent or otherwise, arising from or relating directly or indirectly to M.S and Z.S.'s attendance within the District from the period of time specifically stated within the enrollment in District, including but not limited to: (a) compensatory education; (b) reimbursement of any medical, behavioral, or education evaluations; (c) transportation; (d) any claim of improper placement, supervision, monitoring and/or implementation of educational programming; and/or (e) attorney fees and expert witness fees. By way of further illustration, this mutual Release and Waiver also includes, but is not limited to, any claim concerning and/or alleging a denial of FAPE, discrimination, state or federal constitutional rights violations, state or federal civil rights violations, monetary damages, pain and suffering& personal injury, property damage reimbursement, prevailing party status, attorney's fees and costs, and expert fees, claims or causes of action arising under state or federal statutes, regulations, or common law, including but not limited to the New Jersey statutes and regulations pertaining to special education (inclusive of N.J.A.C. 6A:46-1 et seq. and NJ.A.C. 6A:14 et seq.), the New Jersey Law Against Discrimination, 10:5-1 et seq., the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., Section 504 of the Rehabilitation Act, 29 U.S.C. §701 et seq., the American with Disabilities Act. 42 U.S.C. §12101 et seq., the New Jersey Constitution, the United States Constitution, and the Civil Rights Act, 42 U.S.C. §1983, §1985, and §1988.

10. This Agreement constitutes the full and complete agreement of the parties and may not be changed or modified absent mutual agreement of the parties. This Agreement is

binding upon the parties and their respective heirs, assigns or successors in interest.

11. This Agreement shall be governed by and construed in accordance with New Jersey law.

12. The terms and conditions of this Agreement shall be kept strictly confidential and will not be disclosed to any individual that is not acting directly on behalf of any party. In the event the Agreement is required to be disclosed in any litigation, including an action to enforce the Agreement, the party or parties involved shall make every effort to have it disclosed to the court *in camera* and subject to an appropriate protective order maintaining the confidentiality of the Agreement to the fullest extent possible.

13. The parties hereby verify, affirm and represent that they understand the contents of this Agreement and are entering into it voluntarily and with a full understanding of its meaning.

Chelsea Sparaco

C.S., o/b/o M.S. and Z.S.

6/10/24

Holly Marone
Board President for the Mount Ephraim Board of Education

MT. EPHRAIM PUBLIC SCHOOLS

125 S. Black Horse Pike Mt. Ephraim, NJ 08059 Phone: 856-931-7807
www.mtephraimschools.com

Mt. Ephraim Board of Education Meeting Held June 10, 2024

On a motion by Patricia Blaylock Seconded by Michael Casey to please approve item (i) the residency settlement agreement.

Ayes: Michelle Cannaday, Michael Casey, Brian Cavallaro, Lindsay Idler, Kristen Marrone, Johnathan Maxson, Patricia Blaylock, Holly Marrone
Nays: None
Abstentions: None
Recused: None

I, Christopher Eberly, Business Administrator/Board Secretary of *the Board* of *Education of the Borough of Mt. Ephraim in the County of Camden, New Jersey. HEREBY CERTIFY that the foregoing extract from the minutes of a meeting of the Board of Education duly called and held on June 10, 2024 has been* compared *by* me *with the original minutes as officially recorded in my office in the Minute Book of the Board* of *Education and is a true, complete and correct copy thereof and of the whole* of *the original minutes* so *far as they relate to the subject matters referred to in the extract.*

In WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Board of Education this 24th day of June 2024.

Christopher Eberly, Business Administrator/Board Secretary

[SEAL]

286-24
Agency Dkt. No. 121-4/24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Padraic Finnegan, Board of Education of the Borough of Essex Fells, Essex County.

This matter was opened before the Commissioner of Education on April 30, 2024, by way of an Order to Show Cause served by petitioner (Essex Fells Board of Education) upon respondent (Padraic Finnegan), requiring respondent to show cause why an order should not be entered suspending his teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

On July 3, 2024, respondent emailed the Office of Controversies and Disputes and stated that he agreed to the suspension of his teaching certificate for not more than one year.

The petition and supporting exhibits submitted by petitioner in this matter indicate that: respondent entered into a contract to work as a teacher for the 2023-2024 school year; the contract provides that it can be terminated by the employee upon sixty days' written notice; and on March 28, 2024, respondent delivered correspondence to the district's Superintendent indicating that he was resigning, effective April 19, 2024, thereby providing less than the required sixty days' notice. The respondent has not denied these allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(a) and further deems them

sufficient to justify suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner, and respondent's teaching certificates, as well as any substitute teaching credential he may hold, are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 29, 2024
Date of Mailing: August 1, 2024

[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.

287-24
Agency Dkt. No. 155-5/24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificate of Devin Grenard, Board of Education of Hanover Park Regional High School District, Morris County.

This matter was opened before the Commissioner of Education on May 21, 2024, by way of an Order to Show Cause served by petitioner (Hanover Park Regional Board of Education) upon respondent (Devin Grenard), requiring respondent to show cause why an order should not be entered suspending his teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

By notice dated June 3, 2024, sent to respondent via regular mail, the Office of Controversies and Disputes (Office) acknowledged proof that the Order to Show Cause had been served upon respondent and directed respondent to answer within 20 days. No answer having yet been received, on July 3, 2024, the Office sent respondent a second and final notice via regular and certified mail, directing him to file an answer within ten days if he wished to contest the suspension of his certificates. To date, the Office has not received a response from respondent.

The petition and supporting exhibits submitted by petitioner in this matter indicate that: respondent entered into a contract to work as a teacher for the 2023-2024 school year; the contract provides that it can be terminated by the employee upon sixty days' written notice; and

on March 4, 2024, respondent emailed a resignation notice to the district, effective March 8, 2024, thereby providing less than the required sixty days' notice. The respondent has not denied these allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(a) and further deems them sufficient to justify suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner, and respondent's teaching certificates, as well as any substitute teaching credential he may hold, are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 29, 2024
Date of Mailing: August 1, 2024

[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.

296-24
OAL Dkt. No. EDU 08069-23
Agency Dkt. No. 191-7/23

New Jersey Commissioner of Education

Final Decision

T.C.R., on behalf of minor child, I.R.,

Petitioner,

v.

Board of Education of the Toms River Regional School District, Ocean County,

Respondent.

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 pursuant to *N.J.A.C.* 6A:22-3.1(a)(1)(iv), respondent cannot be compelled to provide transportation, or the cost thereof, for I.R. between petitioner's out-of-district residence in Barnegat Township and the Toms River Regional School District. *See M.L.P. v. Bd. of Educ. of Twp. of Bloomfield, Essex Cnty.*, Commissioner Decision No. 498-08A at 10 (Dec. 29, 2008) ("[T]o the extent a child lives in one district but attends school in another pursuant to *N.J.A.C.* 6A:22-3.1(a), the child's entitlement to transportation is expressly limited to transportation to the residence of the parent or guardian who is domiciled in [the] district[.]").

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 6, 2024
Date of Mailing: August 7, 2024

[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 08069-23
AGENCY DKT. NO. 191-7/23

T.C.R., ON BEHALF OF MINOR CHILD, I.R.,
Petitioner,
v.
BOARD OF EDUCATION OF THE
TOMS RIVER REGIONAL SCHOOL DISTRICT,
OCEAN COUNTY,
Respondent.

T.C.R., petitioner, pro se

William Burns, Esq., for respondent (Hartman Duff, attorneys)

Record Closed: June 3, 2024 Decided: July 9, 2024

BEFORE **DEIRDRE HARTMAN-ZOHLMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner, T.C.R., seeks payment of transportation costs on behalf of her minor child, I.R. The issue presented is whether the respondent, the Board of Education of the Toms River Regional School District (Board), bears any obligation to provide

transportation, or the cost thereof, to I.R. from her mother's home in Barnegat Township. I find that, pursuant to N.J.A.C. 6A:22-3.1, the respondent does not have any obligation to transport I.R. from outside of the school district.[1]

PROCEDURAL HISTORY

On July 6, 2023, petitioner filed a pro se residency appeal ("appeal") seeking to require the Board to transport I.R. from Toms River schools to Barnegat Township and to pay for such transportation retroactive to 2016.

On August 23, 2023, the Department of Education, Office of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL), where it was filed as a contested case pursuant to N.J.S.A. 52:14F-1 to -13 and N.J.S.A. 52:14B-1 to -15. In lieu of filing an answer to the petition, the Board filed a motion to dismiss. Status conferences were held in this matter on December 19, 2023, February 27, 2024, and March 20, 2024. On April 16, 2024, petitioner filed a response in opposition to respondent's motion. On June 3, 2024, respondent submitted a reply to petitioner's opposition. The record was closed on June 3, 2024.

FACTUAL FINDINGS

I **FIND** the following **FACTS** to be uncontested:

1. T.C.R. and her former husband, R.R., are the parents of I.R. (R-B.)

2. T.C.R. and R.R. are parties to a Final Judgment of Divorce and Property Settlement Agreement ("Agreement") dated May 16, 2016. (R-B.)

3. The Agreement states in pertinent part:

[1] As of February 2024, I.R. resides in District with R.R. during school, and thus the issue of transportation to and from Barnegat is moot as of such date.

> It is anticipated Wife will be relocating from the marital residence. She shall be permitted to relocate with the children within a 30 minute driving distance from the marital home. . .. Pending the agreement of the parties as to which school district shall be utilized, the children shall continue to be enrolled in the Toms River School District. . .. Neither party may modify the school enrollment of the children without the other parent's consent or a court order.
>
> [R-B, Final Judgment of Divorce at 10.]

4. On July 6, 2023, T.C.R. filed this appeal. (R-A.)

5. T.C.R. has resided in Barnegat since 2016. (R-A.)

6. R.R. has resided in Toms River Township since at least 2016. (R-B.)

7. I.R. has attended school in the Toms River School District since at least 2016. (R-A.)

8. T.C.R. and R.R. have joint legal custody of I.R. and share parenting time. (R-B.)

9. Toms River School District has at all relevant times provided transportation for I.R. to and from school and R.R.'s residence in Toms River.

10. Toms River School District has never provided transportation for I.R. outside of the District, nor has it provided any funding for transportation costs outside of the District for I.R. (R-A.)

11. A consent order in the Superior Court matrimonial case between I.R.'s parents, dated December 20, 2016, states that the District shall provide

busing for I.R. from the District to Barnegat. The only parties to this action were I.R.'s parents. The District was not a party to the matter. (A-A.)

LEGAL DISCUSSION

"Specific pleading requirements are governed by the agency with subject matter jurisdiction over the case." N.J.A.C. 1:1-6.1(a). The rules require that a "petition shall include . . . a statement of the specific allegation(s) and essential facts supporting the specific allegation(s) that have given rise to a dispute pursuant to the school laws." N.J.A.C. 6A:3-1.4(a). When deficient and inadequate petitions are presented to the Commissioner, at any time prior to transmittal of the pleadings to the OAL—in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer—the Commissioner may dismiss the petition on the grounds that the petitioner has not advanced any cause of action, even if the petitioner's factual allegations are accepted as true. See N.J.A.C. 6A:3-1.10. Thus, the principles that govern a motion to dismiss for failure to state a claim under R. 4:6-2(e) apply equally to a motion to dismiss for failure to advance a cause of action under N.J.A.C. 6A:3-1.10.

In deciding a motion to dismiss for failure to state a claim upon which relief can be granted under R. 4:6-2(e), "the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." Rieder v. State, Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (citation omitted). The court may not consider anything beyond whether the complaint states a cognizable cause of action. Ibid. For purposes of determining the motion, the court must "assume the facts as asserted by [petitioners] are true and give [them] the benefit of all inferences that may be drawn in [their] favor." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). If the factual allegations are "palpably insufficient to support a claim upon which relief can be granted," the court must dismiss the complaint. Rieder, 221 N.J. Super. at 552.

The New Jersey Administrative Code delineates how enrollment in school districts is determined. Specifically, N.J.A.C. 6A:22-3.1 provides:

> (a) A student is eligible to attend a school district if he or she is domiciled within the school district.
>
> > 1. A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district.
> >
> > > i. When a student's parents or guardians are domiciled within different school districts and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year. This subparagraph shall apply regardless of which parent has legal custody.

[N.J.A.C. 6A:22-3.1(a) (emphasis added).]

In the instant matter, I.R. is the child of a parent domiciled in Toms River. R.R., the father of I.R., who shares joint custody, resides in the District. Additionally, I.R.'s parents are domiciled in different districts and there ***is*** a written agreement between the parents designating Toms River School District as I.R.'s school district. To change the Agreement, petitioner's avenue of relief is through consent of R.R. or to seek to amendment of the Agreement by application to the Superior Court.

Petitioner seeks relief by way of out-of-district transportation from Toms River schools to and from Barnegat Township. The New Jersey Administrative Code prohibits the relief requested. Specifically, N.J.A.C. 6A:22-3.1(a)(1)(iv) states:

> No school district shall be required to provide transportation for a student who resides outside the school district for all or part of the school year unless transportation is based upon the home of the parent or guardian domiciled within the school district or otherwise required by law.

The regulation explicitly states that a district is not required to provide transportation for a student residing outside the district, unless based upon the home of the parent within the district or as required by law. The District provides transportation to I.R. within the Toms River School District to and from I.R.'s father's home. There is no law requiring the District to provide transportation or transportation costs to I.R. from her mother's home in Barnegat. I.R.'s mother provided a consent order arising from the parents' divorce proceeding stating that the District shall provide busing for I.R. from the District to Barnegat. However, the District was not a party to that action. Without notice to be heard or consent by the District, the parents of I.R. cannot compel the District to provide out-of-district transportation and the District cannot be bound by same. There is no basis to require the District to provide transportation for I.R. between the District and Barnegat, or to pay the cost thereof. Thus, based on the foregoing analysis, petitioner's complaint should be dismissed for failure to state a cause of action.

CONCLUSION

Based on the foregoing, I **CONCLUDE** that no genuine issue of material fact exists as to whether respondent has an obligation to provide out-of-district transportation to I.R. The regulation clearly supports the conclusion that petitioner is not entitled to out-of-district transportation.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's motion to dismiss be and is hereby **GRANTED** and;

It is **FURTHER ORDERED** that T.C.R.'s petition be and is hereby **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

July 9, 2024
DATE

DEIRDRE HARTMAN-ZOHLMAN, ALJ

Date Mailed to Agency: _____

Date Mailed to Parties: _____

DHZ/jm

APPENDIX

EXHIBITS

For petitioner

Exhibits attached to petitioner's response to respondent's Motion to Dismiss:

- A-A Superior Court Order in related matrimonial matter, dated 12/20/2016
- A-B Email texts, dated January 2017
- A-C Print-out of Venmo payments, dated 2023

For respondent

Exhibits attached to respondent's Motion to Dismiss:

- R-A Petitioner's Appeal
- R-B Final Judgment of Divorce and Property Settlement Agreement
- R-C August 4, 2023, letter from R.R.'s attorney in related matrimonial matter

297-24
OAL Dkt. No. EDU 11042-23
Agency Dkt. No. 251-9/23

New Jersey Commissioner of Education

Final Decision

T.C.L., on behalf of minor children, C.C. and V.C.,

Petitioner,

v.

Board of Education of the Bordentown Regional School District, Burlington County,

Respondent.

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 that petitioner has demonstrated, by a preponderance of the credible evidence, that she, C.C., and V.C. are domiciled at an in-district address in Bordentown. Accordingly, the children are eligible to receive a free public education in the Bordentown Regional School District pursuant to *N.J.S.A.* 18A:38-1(a), and respondent is not entitled to reimbursement for the cost of the children's tuition.

Accordingly, the Initial Decision is adopted, and the petition of appeal is hereby granted.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 6, 2024
Date of Mailing: August 7, 2024

[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 11042-23
AGENCY DKT. NO. 251-9/23

T.C.L. ON BEHALF OF C.C. AND V.C.,
Petitioner,
v.
BOARD OF EDUCATION,
BORDENTOWN REGIONAL SCHOOL
DISTRICT, BURLINGTON COUNTY,
Respondent.

Samuel M. Watson, Esq, for petitioner (South Jersey Legal Services, Inc., attorneys)

Cameron R. Morgan, Esq., for respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC, attorneys)

Record Closed: May 20, 2024 Decided: July 5, 2024

BEFORE **MARY ANN BOGAN**, ALJ:

STATEMENT OF THE CASE

Petitioner T.C.L. on behalf of her minor children, C.C. and V.C., appeals the decision of respondent, Bordentown Regional School District, Board of Education

(Board), that C.C. and V.C. were not eligible to attend school within the Bordentown Regional School District (District), for the school year pursuant to N.J.S.A. 18A:38-1, and its accompanying regulations, N.J.A.C. 6A:1-1.1 et. seq., for the school year. The Board contends that C.C. and V.C. are not eligible to attend school in the District because they live in a home not domiciled in the Bordentown Regional School District. The District requests that tuition be assessed for each of the two children for the period of ineligible attendance at the approved per-pupil tuition rate.[1]

PROCEDURAL HISTORY

The Board retained McNelis Investigative Services, Inc. to conduct a residency investigation. The Board introduced a Surveillance Report (report), prepared by Vanessa Bekarciak, who was not present to testify regarding the investigation. (R-1.) The report indicates that surveillance of petitioners took place on June 1, 2, and 7, 2023. Thereafter, the District issued a Final Notice of Ineligibility Due to Non-Residency in the District, dated August 29, 2023, to T.C.L., stating that C.C. and V.C. are not eligible to attend school in the District because:

> The district was provided with information showing that you and your two sons, C.C. and V.C. are no longer residing at your former address within the District, located at Bradford. Surveillance was subsequently conducted resulting in an Investigation Report which documented through eyewitness accounts, as well as video and photographic evidence, your husband transporting V.C. and C.C. back and forth between your current home at Coachman, within the Florence Township School District, and their bus stop in proximity to your previous address in the District, at Bradford.
>
> [P-5.]

On September 15, 2023, T.C.L. filed a pro se petition with the Office of Controversies and Disputes of the New Jersey Department of Education. The matter was transmitted on October 18, 2023, to the Office of Administrative Law (OAL) and filed as a

[1] After petitioner purchased the Coachman home with S.L., who was her fiancé at that time, the District challenged petitioner's residency in 2022. The Board voted to withdraw the notice of ineligibility, and C.C. and V.C. remained enrolled at the District. (P-1, P-3, and P-4.)

contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Prehearing conferences were held, and after the parties completed discovery and confirmed witnesses, the hearing took place on April 9, 2024. The record closed on May 20, 2024.

FACTUAL DISCUSSION AND FINDINGS

The issue in dispute is whether the petitioner and her two minor children reside in a three-bedroom apartment on Bradford Street located in the geographic area served by District during the school year or whether they live outside of the District geographic area and owe the amount of tuition to respondent for the school year.

The following is a summary of the testimonial and documentary evidence that I found relevant to the above issues.

Petitioner has leased a three-bedroom apartment on Bradford Street in Bordentown (Bradford) since January 1, 2010. Her adult daughter and two minor children are named on the lease as residents. Petitioner introduced a newly signed lease, dated January 1, 2024, to December 2024, and introduced portions of the prior year leases from January 1, 2010, including for the years 2022–2023. (P-20 and P-17.) Rental receipt payments for June 2023 through September 2023 were also provided. (P-8.)

Petitioner testified that in the spring of 2022, petitioner's then fiancé, S.L., decided to buy a home located on Coachman Drive in Bordentown (Coachman). Petitioner is a co-owner and signed the mortgage. Petitioner planned to move into the home with C.C. and V.C. full time and lived there during the summer of 2022. When petitioner began to update the family's transportation information with the District, she learned that the home is located in the Florence Township school district even though the home is located in Bordentown and has a Bordentown address and zip code. Petitioner decided that switching schools would negatively impact C.C.'s and V.C.'s education, so she decided that she would return full time to the Bradford apartment with the children, and S.L. would remain in the Coachman home. Petitioner submits that her living arrangement is consi-

stent with District policy, which states:

> The requirements to attend schools in the Bordentown Regional School District require children to be domiciled in the school district with parents/guardians. This means they must live and sleep in a legal residence of the sending district for the majority of the week.
>
> [P-18]

T.C.L. stated that the family spends an occasional weekday night with S.L. at Coachman, and many weekend nights. However, a majority of their belongings remain in Bradford, where they sleep the majority of time.

T.C.L. testified that the surveillance documented in the report introduced by the District, which was taken over a three-day period during two school weeks on June 1, 2, and 7, 2023, does not show that the children live at the Coachman home or leave for school from that home. Petitioner points out the first day of surveillance begins with V.C. at the Coachman address on a school morning. Then the video shows V.C. returning to Bradford, exiting the apartment with another child and walking to the bus stop. On the second day of surveillance, V.C. is observed leaving Coachman, returning to Bradford, and sitting in a stairwell at the residence with another child. V.C. then walked to the bus stop with two other children. On June 7, 2023, S.L. and V.C. are observed exiting the Coachman property, where they were followed, to Bradford, where V.C. was dropped off. V.C. was then observed walking to the bus stop with another child. Surveillance was resumed in the afternoon at Coachman, but no activity was observed for the remainder of that day. The investigative report, which describes V.C. being picked up from the bus by T.C.L. one afternoon and returning to Coachman, and C.C. being picked up from the bus two afternoons and brought back to the Coachman address, does not document the minor children sleeping at the Coachman home on those nights. T.C.L. noted that when C.C. was picked up from the bus on June 2, he would have stayed overnight because that was a Friday night.

Petitioner urges that the surveillance demonstrates that C.C. and petitioner slept at the Bradford apartment each night, and the report does not view T.C.L. at the

Coachman property at any time. Petitioner put forward that the part in the investigative report which shows a white car that the investigator concluded was associated with T.C.L. at the house on each of the three days does not indicate that she stayed at the Coachman home. Petitioner states that car is a family car registered in both her name and S.L.'s name for their two adult children, and on most workdays, she carpools to work. She introduced work emails from June 7, 2023, to demonstrate that on the same day the car was viewed at the Coachman home, she was at work. (P-19.)

Petitioner's New Jersey driver's license reflects the Bradford home.

S.L., petitioner's husband, testified it was likely he would be seen picking the children up from their bus stop after school to take the children to the Coachman property because he is responsible for after-school care. It is also not unusual for the children to stay with him for dinner and any sports activity because he participates with them in that activity and then transports them back to the Bradford home. S.L. acknowledged that V.C. stayed with him for a few nights in June 2022 to help him work through a difficult time he was having in school, but the children do not routinely sleep at the Coachman home during the school week.

J.J., a neighbor at the Bradford location, testified that she has been neighbors with petitioner, C.C., and V.C. at Bradford since her son started kindergarten, about eight years ago. J.J. recalled that petitioner told her that she and S.L. had bought a new home and planned to move. Sometime later, petitioner told her that she and the children would remain living in Bradford because she learned that the Coachman home was located outside of the District. J.J. continues to see the boys around the apartment complex as much as she did before petitioner bought the home, and her son and petitioner's children still play together for the same amount of time as they did before the other home was purchased. J.J. has recently been inside the petitioner's apartment, and it still looks the same as it did over the last years.

It is undisputed that petitioner signed a current lease for Bradford, and her children's names are on the lease as residents. Petitioner submitted a signed letter from the property manager stating that she, C.C., and V.C. live at Bradford; rent payments,

payroll statements, and W-2 statements from T.C.L.'s job that all reflect the Bradford address; and an AT&T bill and C.C. and V.C.'s "Virtual Wallet Student Spend Statement," which also reflect the Bradford address. (P-7, P-11, P-12, P-13, P-14, P-15, and P-16.)[2]

Respondent did not present witnesses to testify on its behalf, including the investigator who prepared the surveillance report. This report was introduced and contains observations recorded on June 1, 2, and 7, 2023. (R-1.)[3]

A credibility determination requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses, I **FIND** them to be credible. Petitioner testified clearly and directly as to her unique circumstances, and her testimony is consistent with the surveillance. S.L.'s testimony was also clear and responsive to the observations in the surveillance showing him transporting the children, and his explanation that he is responsible for the children's after-school care is believable. Neighbor J.J. also testified in a believable manner about her observations of the children in and around the Bradford apartment complex and inside the apartment.

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[2] Petitioner also introduced a notarized affidavit from a neighbor C.M.H. at Bradford, dated February 21, 2024. This document was not accepted into evidence, as it is outside the scope of this appeal.

[3] Respondent also introduced an unsigned, undated letter that was incomplete and determined to be hearsay. This document was not accepted into evidence. Respondent also entered a one-page letter signed by Investigator William R. Moore, describing the content of surveillance taken mid-year of the year following the school year at issue. Mr. Moore was also present to testify. The testimony and introduction of after acquired evidence containing surveillance taken mid-year of the next school year is outside the scope of the due process petition period of ineligibility and was not accepted.

The fact that the surveillance report submitted in the form of written documents is hearsay provides no basis for its exclusion in this forum. Hearsay evidence is admissible, N.J.A.C. 1:1-15.5(a). Ultimately, if evidence or testimony is found to be hearsay, it will be accorded whatever weight the judge deems appropriate taking into account the nature, character, and scope of the evidence, and generally, its reliability. In the final analysis of the administrative case, the residuum rule must be satisfied. This rule states there must be some legally competent evidence to support each ultimate finding of fact relative to the issues before the court. N.J.A.C. 1:1-15.5; see also Weston v. State, 60 N.J. 36, 51 (1972). Here, the evidence was used reasonably to provide the respondent with an opportunity to cross-examine the petitioner. However, it is not disputed that the District's only proffered evidence is hearsay; its author did not appear to present testimony as to the investigation or the content of the report, thereby limiting its reliability.

LEGAL ANALYSIS AND CONCLUSION

The issue is whether petitioner and her minor children are domiciled in the District at the Bradford home for the school year for purposes of receiving a thorough and efficient public education free of charge pursuant to N.J.S.A. 18A:38-1. If not, whether the respondent's request for tuition reimbursement for the school year should be granted.

Public schools are free to persons over five and under twenty years of age who are domiciled within the school district. N.J.S.A. 18A:38-1(a), which sets forth the right of a student to a free public education, states in pertinent part:

> Public schools shall be free to the following persons over five and under twenty years of age:
>
> a. Any person who is domiciled within the school district[.]

Pursuant to N.J.A.C. 6A:22-3.1(a)(1), a student is eligible to attend a school within a school district if he or she is domiciled within the school district, and a student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district.

> "Domicile" is defined as "the place where [a person] has his [or her] true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has an intention of returning." T.B.W. ex rel. A.W. v. Bd. of Ed. of the Township of Belleville, Essex County, 1998 N.J. AGEN LEXIS 122, Agency Dkt. No. 159-5/96, 1998 WL 668678 (N.J. Adm. June 18, 1998). As the court noted in Collins v. Yancey, 55 N.J. Super. 514, 520–21, 151 A.2d 68 (Law Div. 1959), a person may have several residences or places of abode, but only one domicile at a time. Id.
>
> [D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist., 366 N.J. Super. 269, 273–74 (App. Div. 2004).] [In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), aff'd, 311 N.J. Super. 589 (App. Div. 1998), cert. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051 (1999).]

A child's domicile is normally that of his or her parents. Somerville Bd. v. Manville Bd., 332 N.J. Super. 6, 12 (App. Div. 2000), aff'd, 167 N.J. 55 (2001). The acts, statements, and conduct of the individual, as viewed in light of all circumstances, determine a person's true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959). A choice of domicile by a person, irrespective of his motive, will be honored "provided there are sufficient objective indicia, by way of proofs, supporting the actual existence of that domicile." In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991).

If a school district finds that the parent or guardian of a child who is attending school in the district is not domiciled in the district, the superintendent or administrative principal may apply to the board of education for the removal of the child. N.J.S.A. 18A:38-1(b)(2). The parent or guardian is entitled to a hearing before the board, and if, in the judgment of the board, the parent or guardian is not domiciled within the district, the board may order the transfer or removal of the child from school. Ibid. The parent or guardian may contest the board's decision before the Commissioner within twenty-one days of the date of the decision and is entitled to a hearing. Ibid.

In challenging the findings of a board regarding a child's eligibility to attend school in the district, parents have the burden of establishing that their domicile is in the school district by a preponderance of the evidence. Y.E. ex rel. E.E. v. State-Operated Sch. Dist. of the City of Newark, No. A-6009-06T3 (App. Div. 2008); N.J.S.A. 18A:38-1(b)(2). A

student is a resident of a school district when he or she is the child of a parent or guardian[4] whose domicile is located within the school district. N.J.A.C. 6A:22-3.1(a)(1).

When a person arguably has more than one residence, there are factors to consider in determining his or her domicile: the physical characteristics of each place; the time spent and the things done in each place; the other persons found there; the person's mental attitude towards each place; and whether or not there was an intention, when absent, to return to that address. Mercadante v. City of Paterson, 111 N.J. Super. 35, 39–40 (Ch. Div. 1970), aff'd, 58 N.J. 112 (1971).

It is undisputed that petitioner has been renting an apartment located in the geographic area of the District for fourteen years. After she married, petitioner and her husband purchased a home in 2022 in the same town and then later learned that the home was not located in the geographic area of the District. It is also undisputed that the District's sole evidence was the surveillance that never viewed T.C.L. at the Coachman home. Instead, the surveillance that viewed T.C.L. was at the Bradford apartment with C.C. supports petitioner's testimony. In addition, petitioner presented documentary evidence that includes the usual documentary indicia of residence and occupancy, such as pay stubs, current and past leases, student accounts, credit card statements, phone bills, and petitioner's current driver's license, which create a nexus between the family's day-to-day living at the Bradford address.

Accordingly, the investigative report indicating that C.C. and V.C. were seen over the course of a few days at the Coachman home during the 180 required school days, is insufficient to determine that petitioner, and her children, C.C., and V.C. are domiciled outside of the geographic area of the District.

The District stated in their closing statements that the evidence demonstrates that the children being "shuffled" back and forth from the Coachman home to the Bradford home near the bus stop, and testimony on behalf of petitioner stating that the children return to Bradford after an evening of sports with their stepfather at Coachman strains

[4] The record contains insufficient evidence to determine whether S.L. is considered a guardian to his stepchildren.

credibility. The information used for the basis of the District's disbelief is not sufficient to refute the witnesses' sworn testimony and evidence to remove the children from the District school. Moreover, this disbelief does not refute the plausible reasons that children would travel to the Coachman home for after-school care and, on occasion, stay with their stepfather on a school night.

Based on N.J.A.C. 6A:22-3.1(a)(1) and the analysis in In re Unanue, the Bradford address is where petitioner returned to on a daily basis, and where petitioner remained domicile with her C.C. and V.C. As unemancipated children, C.C. and V.C. are domiciled with their parent, T.C.L., the petitioner. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000).

Accordingly, I **CONCLUDE** that petitioner has demonstrated by a preponderance of the credible evidence that she and her children, C.C. and V.C., are domiciled at the Bradford home in Bordentown for the school year and are eligible to receive a free public school education in the Bordentown Regional School District, and respondent is not entitled to reimbursement for the cost of tuition.

ORDER

It is hereby **ORDERED** that respondent's determination that petitioner's children, C.C. and V.C., were ineligible for a free public education in the Bordentown Regional School District for the school year is hereby **REVERSED**.

Petitioner's appeal 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.

July 5, 2024
DATE

MARY ANN BOGAN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

MAB/nn/lam

APPENDIX

WITNESSES

For petitioner

T.C.L.

S.L.

J.J.

For respondent

None

EXHIBITS

For petitioner

P-1 Email to Controversies and Disputes with initial submission

P-2 Pro se residency appeal

P-3 Initial notice of ineligibility due to non-residency in the District, dated August 24, 2022

P-4 Withdrawal of Initial notice of ineligibility due to non-residency in the District, dated September 16, 2022

P-5 Initial notice of ineligibility due to non-residency in the District, dated August 7, 2023

P-6 Final notice of ineligibility due to non-residency in the District, dated August 29, 2023

P-7 Letter from property manager of Bradford Pointe Apartments, dated August 23, 2023

P-8 Rental payment receipts from June 2023 through September 2023

P-9 Email from school district, dated January 4, 2023

P-10 Email from petitioner to school district with copy of pertinent pages of petitioner's 2023 Bradford Pointe lease

P-11 Petitioner's earning statements for various months from December 2022 through September 2023

P-12 Petitioner's 2022 W-2 and earnings summary

P-13 Petitioner's AT&T cell phone statement, dated September 2023

P-14 PNC Bank Virtual Wallet Student Spend statement for V.C. for June 2023 through July 2023

P-15 PNC Bank Virtual Wallet Student Spend statement for C.C. for July 2023 through August 2023

P-16 American Express Delta Sky Miles Gold Card statement, dated September 2023

P-17 Pertinent pages of various of petitioner's prior year rental leases from Bradford Pointe

P-18 Screenshot from District's website

P-19 Petitioner's work emails from June 7, 2023

P-20 Entire rental lease for Bradford Pointe for January to December 2024

P-21 Notarized affidavit from neighbor, Charlotte Marie Holden, dated February 21, 2024

For respondent

R-1 Investigative report, dated June 1, 2 & 7, 2023

R-2 Answer to Student Residency Petition

298-24L

State of New Jersey
DEPARTMENT OF EDUCATION
PO BOX 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

KEVIN DEHMER
Acting Commissioner

August 6, 2024

Robert M. Tosti, Esq.
475 Wall Street
Princeton, NJ 08540

Sadia Ahsanuddin, Deputy Attorney General
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625-0112

Re: ***In the Matter of the Certificates of Gina Cinotti, State Board of Examiners Dkt. No. 1718-226, Commissioner Appeal Dkt. No. 9-6/24A***

Dear Counsel:

I have reviewed the materials filed in connection with appellant Gina Cinotti's Motion to Stay the decision of the State Board of Examiners (Board) suspending her certificates for one year.

Pursuant to *N.J.A.C.* 6A:4-3.3(a), a motion to stay a Board determination pending resolution of an appeal filed with the Commissioner must first be made to the Board. Here, appellant sought a stay from the Board that was denied on July 12, 2024. Thereafter, appellant was entitled to seek a stay from the Commissioner in accordance with *N.J.A.C.* 6A:4-3.1. Appellant filed the instant motion with the Commissioner on July 15, 2024.

Pursuant to *N.J.A.C.* 6A:4-4.1(b), a motion for stay is considered an extraordinary remedy that may only be granted upon a finding that appellant has satisfied each prong of the four-pronged standard set forth in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982). Thus, a stay may be granted where necessary to prevent irreparable harm, where the legal right underlying the movant's claim is settled, where there is a likelihood of success on the merits and where the relative hardship to the moving party favors granting such relief. *Id.* at 132-34.

The moving party must prove each of the four prongs "by clear and convincing evidence." *Garden State Equality v. Dow*, 216 *N.J.* 314, 320 (2013).

Upon review of the parties' submissions, I find that appellant has failed to meet this exacting standard. Although appellant argues that she will suffer irreparable harm due to an inability to work while her certificates are suspended, and that she "has a strong case since the ALJ found no cause to suspend or revoke her certificates based upon the conduct demonstrated at the hearing," she has failed to demonstrate that the legal right underlying her claim is settled. Appellant's underlying claim that she did not engage in unbecoming conduct warranting a suspension of her certificates is intensely fact sensitive and must be viewed in light of various precedents related to the conduct of teachers. For this reason, the Commissioner cannot conclude that appellant has demonstrated that the legal right underlying her claim is settled.

Because all four prongs of the *Crowe* standard must be proven for a stay to be granted, it is not necessary to analyze the remaining three prongs. Accordingly, appellant's request for a stay of the Board's June 27, 2024, Order of Suspension is hereby DENIED.

Sincerely,

Kevin Dehmer
Acting Commissioner

KD/JS
c: State Board of Examiners

299-24

New Jersey Commissioner of Education

Final Decision

E.H., on behalf of minor child, K.H.,

Petitioner,

v.

Board of Education of the Village of Ridgefield Park, Bergen County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that she and her minor child, K.H., are no longer domiciled in the Village of Ridgefield Park and that K.H. is therefore no longer entitled to a free public education in Ridgefield Park Schools. The Board contended that E.H. and K.H. have moved to Ridgefield, which is a different school district. The Board filed a motion for summary decision; no tuition reimbursement was sought for the period of K.H.'s ineligible attendance in Ridgefield Park schools.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; the respondent district held a residency appeal hearing on February 21, 2024; its decision, finding that petitioner and her daughter no longer resided within the district, was issued on February 22, 2024; the petitioner did not dispute that she has relocated; the family in this matter suffered a tragic loss that occurred soon after the Board issued the within residency decision; pursuant to *N.J.A.C.* 6A:22-6.3(a), tuition may be assessed for the period of a student's ineligible enrollment; however, nothing in the chapter precludes an equitable determination, by the district board of education or the Commissioner, that, when the particular circumstances of a matter so warrant, tuition shall not be assessed; here, the respondent Board submitted no information as to tuition; therefore, no determination as to tuition can be made. The ALJ concluded that petitioner's residency appeal must be dismissed with prejudice.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter and dismissed the petition for the reasons expressed therein. The petition was dismissed.

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.

299-24
OAL Dkt. No. 05122-24
Agency Dkt. No. 62-3/24

New Jersey Commissioner of Education

Final Decision

E.H., on behalf of minor child, K.H.,

Petitioner,

v.

Board of Education of the Village of Ridgefield Park, Bergen County,

Respondent.

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's (ALJ) finding that petitioner and her minor child, K.H., were not domiciled in Ridgefield Park as of February 2024. The Commissioner further concludes that K.H. was, therefore, not entitled to a free public education in the Ridgefield Park School District during that time.[1]

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 6, 2024
Date of Mailing: August 7, 2024

[1] The respondent did not seek reimbursement of tuition for the period of K.H.'s ineligible attendance.

[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
SUMMARY DECISION
OAL DKT. NO. EDU 05122-24
AGY. DKT. NO. 62-3/24

E.H. ON BEHALF OF MINOR CHILD K.H.,
Petitioner,
vs.
BOARD OF EDUCATION OF THE VILLAGE OF RIDGEFIELD PARK, BERGEN COUNTY,
Respondent.

E.H., on behalf of **K.H.**, petitioner, pro se

David L. Disler, Esq., for respondent (Porzio, Bromberg & Newman, P.C., attorneys)

Record Closed: July 1, 2024 Decided: July 1, 2024

BEFORE **THOMAS R. BETANCOURT,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner appeals the Final Notice of Determination of Ineligibility by Respondent school district, dated February 22, 2024, wherein Respondent determined that the minor child was ineligible to attend school in Respondent school district.

Petitioner filed a pro se residency appeal with the Office of Controversies and Disputes in the New Jersey Department of Education on March 11, 2024.

Respondent filed its Answer via letter from its counsel, dated April 2, 2024.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on April 15, 2024, as a contested case.

A prehearing conference Order was held on May 1, 2024, and a Prehearing Order was entered on May 2, 2024.

The matter was listed for a hearing on June 12, 2024, but was adjourned to permit respondent to file a motion for summary decision. Said motion was received on May 13, 2024. Petitioner did not submit a reply to said motion. The matter was scheduled for oral argument on July 1, 2024, should either party request the same. Neither party did so.

ISSUE

Is the minor child eligible to attend school in the Village of Ridgefield Park school district.

I **FIND** the following undisputed **FACTS**:

At the time of the filing of the residency appeal K.H. was a senior attending Ridgefield Park High School. (see residency appeal)

The respondent Board had determined that petitioner and K.H. no longer resided in the Village of Ridgefield Park and had relocated to Ridgefield, New Jersey, which is a different school district. (See residency appeal and answer)

Petitioner filed a residency appeal with the respondent Board. Said appeal was heard on February 21, 2024. The Board's Final Notice Determination of Ineligibility,

dated February 22, 2024, found that petitioner and her daughter did not reside in the Village of Ridgefield Park and not entitled to a free education in said district. (see residency appeal and answer)

On March 3, 2024, petitioner and her family suffered a terrible tragedy when K.H.'s older sister committed suicide. (See residency appeal)

LEGAL ANALYSIS AND CONCLUSION

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must "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 alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536 (citation omitted).

The material facts, as noted above, are entirely undisputed and the matter is ripe for summary decision.

Any child between the ages of five and twenty years old is entitled to a free public education in the district in which he is a resident. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). A student is a resident of a school district if his parent or guardian has a

permanent home in the district such that "the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere." N.J.A.C. 6A:22-3.1(a)(1). A student may attend school in a district in which he is a non-resident, with or without payment of tuition, at the discretion of the school district. N.J.S.A. 18A:38-3(a); N.J.A.C. 6A:22-2.2.

If a school district discovers that a non-resident child is attending one of its schools, the district may act to remove the child. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.3. If so, the chief school administrator must first issue a notice of ineligibility. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.2, -4.3. The notice shall inform the parent of the right to a hearing before the school district and the right to appeal the school district's decision to the Commissioner of Education. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-5.1. The notice shall also inform the parent whether the district's policy allows for continued attendance, with or without tuition, for students who move out of the district during the course of the school year. N.J.A.C. 6A:22-4.2(b)(7)(i). If, on appeal to the Commissioner, the parent fails to demonstrate his child's entitlement to attend the schools of the district, the parent may be liable for tuition for any period of ineligible attendance. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.2; N.J.A.C.6A:22-6.2, -6.3.

In the instant matter the respondent district held a residency appeal hearing on February 21, 2024, and issued its decision on February 22, 2024, finding that petitioner and her daughter no longer resided within the district. Petitioner does not dispute that she has relocated.

According to N.J.A.C. 6A:22-6.3(a), "[t]uition assessed pursuant to the provisions of this section shall be calculated on a per student basis for the period of a student's ineligible enrollment, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23-3.1. The individual student's record of daily attendance shall not impact on such calculation." However, "[n]othing in this chapter shall preclude an equitable determination, by the district board of education or the Commissioner, that, when the particular circumstances of a matter so warrant, tuition shall not be assessed

for all or part of any period of a student's ineligible attendance in the school district." N.J.A.C. 6A:22-6.3(b).

The respondent submitted no information as to tuition. Accordingly, no determination as to tuition can be made.

ORDER

It is hereby **ORDERED** that Petitioner's residency appeal is **DISMISSED**, with prejudice.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

July 1, 2024
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

For Petitioner:

None

For Respondent:

Notice of Motion for Summary Decision
Letter brief in support of motion

Pleadings:

Residency Appeal
Answer

300-24E
OAL Dkt. No. 08675-24
Agency Dkt. No. 98-4/24

New Jersey Commissioner of Education

Final Decision on Emergent Relief

Board of Trustees of the College Achieve Greater Asbury Park Charter School, Monmouth County,

Petitioner,

v.

Board of Education of the City of Asbury Park, Monmouth County,

Respondent.

The record of this emergent matter, the sound recording of proceedings at the Office of Administrative Law (OAL), and the Initial Decision on Emergent Relief of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has demonstrated entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6. Accordingly, the recommended Initial Decision of the OAL granting petitioner's application for emergent relief is adopted.

For purposes of procedural clarification, the Office of Controversies and Disputes transmitted the petition of appeal and petitioner's first motion for emergent relief to the OAL on April 15, 2024, under Agency Dkt. No. 98-4/24; these were docketed by the OAL under OAL Dkt. No. EDU 04777-24. Petitioner's second motion for emergent relief – the motion at issue in this decision – was transmitted to the OAL on June 26, 2024, again under Agency Dkt. No. 98-4/24; the OAL docketed the second motion as OAL Dkt. No. EDU 08675-25, as captioned above. In the Initial

Decision, the ALJ indicated that the parties advised that no other issues remained in OAL Dkt No. EDU 08675-24 once the motion for emergent relief was resolved. Accordingly, following the decision herein, OAL Dkt No. EDU 08675-24 is no longer pending. However, Agency Dkt. No. 98-4/24 remains pending, with the proceedings at the OAL to occur under OAL Dkt. No. EDU 04777-24.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 6, 2024
Date of Mailing: August 7, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING EMERGENT RELIEF
OAL DKT. NO. EDU 08675-24
AGENCY DKT. NO. 98-4/24

BOARD OF TRUSTEES OF THE COLLEGE ACHIEVE GREATER ASBURY PARK CHARTER SCHOOL, MONMOUTH COUNTY,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF ASBURY PARK, MONMOUTH COUNTY,
Respondent.

Thomas O. Johnston, Esq. and **Jaryda A. Gonzalez**, Esq., for petitioner (Johnston Law Firm, LLC, attorneys)

Eric L. Harrison, Esq., for respondent (Methfessel & Werbel, P.C., attorneys)

Record Closed: July 15, 2024 Decided: July 16, 2024

BEFORE **KIMBERLEY M. WILSON**, ALJ:

STATEMENT OF THE CASE

Petitioner Board of Trustees of the College Achieve Greater Asbury Park Charter School, Monmouth County (Charter School) brings this second motion for emergent relief against respondent Board of Education of the City of Asbury Park, Monmouth County (Board or District), seeking an order requiring the Board to immediately remit payments owed to the Charter School pursuant to New Jersey Department of Education (DOE) payment schedules.

PROCEDURAL HISTORY

On or around March 20, 2024, the Charter School filed a petition with the Commissioner of the DOE, requesting the Commissioner to direct the State Treasurer to remit payments that the District owed the Charter School to it and deduct those amounts from the District's state aid. On or around April 12, 2024, the Charter School filed its first motion for emergent relief, letter brief, and certifications with exhibits (first motion) with the Commissioner of the DOE, Office of Controversies and Disputes, seeking an order directing the Board to remit payment to the Charter School immediately pursuant to the DOE's payment schedule. On or around April 15, 2024, the DOE transmitted the first motion to the Office of Administrative Law (OAL) as a contested case seeking emergent relief.

On or around April 16, 2024, the Board submitted a written response to the first motion, including a certification and a letter brief. After a status conference on April 17, 2024, to determine whether the parties could resolve their differences amicably, on April 18, 2024, the parties presented oral argument on the first motion. The parties were permitted to provide supplemental information to the Administrative Law Judge (ALJ) by April 19, 2024.

On April 19, 2024, counsel for the Charter School advised that on or around April 18, 2024, the Board had remitted payment to the Charter School for the funds the Board owed the Charter School. Pursuant to an Order Denying Emergent Relief dated April 19, 2024, the Charter School's motion was dismissed as moot.

On or around June 20, 2024, the Charter School filed a second motion for emergent relief, again seeking an order directing the Board to remit payment to the Charter School immediately pursuant to the DOE payment schedule (second motion).[1] On or around June 26, 2024, the DOE transmitted the second motion to OAL as a contested case seeking emergent relief. On June 28, 2024, OAL scheduled oral argument on the second motion for July 15, 2024.[2]

On or around July 1, 2024, the Board submitted written opposition to the second motion, which included updated exhibits to a certification and a letter brief. On or around July 11, 2024, the Charter School filed its reply papers, including a letter brief and updated certification. After July 11, 2024, counsel continued to exchange documents with the ALJ regarding the status of any payments to the Charter School.

Oral argument was held on July 15, 2024, and the record remained open to allow the Charter School to provide supplemental submissions. The record closed on July 15, 2024.

The request for emergent relief is now ripe for adjudication.

FACTUAL DISCUSSION AND FINDINGS

I **FIND** the following as **FACT,** as it is undisputed:

1. Pursuant to a DOE Division of Finance and Business Services Office of School Finance FY 2023–24 District Payment Schedule dated December 20, 2023, the Board was scheduled to make the following payments to the Charter School based on the Charter School's October 15, 2023, enrollment:

[1] For the second motion, the Charter School relied upon certifications and other information presented to OAL for the first motion.

[2] July 15, 2024, was the first date that the ALJ had available on her calendar after the second motion was filed to address both oral argument and the disposition of the second motion.

Scheduled payment date	Payment amount
July 15, 2023	$208,813
August 15, 2023	$208,813
September 8, 2023	$169,796
September 15, 2023	$208,813
September 22, 2023	$169,796
October 8, 2023	$169,796
October 15, 2023	$208,813
October 22, 2023	$169,796
November 8, 2023	$169,796
November 15, 2023	$208,813
November 22, 2023	$169,796
December 8, 2023	$169,796
December 15, 2023	$208,813
December 22, 2023	$169,796
January 8, 2024	$136,973
January 15, 2024	$159,272
January 22, 2024	$136,973
February 8, 2024	$136,973
February 15, 2024	$159,272
February 22, 2024	$136,973
March 8, 2024	$136,973
March 15, 2024	$159,272
March 22, 2024	$136,973
April 8, 2024	$136,973
April 15, 2024	$159,272
April 22, 2024	$136,973
May 8, 2024	$136,973
May 15, 2024	$159,272
May 22, 2024	$136,973
June 8, 2024	$136,973

June 15, 2024	$159,272
June 22, 2024	$136,971

[Nicholas Puleio Cert. Ex. A.]

2. As of June 20, 2024, the Board failed to submit payment to the Charter School beginning with the May 2024 payments. Supp. Nicholas Puleio Cert.¶ 2. The Board owed the Charter School $751,247. Ibid. If the Board did not submit payment to the Charter School by June 30, 2024, the Charter School would end its school year with a deficit of $273,509 and would not have funds to satisfy its financial obligations. Id. ¶ 4, 5.

3. As discussed in a letter dated June 28, 2024, from David Shafter (Shafter), State Monitor for the District, to Kenneth E. Saunders, President of the Board, Shafter overrode the Board's failure to approve payments to the Charter School at its April 25, 2024, meeting and directed the District to pay the Charter School $709,772. Thomas O. Johnston Cert. dated July 11, 2024, Ex. D.

4. Pursuant to an email from Shafter dated July 12, 2024, to counsel for the Board, Shafter indicated that the District paid the Charter School the total amount due for the 2023–2024 school year.

5. During oral argument, counsel for the Charter School indicated that if it did not receive payment from the Board for the students in the District attending the Charter School, the Charter School would not be able to satisfy its debts, potentially leading the Charter School to lose teachers and students. If this were allowed to occur, the Board would succeed in shutting down the Charter School.

6. In a DOE Office of School Finance FY 2024–25 District Payment Schedule dated June 28, 2024, the Board is to remit payments of $277,996 to the

Charter School on July 15, 2024, and August 15, 2024. Micah Bender Cert. Ex. A.

LEGAL ANALYSIS AND CONCLUSION

The regulations governing controversies and disputes before the Commissioner of Education provide that "[w]here the subject matter of the controversy is a particular course of action by a district board of education . . . , the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may "[t]ransmit the motion to the OAL for immediate hearing on the motion." N.J.A.C. 6A:3-1.6(c)(3).

At a hearing for emergent relief, the petitioner must show that it satisfies the following four standards:

> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
>
> 2. The legal right underlying petitioner's claim is settled;
>
> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
>
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.
>
> [N.J.A.C. 6A:3-1.6(b) (citing Crowe v. DeGioia, 90 N.J. 126 (1982)).]

The petitioner must prove each of these standards by clear and convincing evidence. Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013). Arguably, these standards are a high threshold to meet, and I will address each one separately.

1. Irreparable Harm

As the New Jersey Supreme Court explained in Crowe, "[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm." 90 N.J. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Indeed, the purpose of emergent relief is to "prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case." Ibid. (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854)).

The threshold standard for irreparable harm in education is showing that once something is lost, it cannot be regained. M.L. ex rel. S.L. v. Bd. of Educ. of Ewing, EDU 04949-09, Initial Decision (June 15, 2009), modified, Acting Comm'r (June 15, 2009), http://njlaw.rutgers.edu/collections/oal/. While the Board has remitted payment to the Charter School for the 2023–2024 fiscal year, the Board is required to make payments to the Charter School beginning on July 15, 2024, the first payment which is presently due and owed. For the reasons discussed below, the Charter School has shown that it will be irreparably harmed if emergent relief were not granted.

The Board has remitted payment to the Charter School for the remainder of the 2023–2024 fiscal year, which, at first blush, appears as though the relief that the Charter School seeks is moot. Courts may decide cases that are otherwise moot when they present issues of "significant public importance or . . . stem from a controversy 'capable of repetition, yet evading review' because of the short duration of any single plaintiff's interest." Finkel v. Twp. Cmte. of Twp. of Hopewell, 434 N.J.Super. 303, 315–316 (App. Div. 2013) (citing In re Conroy, 190 N.J. Super. 453, 459 (App. Div.), rev. on other grounds, 98 N.J. 321 (1983)).

The Charter School has had to file two emergent motions within the past three months for the Board to remit payments owed under the payment schedule for the 2023–2024 fiscal year; based on past pattern and practice, it is likely that the Board will continue to refuse to remit payments to the Charter School for the 2024–2025 fiscal year pursuant to the June 28, 2024 payment schedule, and the Board will still owe the Charter School

that money, creating a future fiscal crisis for the Charter School. For these reasons, a determination on the second motion is not moot and is appropriate.

The Charter School has presented sufficient, uncontroverted evidence that the viability of the Charter School is at stake when it does not receive the State-mandated funding from the Board. The Charter School relies on funding from the Board so that the Charter School remains solvent. From the evidence presented, whether the Charter School remains a going concern depends on whether the Board makes the required payments. When the Board fails to remit payment under the relevant payment schedule, the Charter School is unable to pay its bills and is at risk of closing. This is irreparable harm, and I **CONCLUDE** that the Charter School has sufficiently proven this prong.

2. Settled Legal Right

Next, emergent relief "should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. at 304–05).

The legal right for the Board to remit payment to the Charter School is clearly established. A district board of education's obligation is discussed in N.J.A.C. 6A:23A-15.3(g) as follows:

> A district board of education shall process payment(s) and payment adjustments to a charter school during the school year as follows:
>
> 1. The district of residence and non-resident school district(s) shall initiate payments to the charter school based on projected enrollment, as set forth in this section.
>
> 2. The school district of residence and non-resident school district(s) shall pay directly to a charter school the local share per pupil at the charter school rate, pursuant to N.J.S.A. 18A:36A-12b, in 12 equal installments starting July 15 and thereafter on the 15th of each month.
>
> [Emphasis added.]

From the plain language of the regulation, the Board is required to make payments to the Charter School on the fifteenth day each month beginning in July. This is a mandatory, rather than optional, obligation. See Quereshi v. Cintas Corp., 413 N.J. Super. 492, 498 (App. Div. 2010) (stating, "[t]he use of the word 'shall' ordinarily denotes action that is mandatory, unless the context suggests otherwise."); see also A.B. v. Div. of Med. Assistance and Health Servs., 407 N.J. Super. 330, 340 (App. Div. 2009) (stating, "[a] rule of an administrative agency is subject to the same canons of construction as a statute.")

Based on the foregoing, **I CONCLUDE** that the Board's obligation to make payments to the Charter School is a clearly-established legal right, and therefore, the Charter School has shown a legal right underlying the second motion.

3. Likelihood of Success on the Merits

The Charter School has demonstrated that it is likely to succeed on the merits of the underlying claim. Under this emergent relief prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)). This typically "'involves a prediction of the probable outcome of the case based on each party's initial proofs, usually limited to documents." Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)).

As discussed further in Section 2, above, the Board must remit payment to the Charter School based on projected enrollment on the fifteenth of each month, beginning in July. N.J.A.C. 6A:23A-15.3(g)(1), (2). This is the Board's obligation. It is not a discretionary action, and the Board has presented no evidence or information to the contrary. The Board's argument pertains to verifying the residences of certain Charter School students so that the Board is certain that its payments to the Charter School are accurate. This issue, however, is the basis of two other matters pending before the OAL, and importantly, only pertains to the amount to be paid, rather than the requirement to make payment to the Charter School. In other words, the accuracy of the payments can

be determined; the Charter School, however, must receive payment from the Board as required by N.J.A.C. 6A:23A-15.3(g).

Accordingly, **I CONCLUDE** that the Charter School has shown a reasonable probability of ultimate success on the merits.

4. Balancing the Equities

The fourth and final emergent relief standard involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)].

The Charter School has repeatedly affirmed its need for funding from the Board, indicating that without these funds, the Charter School would not be able to satisfy its debts, causing financial instability that could lead to the loss of teachers and students. On its face, this is a great hardship, as the financial instability could mean that the Charter School would be shut down. I also note that this is the second time in three months that the Charter School has had to seek emergent relief from OAL for the Board's failure to remit payments to it.

The applicable law here is clear, and **I CONCLUDE** that the Charter School will suffer greater harm should emergent relief not be granted than the Board if the requested relief is not granted.

Based upon the foregoing, I **CONCLUDE** that the Charter School has met all of the requirements set forth in N.J.A.C. 6A:3-1.6(b) warranting an order for emergent relief in this matter.

While the Board's argument about its need to verify the residency of certain Charter School students is not determinative here, it is an ongoing issue, and the parties have repeatedly requested DOE assistance in resolving it. I would request that the DOE intercede so this financial issue does not continue into future fiscal years. The Board has

an interest in ensuring that its funds are paid and distributed correctly just as the Charter School has a right to receive payment from the Board as mandated by State regulation.

ORDER

Accordingly, I **ORDER** that the Charter School's second motion for emergent relief be and hereby is **GRANTED**. The Board shall remit all payments due to the Charter School in the amounts and by the dates set forth on the FY 2024–25 District Payment Schedule dated June 28, 2024, as the DOE may subsequently amend.

I also request that the DOE intercede and assist the parties with the Charter School students' residency issue so that the Board can receive the necessary assurances that the payments it will be remitting to the Charter School are a more accurate reflection of Asbury Park domiciled students who are attending the Charter School.

Finally, counsel has advised that no other issues remain after this emergent relief matter is resolved.

This order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If Commissioner of the Department of Education does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

July 16, 2024
DATE

KIMBERLEY M. WILSON, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMW/dw

306-24

New Jersey Commissioner of Education

Final Decision

Jessica Fava-Cutrona,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

Synopsis

Petitioner challenged the respondent New Jersey State Board of Examiners (SBE) determination to deny her application for a Principal Certificate of Eligibility (Principal CE). The SBE based its decision upon petitioner's failure to satisfy *N.J.A.C.* 6A:9B-12.5(a)(4), which requires that she "[c]omplete five years of successful educational experience under a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate." Petitioner was employed from 2007 through September 2023 at a non-public parochial school where she held the positions of teacher, vice principal, and principal. However, because she never held a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate, the educational experience she obtained while working at the non-public school failed to satisfy the requirements of *N.J.A.C.* 6A:9B-12.5(a)(4). Petitioner asserted that her prior teaching experience, if fully reviewed, does meet the teaching experience standard, had it occurred under a provisional certificate. She also asserted that a full review of her teaching experience would show that she meets the requirements for the issuance of a Principal CE under *N.J.A.C.* 6A:9B-12.5(a)(4). The SBE filed a motion to dismiss, contending that it cannot waive certification requirements.

The ALJ found, *inter alia*, that: petitioner failed to meet her burden of demonstrating, by a preponderance of evidence, that she is entitled to the Principal CE; in fact, petitioner admitted that she does not meet the regulatory requirements as written; petitioner's arguments regarding the comparability of her work experience at the non-public school to the five years of experience required under *N.J.A.C.* 6A:9B-12.5(a)(4) was without merit, as was her contention that certification requirements are a technicality that can be overlooked. The ALJ concluded that the SBE cannot waive certification requirements and therefore its decision to deny petitioner's application for a Principal CE was reasonable and consistent with governing regulations. Accordingly, the SBE's motion to dismiss was granted.

Upon review, the Commissioner, *inter alia*, concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner noted that the SBE's decision to deny her application for a Principal CE was reasonable, appropriate, and consistent with regulatory requirement; further, petitioner is not at liberty to rewrite the SBE's certification requirements, and neither is the SBE at liberty to waive them. The petition was dismissed.

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.

306-24
OAL Dkt. No. EDU 09743-23
Agency Dkt. No. 225-8/23

New Jersey Commissioner of Education

Final Decision

Jessica Fava-Cutrona,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

The record in 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 the Board's reply thereto, have been reviewed and considered.

Petitioner challenges the Board's August 4, 2023, denial of her application for a Principal Certificate of Eligibility (Principal CE). She presently holds a Teacher of English Certificate of Eligibility with Advanced Standing. Petitioner worked at a non-public parochial school from 2007 until September 2023, where she held the positions of teacher, vice principal, and principal. She now seeks to work as a principal in a public school, which requires a Principal CE.

It is undisputed that petitioner meets all but one of the requirements for issuance of a Principal CE, specifically *N.J.A.C.* 6A:9B-12.5(a)(4), which requires that she "[c]omplete five years of successful educational experience under a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate." Because petitioner has never held a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate, her educational experience obtained

while working at the non-public school failed to satisfy that requirement. Consequently, the Board denied her application for a Principal CE.

In response to petitioner's appeal of the Board's decision, the Board filed a motion to dismiss, asserting primarily that it cannot waive certification requirements. *N.J.A.C.* 6A:5-1.3(a)(1)(i). Petitioner filed opposition, and the Administrative Law Judge (ALJ) heard oral argument on the motion. As detailed in the Initial Decision, the ALJ found that petitioner failed to meet her burden of demonstrating, by a preponderance of evidence, that she is entitled to the Principal CE. Indeed, the ALJ found that petitioner admits that she does not meet the regulatory requirements as written.

In addition, the ALJ rejected petitioner's argument that her work experience at the non-public school was comparable to the five years of experience required under *N.J.A.C.* 6A:9B-12.5(a)(4) and should, in essence, be substituted for same—even though she did not hold a provisional or standard certificate during that time as required by the regulation. The ALJ also rejected petitioner's contentions that certification requirements are a mere technicality that can be overlooked, and that she received disparate treatment from the Board as compared to out-of-state applicants. Ultimately, the ALJ found that the Board cannot waive certification requirements and that, therefore, its decision to deny petitioner's application for a Principal CE was reasonable and consistent with governing regulations. Accordingly, the ALJ granted the Board's motion to dismiss the petition of appeal.

In her exceptions, petitioner reiterates the arguments she made below that were already considered and rejected by the ALJ, i.e., that: (1) the Board "failed to look past the technicality of whether she held the provisional certification during the time that she obtained the necessary years of teaching experience"; and (2) she received disparate treatment from the Board in that "the Board afforded her less consideration than out-of-state applicants." Exceptions at 7-8. Petitioner additionally asserts, without citing any legal authority for same, that her Teacher of English Certificate

of Eligibility with Advanced Standing "further supports [her] application that she has met her teaching experience requirement for issuance of a Principal CE." *Id.* at 8.

In response, the Board argues that the Commissioner should adopt the ALJ's Initial Decision because the ALJ correctly concluded that the Board's determination was consistent with the applicable statutory and regulatory provisions. The Board also asserts that petitioner's exceptions restate the same arguments already rejected by the ALJ and emphasizes that petitioner's mere disagreement with the outcome does not advance a cause of action.

Petitions are subject to dismissal by the Commissioner "on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true." *N.J.A.C.* 6A:3-1.10. This standard also appears in *New Jersey Court Rule* 4:6-2(e), which permits a motion for judgment on the pleadings for failure to state a claim upon which relief can be granted. *See Wadley v. N.J. Dep't of Educ., Office of Student Prot.*, OAL Dkt. No. EDU 09223-22, Initial Decision at 4-5 (Mar. 10, 2023), *adopted*, Commissioner Decision No. 110-23 (Apr. 1, 2023) (assessing respondent's motion to dismiss pursuant to *N.J.A.C.* 6A:3-1.10 under the standards used by courts when analyzing *Rule* 4:6-2 motions). The petition must contain factual "allegations, which, if proven, would constitute a valid cause of action." *Sickles v. Cabot Corp.*, 379 *N.J. Super.* 100, 106 (App. Div. 2005) (quoting *Leon v. Rite Aid Corp.*, 340 *N.J. Super.* 462, 472 (App. Div. 2001)). Ultimately, a petition must be dismissed for failure to state a claim "if it has failed to articulate a legal basis entitling [petitioner] to relief." *Ibid.*

Pursuant to *N.J.S.A.* 18A:6-38, the Legislature entrusted the Board with issuance of appropriate certificates to teachers, administrators, and other certificated staff. Petitioner bears the burden of proving, by a preponderance of evidence, that she satisfies the statutory and regulatory requirements for issuance of a certificate. *In re Polk License Revocation*, 90 *N.J.* 550, 561 n.1 (1982);

McQuilken v. N.J. Dep't of Educ., State Bd. of Exam'rs, OAL Dkt. No. EDU 8375-11 (Initial Decision at 7), Commissioner Decision No. 34-12 (Jan. 27, 2012). "[A] decision by the Board denying an application for a certificate is not entitled to the arbitrary, capricious or unreasonable standard of review that is afforded to appeals filed under *N.J.A.C.* 6A:4, challenging a decision of the Board revoking or suspending a certificate." *Nimczyk v. N.J. Dep't of Educ., State Bd. of Exam'rs*, Commissioner Decision No. 98-22 (May 16, 2022), at 2. Instead, "the appropriate standard of review . . . is whether the decision is consistent with the applicable statutory and regulatory provisions." *Id.* at 2-3.

Upon review, the Commissioner concurs with the findings and conclusions of the ALJ. Even assuming the facts as alleged by petitioner are true, she has failed to articulate a legal basis for the relief she seeks. Because it is uncontested that petitioner does not possess "five years of successful educational experience under a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate" as is required by *N.J.A.C.* 6A:9B-12.5(a)(4), the Board's decision to deny her application for a Principal CE was reasonable, appropriate, and consistent with regulatory requirements. Petitioner is not at liberty to rewrite the Board's certification requirements, and the Board is not at liberty to waive them. See *Hutchinson v. New Jersey State Board of Examiners*, OAL Dkt. No EDU 16373-12, Initial Decision (April 5, 2013), adopted, Commissioner Decision No. 177-13 (May 15, 2013) (holding that the Board is not at liberty to waive applicable regulatory requirements when deciding whether to issue certificates and endorsements).

Petitioner's exceptions lack merit. As explained above, the Board is simply not permitted "to look past the technicality" of the regulatory requirement found at *N.J.A.C.* 6A:9B-12.5(a)(4). Furthermore, petitioner's contention that the Board gave less consideration to petitioner's application than it would have given an out-of-state applicant is speculative at best. Moreover, her

assertion that her Teacher of English Certificate of Eligibility with Advanced Standing supports her position that she has met her teaching experience requirement for issuance of a Principal CE is unsupported by the relevant regulations. As stated, *N.J.A.C.* 6A:9B-12.5(a)(4) mandates that the requisite five years of successful education experience be obtained "under a valid provisional or standard New Jersey certificate or equivalent out-of-state certificate." A Teacher of English Certificate of Eligibility with Advanced Standing is neither a valid provisional nor a standard New Jersey certificate. *See N.J.A.C.* 6A:9-2.1 (distinguishing between a certificate of eligibility, a provisional certificate, and a standard certificate).

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the Board's motion to dismiss the petition of appeal is granted.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 23, 2024
Date of Mailing: August 26, 2024

[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 GRANTING RESPONDENT'S MOTION TO DISMISS

OAL DKT. NO.: EDU 09743-23
AGENCY DKT. NO. 225-8/23

JESSICA FAVA-CUTRONA,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION, BOARD OF EXAMINERS,

Respondents.

Daniel E. Dugan, Esq., for petitioner (Stewart Lee Karlin Law Group. P.C., attorneys)

Amna T. Toor, Deputy Attorney General for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorneys)

Record Closed: April 3, 2024 Decided: July 10, 2024

BEFORE **WILLIAM COURTNEY**, ALJ:

FACTUAL DISCUSSION

Petitioner Jessica Fava-Cutrona worked at Immaculate Conception High School ("ICHS"), a non-public parochial school, from 2007 through September of 2023 when ICHS closed due to lack of enrollment. While employed at ICHS she served in the positions of teacher, vice principal and principal. Petitioner holds a New Jersey teacher of English certificate of eligibility with advanced standing and obtained a master's degree in education leadership. After ICHS closed petitioner was offered and accepted a leadership position in a public school. She is now seeking to pursue a position as principal in a public school which requires an applicant to possess a Principal Certificate of Eligibility ("Principal CE").

N.J.A.C. 6A:9B-12.5 (a)(1)-(4) requires that a candidate seeking a Principal CE must hold a master's degree, complete a 300-hour internship, pass a Department-approved examination, and relevant here, complete "five years of successful educational experience under a valid provisional or standard New Jersey certificate or equivalent out-of-State certificate." Upon review of her application, the Department[1] found that petitioner satisfied the regulatory requirements for obtaining a Principal CE, except for the requirement under N.J.A.C. 6A:9B-12.5 (a)(4) that she complete five years of successful educational experience under a valid provisional or standard certificate.

Petitioner's application was denied by the Board on August 4, 2023. In its decision, the Board noted that petitioner's employer was not required to apply for provisional certification for her and provide a pathway to standard certification, which includes participation in a Department-approved mentoring program, a non-public school may still choose to provide a mentoring program pursuant to N.J.A.C. 6A:9B-8.9. If petitioner anticipated that she would one day seek a position as the principal in a public school, she could have requested her employer participate in a Department -approved mentoring

[1] The Office of Certification and Induction within the Department of Education initially reviews and evaluates information relating to an applicant's eligibility for certification.

program and apply for her provisional certification so that she would have completed five years of successful educational experience under a provisional or standard certificate.

The Board asserted that it cannot waive certification requirements (*citing* N.J.A.C. 6A:5-1.13(a)(1)(i)), instead informing Ms. Fava-Cutrona that her option for obtaining a Principal CE would be to repeat five years of successful educational experience by seeking employment under her Teacher of English CEAS, securing a provisional certificate, and eventually a standard certificate, to secure five years' experience under a provisional or standard certificate.

Petitioner maintains she is not arguing ignorance of the requirements for the issuance of a Principal CE as the basis for setting forth a viable cause of action as the Board asserts. Instead, as she asserted in her application and on appeal, her prior teaching experience, if fully reviewed, does meet the teaching experience standard had it occurred under a provisional certificate. She also asserts that a full review of her teaching experience would show that she meets the requirements for the issuance of a Principal CE under N.J.A.C. 6A:9B-12.5(a)(4).

LEGAL ANALYSIS

The standards for granting or denying a motion to dismiss for failure to state a claim in an administrative proceeding are identical to those governing similar motions in the Superior Court. Compare N.J.A.C. 6A:3-1.10 with R. 4:6-2(e); See also Sloan v. Klagholtz, 342 N.J. Super. 385, 393-94 (App. Div., 2001).

When reviewing a motion to dismiss pursuant to R. 4:6-2(e), the court's inquiry is "limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart - Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). the petitioner is required to plead facts and give detail od a cause of action. Once filed , "a complaint may be dismissed for failure to state a claim if it fails to articulate a legal basis

entitling plaintiff to relief." Hoffman v. Hampshire Labs, Inc. 405 N.J. Super.105 (App. Div., 2009) quoting Sickles v. Cabot Corp., 379 N.J. Super. 100 (App. Div. 2005).

While a complaint may be entitled to liberal reading, it must allege facts that give rise to to a legal cause of action; mere conclusions cannot suffice. Pressler and Venero, N.J. Court Rules, cmt.1 on R. 4-5-2 (2022) citing Glass v. Suburban Restoration Co., 317 N.J. Super. 574, 582 (App. Div., 1998). Although the standard is a "generous one" for a plaintiff, a pleading will be dismissed if it states no basis for relief and discovery will nor provide one. Green v. Morgan Props., 215 N.J. 431, 451 (2011); Rezem Family Associates, L.P., v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div., 2011). A party cannot satisfy its obligation to identify a cognizable claim with conclusory or vague allegations. Delbridge v. Office of the Public Defender, 238 N.J. Super. 288, 314 (App. Div., 1989).

In the case at bar, there is no dispute that the petitioner meets all of the requirements for the Principal CE with the exception of N.J.A.C. 6A:9B-2.5(a)(4) which requires that she complete 5 years of successful educational training under a valid provisional or standard certificate. There is also no dispute that petitioner's educational training took place in a parochial school that lacked the required provisional or standard certificate.

The gravamen of petitioner's argument on appeal is that this tribunal should view the education training she received in the non-certified parochial school program as comparable to the training she would have received if she had worked in a school that held the required standard or provisional certificate. In support of this contention, the petitioner points to the Board's finding that the petitioner's years of experience as a teacher and a principal in the non-public school to be noteworthy. The Board did however indicate, that while they were they were sympathetic to her position, they could not waive the certificate requirement.[2]

[2] The Board cited N.J.A.C. 9B-8.9 which sets forth the requirements needed to be met in order for a non - public school to provide a mentoring program for novice teachers.

I agree with respondent's argument that petitioner has failed to proffer any information that was not considered by the Board or any argument as to why the Board's denial application was inconsistent with the governing statutory provisions.

Petitioner points out that she could not have applied for a provisional certificate while she worked at ICHS because it is the choice of the non-public school whether to provide a mentoring program pursuant to N.J.A.C. 6A:9B-8.9. She then concludes that because ICHS was not required to apply for a provisional certification and thus provide a pathway to certification, she maintained that the Board, in its decision, improperly shifted that responsibility and makes the denial of petitioner's application arbitrary and capricious. I disagree.

Just because the Board pointed out to petitioner that there was a way for ICHS to obtain the provisional certificate while she worked there and that she always had the option of obtaining her 5 years of experience in a public school setting, I **FIND** that this observation does not amount to an improper shifting of any burden or responsibility to the petitioner. As respondent correctly asserts, It is the petitioner's burden to demonstrate by a preponderance of the evidence that she is entitled to the certificate she is entitle to the certificate she seeks. McQuilken v. St. Bd. of Examiners, OAL Dkt. No. EDU 08375-2011, Initial Decision (Dec. 13, 2011), https://njlaw.rutgers.edu/collections/oal/html/initial/edu8375-11_.1html, adopted Comm'r (January 27,2012) citing Farrar v. St. Bd, of Exam'rs OAL Dkt. No EDU 13768-08, Initial Decision (Sept. 9, 2009), adopted, Comm'r (July 26, 2010). Petitioner has not only failed to meet this burden, but she also acknowledges that she does not meet the requirements for a Principal CE. Accordingly, the Board's decision to deny petitioner's application is not, as petitioner maintains, arbitrary and capricious.

I also **FIND** that compliance with the certification requirements is not, as petitioner suggests, a mere technicality that can be overlooked. The Board cannot waive certification requirements. See N.J.A.C. 6A:5-1.3(a)1(i) (declaring the "[c]ertification requirements of N.J.S.A. 18A:26-2 shall not be violated").

Petitioner also challenges the Board's refusal to consider whether her five years of teaching experience at ICHS was equivalent to the teaching experience she would have received had she been working under a provisional or standard certificate. Petitioner maintains that a full review of her teaching experience at ICHS under what she claimed to be the "equivalent of a provisional certificate" satisfies the requirement under N.J.A.C. 6A:9B-12.5(a)(4) that she complete those five years of successful educational experience under a provisional or standard New Jersey certificate or **"equivalent out-of-state certificate**". Id. [emphasis added]. She also argues that it would be improper to consider the equivalency of an out-of-state applicant's education training and not consider the equivalency of the training she received at a parochial school within New Jersey.

After a full review of the comparison petitioner is making between herself and out-of- state applicants, I **FIND** her assertions of disparate treatment to be unfounded. Under N.J.A.C. 6A:9B-12.5(a)(4), if an out-of-state applicant did not obtain their five years of educational experience under an equivalent out-of-state certificate, the five years of experience would not satisfy the regulation's requirement. There has also been no evidence offered to prove New Jersey would independently evaluate whether the out-of-state applicant's five years of teaching experience in a non-certified setting was the equivalent to that received under a standard or provisional New Jersey certificate. New Jersey's willingness to accept the educational experience of an out-of-state applicant takes place under a Principal certification program equivalent to that of New Jersey's is based on the equivalency of the other state's program to that of New Jersey's and is not a case-by-case determination as to whether a non-certified program meets the requirements of a provisional or standard certificate. There has been no credible evidence presented in this case that supports petitioner's assertion that being taught under "the equivalent of a provisional certificate" satisfies the requirement under N.J.A.C. 6A:9B-12.5(a)(4) that the required educational experience be obtained under a provisional or standard New Jersey certificate or "equivalent out-of-state certificate".

For the reasons set forth above, I **CONCLUDE** that petitioner has failed to meet her burden to show by the preponderance of the evidence that the Board improperly denied her Principal CE. I further **CONCLUDE** that the Board's decision to deny petitioner's application was reasonable and consistent with its governing regulations. Because the petitioner has failed to advance a cause of action that the Board's decision was otherwise inconsistent with applicable statutory and/or regulatory provisions, I **CONCLUDE** that petitioner's appeal should be dismissed.

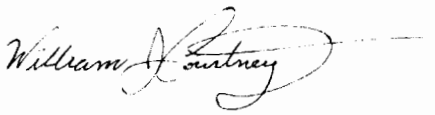
ORDER

Accordingly, it is **ORDERED** that Respondent's motion to dismiss is **GRANTED** and this matter 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 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.



July 10, 2024
DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

1. August 4, 2023 Decision of the New Jersey Dept. of Educ. Bd. of Examiners Denying petitioner's Application for a Principal CE
2. September 15, 2023 Brief in Support of Respondent's Motion to Dismiss
3. November 26,2023 Brief in Opposition to Motion to Dismiss
4. January 4, 2024 Brief in Reply to Petitioner's Opposition to Motion to Dismiss
5. Oral argument of the parties on Motion to Dismiss April 3, 2024

307-24

New Jersey Commissioner of Education

Final Decision

A.P., on behalf of minor child, A.P.,

Petitioner,

v.

Board of Education of the City of Burlington, Burlington County,

Respondent.

Synopsis

Pro se petitioner challenged the determination of the respondent Board that several interactions between petitioner's daughter, A.P., and a school lunchroom aide did not constitute harassment, intimidation, or bullying (HIB) under New Jersey's Anti-Bullying Bill of Rights Act (the Act), *N.J.S.A.* 18A:37-14. Following an investigation by the school district's anti-bullying specialist into the allegations that A.P. was a victim of HIB, the Board found that the incidents reported did not satisfy the Act's definition of HIB. The District's anti-bullying specialist concluded that there was no HIB but recommended that the lunchroom aide should not interact with A.P. at lunch and recess. Petitioner subsequently filed the within appeal. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; the decision of a board acting within the scope of its authority is entitled to a presumption of correctness and will not be overturned unless there is an affirmative showing that such decision was arbitrary, capricious, or unreasonable; further, the action of a board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives; in this case, petitioner's allegations did not meet the legal standards of the HIB statute; for a finding of HIB, the alleged behavior must reasonably be perceived as being motivated by an actual or perceived distinguishing characteristic of the victim, a critical element that is missing in this case; petitioner instead argued that the lunchroom aide targeted A.P. because of an acrimonious relationship between petitioner and the aide, who were long-time acquaintances. The ALJ concluded that the lunchroom aide's actions did not permit a finding of HIB because her behavior was not motivated by an actual or perceived characteristic of A.P. Accordingly, there was no violation of *N.J.S.A.* 18A:37-14 and the Board's actions were not arbitrary, capricious, or unreasonable. Summary decision was granted to the Board and the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that the Board's determination in this matter was not arbitrary, capricious, or unreasonable. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

307-24
OAL Dkt. No. EDU 02104-24
Agency Dkt. No. 17-1/24

New Jersey Commissioner of Education

Final Decision

A.P., on behalf of minor child, A.P.,

Petitioner,

v.

Board of Education of the City of Burlington, Burlington County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the petitioner pursuant to *N.J.A.C.* 1:1-18.4, have been reviewed and considered. The Board did not file exceptions or reply to petitioner's exceptions.

Petitioner alleged that her child, A.P.,[1] was bullied when, on several separate occasions, a lunch aide made A.P. sit by herself at lunch, miss recess for doing nothing wrong, and cry. Additionally, petitioner alleged that the lunchroom aide singled out A.P. due to the aide's personal history with petitioner. The Administrative Law Judge (ALJ) concluded that the lunchroom aide's actions did not permit a finding of HIB because her behavior was not motivated by an actual or perceived characteristic of A.P.

In her exceptions, petitioner fails to address the ALJ's conclusion that the lunchroom aide's actions were not motivated by an actual or perceived characteristic of A.P. Instead, petitioner argues

[1] Because petitioner and her child share the same initials, petitioner will be referred to herein as "petitioner," and her child will be referred to herein as "A.P."

that there are four different kinds of harassment, intimidation, and bullying (HIB). Petitioner contends that in reaching his decision, the ALJ utilized the incorrect type of HIB, which had been provided by the Board, rather than the type of HIB under which she filed. While petitioner does not define her preferred type of HIB (or the three other types of HIB), she cites to an excerpt from guidance published by the Department of Education that identifies four distinct kinds of bullying behavior.[2] It appears petitioner misunderstands these four behaviors to be separate grounds upon which an individual may file an HIB complaint. Petitioner's preferred type of HIB is likely "psychological," as it is the only bullying behavior highlighted in the excerpt she provides. The guide defines psychological bullying as, "... purposefully keeping people from activities and breaking up friendships and other relationships." *Ibid.* Lastly, petitioner claims that the lunchroom aide has a history of harassment and cites to a screenshot of the aide's records from a New Jersey Municipal Court Case Search.

Upon review, the Commissioner concurs with the ALJ that the lunch aide's actions do not warrant a finding of a violation of *N.J.S.A.* 18A:37-14. When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. W. Orange Bd. of Educ.*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]" and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't. of Envtl. Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff'd*, 131 *N.J. Super.* 37 (App. Div. 1974).

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[2] According to the guidance, "Guidance for Parents on the Anti-Bullying Bill of Rights Act (P.L.2010, c.122)," the four types of bullying behavior are verbal, physical, psychological, and electronic. *See* https://www.nj.gov/education/mksd/docs/HIB%20ParentGuide.pdf (page 10).

The Anti-Bullying Bill of Rights Act (the Act) defines HIB as follows:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L. 2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
>
> *N.J.S.A.* 18A:37-14.

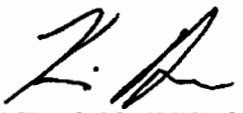
Therefore, a finding of HIB requires three elements.[3] First, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic and, second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County*, Commissioner Decision No. 51-20 (decided February 4, 2020).

[3] The statute also requires that the conduct take place on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in *N.J.S.A.* 18A:37-15.3. The parties do not contest that this requirement has been met.

In her exceptions, petitioner misconstrues the legal analysis undertaken when considering HIB matters. Pivotal to the analysis is the first element, an act that is reasonably perceived as being motivated by any actual or perceived characteristic. However, petitioner fails to identify a distinguishing characteristic of A.P. that might have motivated the lunchroom aide's behavior. Further, even if true, the lunch aide targeting A.P. due to the aide's personal history with petitioner, while inappropriate, does not constitute a distinguishing characteristic under *N.J.S.A.* 18A:37-14. *See K.L. v. Evesham Twp. Bd. of Educ.*, 423 *N.J. Super.* 337, 351 ("[H]armful or demeaning conduct motivated only by another reason, for example, a *dispute about relationships* ... or aggressive conduct without identifiable motivation, does *not* come within the statutory definition of bullying.") (emphasis added). Absent a distinguishing characteristic, the lunch aide's conduct cannot satisfy the first prong required for a finding of HIB; therefore, the Board's decision was not arbitrary, capricious, or unreasonable.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[4]



ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 23, 2024
Date of Mailing: August 26, 2024

[4] 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 02104-24
AGENCY REF. NO. 17-1/24

A.P. ON BEHALF OF MINOR CHILD, A.P.,
Petitioner,
v.
CITY OF BURLINGTON
BOARD OF EDUCATION,
Respondent.

A.P. on behalf of minor child, A.P., pro se

Alicia D'Anella, Esq., for respondent (Gorman, D'Anella, and Morlok, LLC, attorneys)

BEFORE **MICHAEL R. STANZIONE**, ALJ:

Record closed: May 14, 2024 Decided: July 10, 2024

STATEMENT OF THE CASE

This case arises from petitioner A.P.'s challenge of the determination by respondent, City of Burlington Board of Education (respondent or Board), that there was

no harassment, intimidation or bullying (HIB) during several interactions between petitioner A.P.'s daughter, A.P., and a school lunchroom aide.

Petitioner's daughter is a student in the City of Burlington School District (District). Following an investigation by the District's anti-bullying specialist into the allegation that she was a victim of HIB, the Board found that the incident reported did not satisfy the Anti-Bullying Bill of Rights Act's (ABR) definition of HIB. The District's anti-bullying specialist concluded that there was no HIB. The specialist determined that the only corrective action that should be required was that the lunchroom aide should not interact with the student at lunch and recess.

PROCEDURAL HISTORY

The HIB investigation concluded on October 20, 2023, and the HIB investigation summary report completed by the anti-bullying specialist was submitted to the superintendent on October 25, 2023. On or about December 11, 2023, petitioner's requested appeal hearing on the investigation determination was held. Following the appeal hearing, the Board affirmed the determination that the incident did not satisfy the ABR definition of HIB. On or about February 14, 2024, petitioner filed an appeal of that determination. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on February 14, 2024, for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The Board filed an answer and a motion for summary decision on February 13, 2024, before the matter was transmitted to the OAL. An initial prehearing conference was held on March 12, 2024. On March 14, 2024, petitioner emailed a response to the Board's motion for summary decision. This was followed by a prehearing conference on March 25, 2024. On May 14, 2024, oral argument was held on the motion via Zoom with the consent of the respondent, as the petitioner was unable to travel for an in-person oral argument.

MOTION

Respondent has filed a motion for summary decision, arguing that the undisputed facts demonstrate that the alleged actions by the lunchroom aide do not constitute HIB as defined by the ABR. Specifically, respondent relies on the anti-bullying specialist's finding that the student lacked a defining characteristic to meet the requirements of a finding of HIB.

Petitioner opposes respondent's motion, arguing generally that the actions of the District's lunchroom aide meet the definition of HIB. She argues that her daughter was singled out by the employee because of petitioner's history with the employee.

FINDINGS OF UNDISPUTED FACT

The following **FACTS** of the case are not in dispute:

1. At all times relevant to this matter, petitioner's daughter was a student attending school in the District.

2. The lunchroom aide had A.P. sit by herself in the cafeteria and sit-out recess. The petitioner and the lunchroom aide have had multiple interactions in their past and they "were not good ones."

3. Respondent's investigation concluded that the alleged conduct was not reasonably perceived as being motivated by an actual or perceived characteristic of petitioner's child. R-4 at ¶ 3. The report noted that no motivating factor was determined. R-5, Exhibit A, at 4. It stated that the "student was reprimanded for not following school rules. Student was not targeted for any real or perceived characteristics." Id. at 6. The incident, according to the anti-bullying specialist, did not satisfy the definition of HIB. Id. at 7.

4. The anti-bullying specialist found that the lunchroom aide was responding to the student's behavior. R-4 at ¶ 4.

5. Respondent took steps to ensure that the student would not have any future contact with the lunchroom aide Id. at ¶ 5. The lunchroom aide was moved to a different lunch period than A.P.

PARTIES' ARGUMENTS

Petitioner:

Petitioner, through oral argument, alleged that the staff member is "singling out" her daughter. Referencing her personal history with the lunchroom aide, she argues that the staff member unfairly harassed and bullied her daughter because she is petitioner's child. Petitioner asserted that she and the staff member "have never been friends" and queried why the staff member told her daughter that they knew each other. P-2. Prior to these interactions with the lunchroom aide, her daughter always loved school; however, since interacting with the aide, she no longer wants to attend school.

Respondent:

Respondent argues that its motion must be granted because the staff member's conduct was not motivated by an actual or perceived distinguishing characteristic. R-4 at ¶ 3.

First, the Board concluded in its HIB investigation report that the actions of the lunch aide toward petitioner's child were found to be in direct response to the student's behavior. Id. at 4. Although the incident was not determined by the Board to meet the criteria of HIB, the District took steps to ensure that the student did not have further contact with the accused staff member. Id. at 5.

LAW AND ANALYSIS

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 OAL summary decision rule is essentially the same as the summary judgment rule under the New Jersey Court Rules, which states:

> The judgment or order sought shall be rendered forthwith 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. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.
>
> [R. 4:46-2(c).]

The New Jersey Supreme Court has modified and clarified the analysis required when considering a motion for summary decision/judgment. In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995), the Court adopted the summary judgment standard utilized by federal courts:

> Under this new standard, 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. 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." [Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986).] . . . If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a "genuine" issue of material fact for purposes of Rule 4:46-2. Liberty Lobby, supra, 477 U.S. at 250, 106 S. Ct. at 2511, 91 L. Ed.

> 2d at 213. The import of our holding is that when the evidence "is so one-sided that one party must prevail as a matter of law," Liberty Lobby, supra, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214, the trial court should not hesitate to grant summary judgment.

The burden is on the moving party to exclude all reasonable doubt as to the existence of any genuine issue of material fact, and all inferences of doubt are drawn against the moving party and in favor of the non-moving party. Saldana v. DiMedio, 275 N.J. Super. 488, 494 (App. Div. 1994). The critical question, therefore, is "whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one-sided that one party must prevail as a matter of law." Brill, 142 N.J. at 533 (citation omitted). If the non-moving party's evidence is merely colorable or is not significantly probative, summary judgment should not be denied. See Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

All of the material facts in this case are undisputed. The petitioner has not contested any material fact put in front of this tribunal. Petitioner argued only that the legal definition under ABR of what constitutes HIB is not good enough.

The ABR defines harassment, intimidation or bullying as follows:

> any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c. 122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> > a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable

> fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
>
> [N.J.S.A. 18A:37-14 (emphasis added).]

The requirement that the conduct is reasonably perceived as being motivated by a distinguishing characteristic is fundamental to the decision. The statutory definition of HIB "does not include all violent or aggressive conduct." K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 350 (App. Div. 2011).

On October 25, 2023, the HIB investigation report was submitted to the District superintendent. In its summary of findings, the report noted that no motivating factor was determined. R-5, Exhibit A, at 4. It stated that the "student was reprimanded for not following school rules. Student was not targeted for any real or perceived characteristics." Id. at 6. The incident, according to the anti-bullying specialist, did not satisfy the definition of HIB. Id. at 7.

In other words, the petitioner's child, according to the investigation, was not targeted due to race, color, religion, ancestry, gender, sexual orientation, or a mental, physical, or sensory disability, or due to any other distinguishing characteristic. Petitioner corroborated the findings of the investigation, because she asserted in her opposition to the motion for summary decision, during oral argument, and in her pro se petition of appeal that the school staff member targeted her child due to her personal history with the petitioner.

Accordingly, accepting petitioner's version of the facts as accurate and undisputed, I **CONCLUDE** that the school lunchroom aide's actions were not motivated by an actual

or perceived characteristic of student A.B. This does not permit a finding of a violation of N.J.S.A. 18A:37-14.

I therefore **CONCLUDE** that the respondent's motion for summary decision should be granted.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

July 10, 2024
DATE

MICHAEL R. STANZIONE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

EXHIBITS

For Petitioner:

P-1 Pro Se Petition of Appeal

P-2 Response email to respondent's Motion for Summary Decision

For Respondent:

R-1 Filed answer to petition of appeal

R-2 Notice of Motion for Summary Decision

R-3 Brief in support of respondent's Motion for Summary Decision

R-4 Certification of superintendent Dr. John Russell

R-5 Exhibits A and B

308-24

New Jersey Commissioner of Education

Final Decision

Israel Torres,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

Synopsis

Petitioner – a school bus driver – appealed the Department's determination to suspend his school bus endorsement for six months pursuant to *N.J.S.A.* 18A:39-28 *et seq.* after an incident on March 24, 2024, in which an elementary school student remained on petitioner's bus beyond the end of his assigned bus route. Petitioner did not dispute that a sleeping child remained on the bus but contended that the student was never left alone, as he noticed the child while proceeding back to his base location. The Department filed a motion to dismiss in lieu of an answer, requesting that the motion be converted to a motion for summary decision upon transmittal of the matter to the Office of Administrative Law (OAL).

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioner admitted that after completing his bus route on March 24, 2024, he noticed that a sleeping child remained on the bus; petitioner then located a safe place to stop, notified dispatch of the situation, and returned the child to the George S. Hess Elementary School; pursuant to *N.J.S.A.* 18A:39-28, petitioner had an affirmative duty to visually inspect the school bus at the end of the transportation route to determine that no pupil had been left on the bus; "end of the transportation route" under *N.J.S.A.* 18A:39-28 means when the children are dropped off at the assigned destination, or the last bus stop; in accordance with *N.J.S.A.* 18A:39-29, if a school bus driver is found to have left a child on the bus at the end of a route, the driver's school bus endorsement shall be suspended for six months for the first offense. Accordingly, the ALJ granted summary decision to the respondent and affirmed the petitioner's six-month suspension for leaving a child on the school bus at the end of a route.

Upon full review, the Commissioner concurred with the ALJ that the respondent is entitled to summary decision. Accordingly, the petition was dismissed; respondent was directed to notify the Motor Vehicle Commission of its obligation to suspend petitioner's school bus endorsement pursuant to *N.J.S.A.* 18A:39, and to notify petitioner's employer that he is ineligible for the period of suspension for continued employment as a school bus driver.

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.

308-24
OAL Dkt. No. EDU 05575-24
Agency Dkt. No. 90-4/24

New Jersey Commissioner of Education

Final Decision

Israel Torres,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

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 the "end of the transportation route" under *N.J.S.A.* 18A:39-28 is when the children are dropped off at the assigned destination. Pursuant to *N.J.S.A.* 18A:39-28, school bus drivers have an affirmative duty to visually inspect the bus at the end of the transportation route to determine that no pupil remains on the bus. Here, the petitioner did not visually inspect the school bus before departing George L. Hess Elementary School, the end of his transportation route, and as a result a child was left on the bus. Thus, the ALJ correctly concluded that petitioner violated *N.J.S.A.* 18A:39-28.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed. Petitioner's "S" endorsement is hereby suspended for six

months from the date of this decision. Respondent is directed to notify the Motor Vehicle Commission of its obligation to suspend petitioner's school bus endorsement pursuant to *N.J.S.A.* 18A:39-26 et seq., and to notify petitioner's employer that he is ineligible during the period of suspension for continued employment as a school bus driver.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 23, 2024
Date of Mailing: August 26, 2024

[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

SUMMARY DECISION

OAL DKT. NO. EDU 05575-24

AGENCY DKT. NO. 90-4/24

ISRAEL TORRES,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION, OFFICE OF STUDENT PROTECTION,

Respondent.

Israel Torres, petitioner pro se

Michael Lombardi, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: June 26, 2024 Decided: July 11, 2024

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioner, Israel Torres (Torres), challenges the suspension of his bus driver "S" endorsement. The Office of Student Protection (OSP) determined that Torres violated N.J.S.A. 18A:39-28, et seq., in allegedly leaving a pupil on a school bus assigned to him

at the end of his transportation route. As a first offense of this kind, the penalty is a six-month suspension of his "S" endorsement to operate a school bus.

PROCEDURAL HISTORY

Petitioner filed his Petition of Appeal with the Department of Education, Bureau of Controversies and Disputes (Department) on April 5, 2024. On April 23, 2024, the New Jersey Department of Education, Office of Student Protection (OSP) filed a motion to dismiss in lieu of an answer, pursuant to N.J.A.C. 6A:3-1.10.[1] The matter was transferred to the Office of Administrative Law (OAL), where it was filed on April 24, 2024, as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The matter was assigned to me on June 4, 2024. I held a telephone conference on June 17, 2024, and set a briefing schedule. Torres submitted his opposition to OSP's motion to dismiss on June 18, 2024. On June 25, 2024, OSP filed a letter brief in reply. On June 26, 2024, Torres filed a statement replying to OSP's reply, which I accepted and considered. The record closed on June 26, 2024.

FINDINGS OF FACT

On March 25, 2024, after departing George L. Hess Elementary School en route to the base location for Sheppard Bus, Torres visually scanned his student mirrors and noticed a sleeping student several rows behind him. After locating a safe place to stop, Torres notified dispatch for his bus company. Dispatch advised him to return to school with the student. Torres never left the student unattended and returned the student to school as instructed.

[1] OSP had initially filed a Motion to Dismiss in Lieu of an Answer with the Commissioner under N.J.A.C. 6A:3-1.10. Upon transmittal to the OAL, the motion was converted to a summary-decision motion under N.J.A.C. 1:1-12.5.

LEGAL ANALYSIS

The School Bus Safety Act, N.J.S.A. 18A:39-26 to -33, requires that the school-bus driver "shall visually inspect the school bus to which he is assigned at the end of the transportation route to determine that no pupil has been left on the bus." N.J.S.A. 18A:39-28. A violation of N.J.S.A. 18A:39-28 results in a mandatory penalty. N.J.S.A. 18A:39-29. The statute dictates that "[i]n the event that, after notice and opportunity to be heard, a school bus driver is found to have left a pupil on the school bus at the end of his route, his school bus endorsement shall be: (a) suspended for six months, for a first offense . . . ." N.J.S.A. 18A:39-29(a).

The issue in this case is whether the Department established by a preponderance of the credible evidence that Torres failed to comply with the statutory requirement that the driver "shall visually inspect the school bus to which he is assigned at the end of the transportation route to determine that no pupil has been left on the bus." N.J.S.A. 18A:39-28. Torres acknowledged in his written statement that he discovered a sleeping student after departing the elementary school when he visually scanned his student mirrors. When Torres discovered the student, he was proceeding to the base location of Sheppard Bus, where he intended to perform the "mandated visual inspection in a safe and timely manner." (Petitioner's Opposition Statement.) Torres discovered the child before he reached his base location and upon notifying dispatch, returned the child to school. Therefore, the heart of the instant controversy lies in the interpretation of the "end of transportation route" phrase, which is not defined in the statute or regulations.

In Klein v. Department of Education, Criminal History Review Unit, EDU 00852-11, the Commissioner of Education (Commissioner) concluded that the "end of the route" as used in N.J.S.A. 18A:39-26 "terminates at the point where all of the children in that group leave the bus . . . and the bus is empty of riders, and before the driver moves on to her next route. At that point, the driver shall inspect the bus for any remaining students." Klein, Comm'r decision (February 21, 2012), <http://njlaw.rutgers.edu/collections/oal/>, at 2. The Commissioner explained that

> [t]he record show[ed] that the driver by walking to the back of the bus on that day, turning off the "Child Minder" button, taking the keys out of the ignition, letting the children out, and locking the doors, fulfilled all indicia of "end of the route" activities save one: She did not inspect the bus. Accepting [the driver's] argument that the inspection did not have to take place until the bus returned to the depot at the end of the day defies reason and eviscerates the fundamental purpose of the statute – to protect our children and ensure their safety.
>
> [Id. at 2-3.]

In 2015, in Herman v. Department of Education Criminal History Review Unit, EDU 10473-14, Initial Decision (June 23, 2015), <http://njlaw.rutgers.edu/collections/oal/>, rev'd, Comm'r (July 30, 2015), <https://www.nj.gov/education/legal/decisions/>, the Commissioner again rejected the argument that the "end of transportation route" means at the end of the workday, once the bus is dropped off at the bus depot lot. The Administrative Law Judge (ALJ) concluded that N.J.S.A. 18A:39-28's requirement of a visual inspection at the end of the route did not apply. The ALJ determined that the route had not ended as long as the bus driver had not left the vicinity of the bus; and that the visual inspection would be performed when she did depart the vicinity of the bus at the bus depot. Herman, Initial Decision, <https://www.nj.gov/education/legal/decisions/>. Upon review, the Commissioner rejected the ALJ's initial decision. Citing Klein, the Commissioner reiterated that the bus driver violated the School Bus Safety Act when she failed to visually inspect the school bus at the end of her route – that is, following the departure of the students from the bus, and before returning to the depot. Herman, Comm'r Decision, <https://www.nj.gov/education/legal/decisions/>, at 5. Concurring with what he described as the "well-reasoned definition" of "end of the transportation route" provided by the Commissioner in Klein, the Commissioner declared the ALJ's rejection of the Commissioner's holding in Klein "undermines the purpose and intent of the School Bus Safety Act." Id. at 7. He explained:

> [a]s the Commissioner stated in Klein, "Accepting petitioner's argument that the inspection did not have to take place until the bus returned to the depot at the end of the day defies reason and eviscerates the fundamental purpose of the statute – to protect our children and ensure their safety." *Klein*, *supra*, at 2. To hold otherwise would excuse – if not

> promote – inefficiency (by endorsing needless rides to the bus depot for our students) and place children at unnecessary risk of harm. It is nonsensical to delay visual inspection of the school bus until arrival at the bus depot when, in fact, any heightened safety risk to the children can be avoided altogether if they are discovered on the bus while still present on school grounds or prior to leaving the route. While it may be true that [the student] was never left unattended, and it is not known from the present record whether he suffered any harm or distress, the visual inspection required by N.J.S.A. 18A:39-28 should have occurred prior to departing the [school] at the end of the transportation route – when all of the other children had exited the bus.
>
> [Id. at 7-8.]

In his decision, the Commissioner also cited Vickery v. Department of Education Criminal History Review Unit, EDU 00083-15, Initial Decision (June 2, 2015), <http://njlaw.rutgers.edu/collections/oal/>, adopted, Comm'r (July 9, 2015), <https://www.nj.gov/education/legal/decisions/>, which he stated "reinforces the Act's requirement that the visual inspection of the school bus should have occurred before departing the [school] at the end of the transportation route – when all of the other children had exited the bus." Herman, Comm'r Decision, <https://www.nj.gov/education/legal/decisions/> at 6.

In Vickery, a school bus driver similarly failed to complete the required visual inspection of the school bus following his departure at the last bus stop on route and consequently found a sixteen-year-old student, who had fallen asleep and failed to exit the bus, at the bus yard. The driver averred he had not violated the Act because he did not leave the child alone on the bus and conducted a visual inspection upon his return to the bus yard, which was the end of his route. The ALJ determined that pursuant to Klein the Act requires that an inspection be conducted when the last child is dropped off during the route, and not after the vehicle has finished its drop-offs and has returned to its garage or depot. Vickery, Initial Decision, <https://www.nj.gov/education/legal/decisions/>. On review, the Commissioner adopted the findings and determinations of the ALJ. Vickery, Comm'r Decision, <https://www.nj.gov/education/legal/decisions/>.

Following Klein, Herman and Vickery, the Commissioner has consistently held that the "end of the transportation route" means at the end of a student drop-off point. See Arcos v. Dep't of Educ., Crim. Hist. Rev. Unit, EDU 01752-18, Initial Decision, (November 7, 2018), adopted, Comm'r (September 20, 2018), <http://njlaw.rutgers.edu/collections/oal/> ("the end of the transportation route" triggering the school bus driver's affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28 occurs when the driver drops off the children at the assigned destination and not when the bus driver competes all of her assigned routes for the day.); Pedi v. Dept. of Educ., Office of Student Protection, EDU 04317-21, Initial Decision (October 13, 2021), adopted, Comm'r (November 18, 2021), (bus driver violated N.J.S.A. 18A:39-28 when she merely conducted a "turnaround view" and not a full visual inspection of the bus after her first student drop off, continued onto her second route, and subsequently found a child from her first route.); and Severe v. Dept. of Educ., Office of Student Protection, EDU 01502-21, Initial Decision (September 19, 2022), 2022 N.J. AGEN LEXIS 794, adopted, Comm'r (October 31, 2022), <http://njlaw.rutgers.edu/collections/oal/> (the "end of the transportation route" under N.J.S.A. 18A:39-28 is when the children are dropped off at the assigned destination, that triggers the school-bus driver's affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28, not when the bus driver competes all of her assigned routes for the day.)

Here, Torres contends that it was unsafe to pull over on the premises of George L Hess Elementary School and perform a student check. In his opposition, Torres explained the traffic at the designated area for arriving and departing school buses. He explained that "he planned to perform my student check, and post trip inspection upon arrival to base" because that was the safest place to perform those duties. (Opposition Brief.) Torres failed to mention whether he performed a visual inspection of his bus after the students departed and **prior** to driving away. (emphasis mine.) According to Torres, after he drove off the premises, he noticed the sleeping student while visually scanning his student mirrors. As a result, Torres found a child on the bus as he was proceeding to his base location, having left the school. Regardless of Torres' intentions, visual inspection was required to be performed at the school prior to departure.

The statute requires the driver to visually inspect the bus at the end of his transportation route. N.J.S.A. 18A:39-28. There can no longer be any doubt that the end of the transportation route was George L. Hess Elementary School. Herein, there is no dispute to the material fact that Torres discovered the student after leaving the school en route to Sheppard Bus's base location. For that reason, he violated N.J.S.A. 18A: 39-28.

After OSP determines that a child was indeed left behind at the end of the route, a mandatory penalty is imposed due to the safety implications of such a violation. Garner v. N.J. Dep't of Educ., Crim. Hist. Rev. Unit, 2009 N.J. AGEN LEXIS 173 (April 3, 2009), adopted, Comm'r (May 1, 2009), https://www.nj.gov/education/legal/. Thus, "[i]n the event that . . . a school bus driver is found to have left a pupil on the school bus . . ., his school bus endorsement shall be: (a) suspended for six months, for a first offense . . . ." N.J.S.A. 18A:39-29(a). Here, since Torres violated the statute, the penalty imposed is mandatory, and there is no discretion to impose anything less than a six-month suspension of his "S" endorsement. Where the violation has been established, no circumstances of the event or of the driver may be considered in determining the penalty. Garner, 2009 N.J. AGEN LEXIS 173 at *5–6.

I **CONCLUDE** that the "end of the transportation route" under N.J.S.A. 18A:39-28 is when the children are dropped off at the assigned destination, that triggers the school-bus driver's affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28, not a safe and convenient location away from the designated route.

The Department seeks relief pursuant to N.J.A.C. 1:1-12.5(b), which 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." This provision mirrors the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules. The motion judge must "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." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). 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." Ibid. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. at 242, 249 (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. Ibid. (quoting Liberty Lobby, 477 U.S at 252).

I **CONCLUDE** that the evidence presented by the parties does not establish any material facts in dispute. Given the limited facts that must be established to support a violation of the duty imposed by the Legislature on a school-bus driver to properly inspect the bus at the end of a route to assure that no child is left on the bus, the arguments offered by OSP amply support summary decision in its favor. And given the mandatory nature of the penalty for a first-time violator of the mandate, the six-month suspension is the only outcome when the violation is proven. N.J.S.A. 18A:39-29(a). OSP'S motion for summary decision must be **GRANTED**.

ORDER

It is hereby **ORDERED** that OSP's motion for summary decision is hereby **GRANTED**, and it is further **ORDERED** that the petitioner's "S" endorsement shall be suspended for six months.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING**

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.

Kathleen M. Calemmo

July 11, 2024 _____

DATE

KATHLEEN M. CALEMMO. ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/tat

310-24E
OAL Dkt. No. EDU 09129-24
Agency Dkt. No. 143-5/24

New Jersey Commissioner of Education

Final Decision

K.A., on behalf of minor child, R.M.,

Petitioner,

v.

Board of Education of the Township of Randolph, Morris County,

Respondent.

The record of this emergent matter, the sound recording of the hearing at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. This matter shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 3, 2024
Date of Mailing: September 5, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER
DENYING EMERGENT RELIEF
OAL DKT. NO. EDU 09129-24
AGENCY DKT. 143-5/24

K.A., ON BEHALF OF MINOR CHILD, R.M.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF RANDOLPH, MORRIS COUNTY,
Respondent.

K.A., petitioner, pro se

Marc Zitomer, Esq., for respondent (Schenck, Price, Smith & King, attorneys)

Record Closed: July 16, 2024 Decided: July 18, 2024

BEFORE **DANIEL J. BROWN**, ALJ:

FACTUAL DISCUSSION AND PROCEDURAL HISTORY

Petitioner is the parent of R.M. R.M. enrolled at the Center Grove Elementary School (Center Grove) beginning in the 2020-2021 school year as a pre-kindergarten student. R.M. completed kindergarten during the 2020-2021 school year and first grade during the 2022-2023 school year at Center Grove, as well. Petitioner and her family moved to the Ironia section of town in November of 2023. The policy of the respondent

(the Board) provides that pupils shall generally attend the school area of their residence. Despite this, R.M. was allowed to finish his first-grade year at Center Grove. In March of 2024, petitioner made a formal request to Danielle Soldivieri, the Director of Social Services, to allow R.M. to remain at Center Grove for the 2024-2025 school year. Ms. Soldivieri spoke with the school principal at Center Grove, who stated that he spoke with R.M.'s counselor, teacher and school nurse and they were not aware of any concerns regarding R.M.'s attendance at Ironia for the 2024-2025 school year. Ms. Soldivieri denied petitioner's request. Petitioner appealed the denial to the Superintendent of schools who agreed with Ms. Soldivieri's denial.

On July 8, 2024, the Department of Education, Office of Controversies and Disputes, transmitted this case to the Office of Administrative Law (OAL) for hearing as to the resolution of petitioner's Motion for Emergency Relief. On June 11, 2024, the merits of the underlying petition were transmitted to the OAL and docketed as EDU 08123-24. On July 8, 2024, both matters were assigned to me with the direction that the case concerning the merits was to be addressed once the Motion for Emergent Relief was heard and decided.

On July 8, 2024, and July 11, 2024, I conducted telephone status conferences. On July 11, 2024, I received the Board's submission.

In petitioner's application for emergent relief, petitioner asserts that emergent relief is appropriate in this case. Petitioner places great reliance on the portion of the Board's policy that states "every effort will be made to continue a pupil in the same elementary school once the pupil has been enrolled in the elementary school". Petitioner argues that the Board is not complying with this policy because it has not made every effort or even a good faith effort to allow R.M. to continue to attend Center Grove. Additionally, petitioner highlights that portion of the policy which provides that a pupil may be assigned to a school other than in his attendance area when it is "justified by circumstances and/or is in the best interest of the pupil." Petitioner states that no one is in a better place than R.M.'s parents and doctors to determine what is in R.M.'s best interest and that they agree that staying at Center Grove next year is the best option for R.M. Petitioner also argues that the class size for next year's second grade class is below the preferred class size as

determined by the Board so there is clearly room for R.M. to attend Center Grove in the 2024- 2025 school year.

In the Board's response, the Board asserts that petitioner cannot and does not meet the standard for emergent relief. Additionally, the Board asserts that the petitioner's reliance on the portion of the Board's policy that provides that "every effort will be made to continue a pupil in the same elementary school once the pupil has been enrolled in the elementary school" is misplaced. The Board argues that the proper and routine interpretation of this rule is that the rule applies if a pupil moves during a school year that has already started and applies only during that school year. The Board argues that it cannot allow R.M. to remain at Center Grove for the remainder of his elementary education due to fluctuations in enrollment and to avoid the slippery slope that it would create for pupils in similar circumstances to R.M. Additionally, the Board states that petitioner was aware of the Board's determination that R.M. is to attend Ironia for the upcoming school year since March 25, 2024. The Board argues that the delay in the petitioner's filing of the instant application for emergent relief demonstrates that the relief that petitioner seeks is not emergent.

Oral argument on the Motion for Emergent Relief was scheduled for July 15, 2024. Petitioner moved for an adjournment of that hearing date. That adjournment request was granted. The hearing date was rescheduled to July 16, 2024.

On July 16, oral argument was conducted and completed. The record was closed on that date.

LEGAL ANALYSIS AND CONCLUSION

Under N.J.S.A. 18A:6-9, the Commissioner's jurisdiction is defined, and is limited to "controversies and disputes arising under the school laws." In Dunellen Bd. of Educ. v. Dunellen Ed. Assoc., 64 N.J. 17, 23 (1973), the New Jersey Supreme Court concluded that "the Legislature enacted provisions entrusting school supervision and management to local school boards . . . subject to the supervisory control [of] . . . the State Commissioner of Education."

The regulations governing such disputes before the Commissioner of Education provide that "[w]here the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may "[t]ransmit the motion to the OAL for immediate hearing on the motion." N.J.A.C. 6A:3-1.6(c)(3).

N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief and instructs that:

> A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982):
>
> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
>
> 2. The legal right underlying petitioner's claim is settled;
>
> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim;
>
> and
>
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.
>
> [N.J.A.C. 6A:3-1.6(b).]

Indeed, the moving party must demonstrate each element "clearly and convincingly." Waste Management of N.J. v. Union County Utilities Authority, 399 N.J. Super. 508, 520 (App. Div. 2008). Emergent relief is designed "to 'prevent some threatening, irreparable mischief, which should be averted until an opportunity is afforded for a full and deliberate investigation of the case.'" Crowe, 90 N.J. at 132 (citation omitted).

IRREPARABLE HARM:

Harm is generally considered irreparable if monetary damages cannot adequately redress it. Id. at 132-33. In other words, irreparable harm is described as "'substantial injury to a material degree coupled with the inadequacy of money damages.'" Judice's Sunshine Pontiac, Inc. v. General Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976) (citation omitted). A claimant must demonstrate more than a risk of irreparable harm. Continental Group, Inc. v. Amoco Chemicals Corp., 614 F. 2d 351, 359 (D.N.J. 1980). The requisite for injunctive relief requires a "'clear showing of immediate irreparable injury,'" or a "'presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by common law.'" Ibid.
(citation omitted).

Petitioner submits that irreparable harm is clear. Specifically, petitioner asserts that she is concerned that a change in schools for the 2024-2025 school year will cause R.M. to feel anxious because he will have no friends and will not see adults who are familiar to him. Additionally, petitioner argues that the longer R.M. goes through the summer without knowing if he is going to be able to attend Center Grove in the fall, the less R.M. will be able to mentally prepare himself and combat his anxiety.

In response, the Board argues that petitioner has not satisfied her burden of proof regarding irreparable harm by clear and convincing evidence. Specifically, the Board argues that the possible harm to R.M. that was highlighted by petitioner is not substantial or immediate. Lastly, the Board argues that petitioner has known of the Board's decision to deny her request since March of 2024 and petitioner's delay in bringing this application for emergency relief shows that the harm that petitioner complains of is not irreparable.

I agree with the Board's argument that petitioner has not satisfied her burden as to irreparable harm. Emergent relief "should not be entered except when necessary to prevent substantial, immediate and irreparable harm. "Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997).

The harm noted by petitioner is not immediate. Petitioner asserts that R.M. will feel anxious about attending a new school. However, R.M.is not currently attending this school. Petitioner may ultimately be correct in her belief that R.M. will feel anxious about attending a new school. However, at this point, this claim of possible harm is speculative and is in no way immediate. Therefore, petitioner has not met her burden as to irreparable harm.

SETTLED LEGAL RIGHT:

Emergent relief "should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133 (citing Citizens Coach Co. v. Camden H. R. Co., 29 N.J.Eq. 299, 304-305 (E & A 1878)).

Each school district is obligated to provide a thorough and efficient education system to all children residing in its school district. N.J. Const. art. VIII, § 4, ¶ 1; N.J.S.A. 18A:33-1. To carry out this policy, local boards of education have discretionary authority under N.J.S.A. 18A:11-1C. The boards adopt rules for the management of the district's public schools and act in a manner to ensure the lawful and proper conduct of the district's public schools. This Board cites the applicable policy which states that "every effort will be made to continue a pupil in the same elementary school once the pupil has been enrolled in the elementary school" and how that policy has been interpreted to apply to a student who has moved during a school year. The Board's interpretation of their rule is reasonable and entitled to deference.

In addressing her burden of proof, petitioner states that she isn't sure what a settled legal right means, but she feels she has met her burden of proof because any resident of Randolph can legally attend a school in the district, in line with district policy, as a taxpayer living in Randolph. In response, the Board states that petitioner has not met her burden of proof because petitioner cites no statute, regulation or case which supports her position. I agree.

Therefore, petitioner has not met her burden as to showing that her claim presents a settled legal right.

LIKELIHOOD OF SUCCESS ON THE MERITS:

Under the third emergent relief standard, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, supra, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115-16 (E. & A. 1930)). This requirement is often implicitly tied to whether the right to the underlying claim is settled.

A presumption of lawfulness and good faith applies to a board of education's actions. In challenges to board actions, the challenger bears the burden of proving that such acts were unlawful, arbitrary, capricious, or unreasonable. Schuster v. Bd. of Educ. Montgomery Twp., 96 N.J.A.R.2d (EDU) 670, 676 (citing Schnick v. Westwood Ed. of Educ., 60 N.J. Super. 448 (App. Div. 1960), and Quinlan v. Bd. of Educ. of North Bergen Twp., 73 N.J. Super. 40 (App. Div. 1962).

The "arbitrary, capricious and unreasonable" standard of review imposes a heavy burden on challengers of board actions, and "means having no rational basis." Piccoli v. Ed. of Educ. of Ramapo Indian Hills Regional School District, OAL DKT. EDU 1839-98 (January 22, 1999) (citing Bayshore Sewage Co. v. Dent. of Envir. Protection, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff'd 131 N.J. Super. 37 (App. Div. 1974).

In support of her argument, petitioner cites the portion of the Board's policy that states "every effort will be made to continue a pupil in the same elementary school once the pupil has been enrolled in the elementary school". Petitioner argues that the Board is not complying with this policy because it has not made every effort to allow R.M. to continue to attend Center Grove. Additionally, petitioner highlights that portion of the policy which provides that a pupil may be assigned to a school other than in his attendance area when it is "justified by circumstances and/or is in the best interest of the pupil." Petitioner states that the best interest of R.M. is to remain at Center Grove for the 2024-2024 school year because R.M.'s parents and doctors believe that is the case.

Petitioner has not met her burden as to this test. Petitioner has not shown that the Board's interpretation that the policy that "every effort will be made to continue a pupil in the same elementary school once the pupil has been enrolled in the elementary school" applies to students who move after a school year begins and applies only to that school year has no rational basis. In fact, it is demonstrably clear that the Board's interpretation of this policy has a rational basis. If the Board's interpretation isn't afforded the deference to which it is entitled, the Board will lose the ability to address fluctuations in enrollment and to enforce that portion of the policy that provides that pupils shall generally attend the school area of their residence.

BALANCING OF THE EQUITIES:

Lastly, petitioner fails to meet the fourth emergent relief standard, which involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J.Eq. 506, 515 (Ch.1941), mod. on other grounds, 132 N.J.Eq. 613 (E. & A. 1942)). To satisfy this standard, petitioner must demonstrate that she will suffer more significant harm than the Board if this tribunal does not grant the requested relief. Petitioner argues that R.M. will suffer a hardship if he is made to unexpectedly change schools in the middle of his elemenatary education. This change in schools is not unexpected. Petitioner was notified by the Board as to the denial of her request to have R.M. remain at Center Grove for the 2024-2025 school year in March of 2024. Additionally, in support of her argument, petitioner cites potential impacts to R.M.'s potential mental health and well-being. This is a speculative assertion, at best. As a result, petitioner has not satisfied her burden as to this standard.

Based on the above discussion, I **CONCLUDE** that petitioner's request is neither reasonable nor appropriate. **I CONCLUDE** that petitioner has failed to establish the existence of irreparable harm, that petitioner's request for emergent relief does not rely upon settled law, that petitioner is not likely to prevail on the merits, and that the equities do not favor petitioner. Thus, I **CONCLUDE** that petitioner's request for emergent relief does not meet the requirements under N.J.A.C. 6A:3-1.6 and must be **DENIED**.

ORDER

Therefore, I **ORDER** that petitioner's request for emergency relief be and is hereby **DENIED.**

There are no more issues to decide as to this application for emergency relief. A scheduling order has been entered to address the merits of the underlying petition docketed under EDU 08123-24.

This Order on application for emergency relief may be adopted, modified, or rejected by the Commissioner of Education, who by law is authorized to make a final decision in this matter. The final decision on the application for emergent relief shall be issued without undue delay, but no later than forty-five (45) days following the entry of this Order. If the Commissioner of Education does not adopt, modify, or reject this Order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

July 18, 2024
DATE

Daniel J. Brown
DANIEL BROWN, ALJ

Date Mailed to Parties: July 18, 2024

Date Mailed to Parties: July 18, 2024

sej

311-24SEC
SEC Dkt. No. T01-24
Agency Dkt. No. 228-7/24

New Jersey Commissioner of Education

Final Decision

In the Matter of Mark Winterbottom,
Mullica Township Board of Education,
Atlantic County

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of a thirty-day suspension, noting that respondent was previously the subject of an Order to Show Cause for failing to timely complete the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is suspended from the Board for thirty days for violating the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2024
Date of Mailing: September 5, 2024

[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.

Before the School Ethics Commission
Docket No.: T01-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Mark Winterbottom,
Mullica Township Board of Education, Atlantic County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Mark Winterbottom (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Mullica Township Board of Education, located in Atlantic County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 4 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including a targeted e-mail message on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated April 29, 2024, and May 22, 2024, advising Respondent that the Commission required completion of the training by

June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent completed his training requirement on July 3, 2024, and also filed a response to the Commission's OTSC. Importantly, Respondent did not deny that he did not complete training in a timely fashion.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required. Additionally, the Commission notes Respondent was previously issued a reprimand for failing to complete his mandatory training requirement in a timely fashion (T07-21).

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

Given that Respondent was previously the subject of an OTSC, the Commission recommends that the Commissioner of Education impose a penalty of **30-day suspension**, with such suspension to become effective immediately upon adoption by the Commissioner of Education.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the

Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T01-24

Whereas, Mark Winterbottom (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2023; and

Whereas, at its special meeting on June 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent completed his training requirement, and also filed a response to the Commission's OTSC that did not dispute that he did not complete training in a timely fashion; and

Whereas, Respondent was previously issued a reprimand for failing to complete his mandatory training requirement in a timely fashion; and

Whereas, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on July 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of 30-day Suspension on Respondent because he was previously the subject of an OTSC; and

Whereas, at its meeting on July 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on July 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

312-24SEC
SEC Dkt. No. T02-24
Agency Dkt. No. 229-7/24

New Jersey Commissioner of Education

Final Decision

In the Matter of Eric Montano,
Englewood City Board of Education,
Bergen County

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. To date, respondent has not notified the SEC that he has completed the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.*6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is removed from the Board for violating the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2024
Date of Mailing: September 5, 2024

[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.

Before the School Ethics Commission
Docket No.: T02-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Eric Montano,
Englewood City Board of Education, Bergen County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Eric Montano (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Englewood City Board of Education, located in Bergen County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 3 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated May 21, 2024, and June 5, 2024, advising Respondent that the Commission required completion of the training by

June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T02-24

Whereas, Eric Montano (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2023; and

Whereas, at its special meeting on June 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on July 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on July 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on July 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

313-24SEC
SEC Dkt. No. T03-24
Agency Dkt. No. 230-7/24

New Jersey Commissioner of Education

Final Decision

In the Matter of Carol Bitzberger,
Bass River Board of Education,
Burlington County

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. To date, respondent has not notified the SEC that she has completed the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is removed from the Board for violating the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2024
Date of Mailing: September 5, 2024

[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.

Before the School Ethics Commission
Docket No.: T03-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Carol Bitzberger,
Bass River Board of Education, Burlington County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Carol Bitzberger (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that she had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Bass River Board of Education, located in Burlington County. As a result of her position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 3 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated May 6, 2024, and June 5, 2024, advising Respondent that the Commission required completion of the training by

June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete her required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of her training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T03-24

Whereas, Carol Bitzberger (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete her training program by December 31, 2023; and

Whereas, at its special meeting on Jume 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why she failed to complete her mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement she was obligated to complete; and

Whereas, at its meeting on July 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on July 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on July 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

314-24SEC
SEC Dkt. No. T04-24
Agency Dkt. No. 231-7/24

New Jersey Commissioner of Education

Final Decision

In the Matter of Scott Pycik,
Edgewater Park Board of Education,
Burlington County

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. To date, respondent has not notified the SEC that he has completed the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.* However, subsequent to the issuance of its decision, the SEC received notice that respondent is no longer a member of the Edgewater Park Board of Education (Board) and advised the Commissioner accordingly.

Upon review, the Commissioner finds that a penalty of censure is appropriate for respondent's failure to timely honor an obligation placed upon school officials by law. If respondent had not already resigned from the Board, the Commissioner would order his removal, as

recommended by the SEC. However, as respondent is no longer a member of the Board, respondent is hereby censured for violating the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2024
Date of Mailing: September 5, 2024

[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.

Before the School Ethics Commission
Docket No.: T04-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Scott Pycik,
Edgewater Park Board of Education, Burlington County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Scott Pycik (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Edgewater Park Board of Education, located in Burlington County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 3 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated May 6, 2024, May 22, 2024, and June 5, 2024, advising Respondent that the Commission required completion of

the training by June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T04-24

Whereas, Scott Pycik (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2023; and

Whereas, at its special meeting on June 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on July 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on July 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on July 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

315-24SEC
SEC Dkt. No. T06-24
Agency Dkt. No. 232-7/24

New Jersey Commissioner of Education

Final Decision

In the Matter of Chuck Palmucci,
New Hanover Township Board of Education,
Burlington County

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. Following the issuance of its decision, the SEC received notice that respondent had completed training on June 17, 2024, and advised the Commissioner accordingly. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner finds that a penalty of censure is appropriate for respondent's failure to timely honor an obligation placed upon school officials by law. *N.J.A.C.*6A:28-4.3(b) provides that a board member who completes training after the issuance of an Order to Show Cause (OTSC), but before the SEC issues its decision, receives a censure. Here, respondent completed the training on the same day the OTSC was issued. The record does not include time

stamps showing the time the training was completed or the time the OTSC was sent to respondent. However, because the SEC did not receive notice from respondent that he had completed the training by the June 13, 2024 deadline that the SEC set in multiple communications to respondent, the SEC issued the OTSC on June 17, 2024; the Commissioner therefore deems respondent to have completed training after the issuance of the OTSC. Accordingly, respondent is censured for violating the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2024
Date of Mailing: September 5, 2024

[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.

Before the School Ethics Commission
Docket No.: T06-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Chuck Palmucci,
New Hanover Township Board of Education, Burlington County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Chuck Palmucci (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the New Hanover Township Board of Education, located in Burlington County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 1 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated May 21, 2024, and June 5, 2024, advising Respondent that the Commission required completion of the training by

June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T06-24

Whereas, Chuck Palmucci (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2023; and

Whereas, at its special meeting on June 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on June 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on June 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on June 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on June 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

316-24SEC
SEC Dkt. No. T09-24
Agency Dkt. No. 234-7/24

New Jersey Commissioner of Education

Final Decision

In the Matter of Tyesha Scott,
Paulsboro Board of Education,
Gloucester County

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. To date, respondent has not notified the SEC that she has completed the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is removed from the Board for violating the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2024
Date of Mailing: September 5, 2024

[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.

Before the School Ethics Commission
Docket No.: T09-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Tyesha Scott,
Paulsboro Board of Education, Gloucester County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Tyesha Scott (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that she had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Paulsboro Board of Education, located in Gloucester County. As a result of her position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 3 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated May 7, 2024, May 22, 2024, and June 5, 2024, advising Respondent that the Commission required completion of

the training by June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete her required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of her training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner Docket No.: T09-24

Whereas, Tyesha Scott (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete her training program by December 31, 2023; and

Whereas, at its special meeting on June 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why she failed to complete her mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement she was obligated to complete; and

Whereas, at its meeting on July 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on July 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on July 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

317-24SEC
SEC Dkt. No. T10-24
Agency Dkt. No. 235-7/24

New Jersey Commissioner of Education

Final Decision

In the Matter of Anthony Remy,
Asbury Park Board of Education,
Monmouth County

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. The SEC noted that respondent had previously been reprimanded for failing to timely complete mandatory training, as well as suspended for failing to timely file disclosure statements. To date, respondent has not notified the SEC that he has completed the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is removed from the Board for violating the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2024
Date of Mailing: September 5, 2024

[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.

Before the School Ethics Commission
Docket No.: T10-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Anthony Remy,
Asbury Park Board of Education, Monmouth County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Anthony Remy (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Asbury Park Board of Education, located in Monmouth County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 3 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including a targeted e-mail message on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated May 8, 2024, May 22, 2024, and June 5, 2024, advising Respondent that the Commission required completion of

the training by June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required. Additionally, Respondent was previously issued a reprimand for failing to timely complete his mandatory training requirement in a timely fashion (T28-21), as well as a 60-day suspension for failing to timely file his 2023 Disclosure Statements (D06-23).

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

Given that Respondent was previously the subject of two OTSC, the Commission recommends that the Commissioner of Education impose a penalty **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the

Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T10-24

Whereas, Anthony Remy (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2023; and

Whereas, at its special meeting on June 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, Respondent was previously issued a reprimand for failing to timely complete his mandatory training requirement in a timely fashion, as well as a 60-day suspension for failing to timely file his 2023 Disclosure Statements; and

Whereas, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on July 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education because he was previously the subject of two OTSC; and

Whereas, at its meeting on July 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on July 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

318-24SEC
SEC Dkt. No. T11-24
Agency Dkt. No. 236-7/24

New Jersey Commissioner of Education

Final Decision

In the Matter of Kathie Lavin,
Freehold Regional Board of Education,
Monmouth County

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a penalty of censure. Respondent has not instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.* but has filed exceptions to the recommended penalty.

In her exceptions, respondent argues that she had completed the required training by June 11, 2024, prior to the June 13, 2024 deadline set by the SEC in its correspondence to her. Respondent includes copies of three emails, which appear to be automatically generated by the Instructure training system, stating that three different assignments had been graded, with time stamps in the early morning on June 11, 2024. Respondent contends that, unbeknownst to her at the time, she had inadvertently failed to hit a required button at the end of the virtual course to allow it to be closed out and for notification to be provided to the New Jersey School Board Association (NJSBA), which offers the training programs. Respondent indicates that she only learned of the omission on July 3, 2024, through an email exchange between the SEC and the NJSBA, in

which the NJSBA confirmed that respondent completed the training but did not hit the submit button at the end. Respondent therefore urges the Commissioner to reject the recommended penalty of a censure.

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. While respondent argues that she completed the training on June 11, 2023 – prior to the SEC's deadline – the record reflects that the NJSBA confirmed that respondent completed the training on June 18, 2024 – after the OTSC was issued. The Commissioner therefore concludes that respondent completed the training after the OTSC was issued. The Commissioner further concludes that *N.J.A.C.* 6A:28-4.3(b) applies and that, unless good cause is shown, a censure is the appropriate penalty.

Respondent's citation to cases in which the SEC reprimanded board members who experienced technical difficulties are not persuasive, as those cases pre-date the passage of *N.J.A.C.* 6A:28-4.3(b). Previously, the School Ethics Act did not set a baseline penalty for failure to timely complete training, but the SEC and the Commissioner routinely reprimanded board members who completed the training after the SEC issued the OTSC but before it issued its decision. *See, e.g., In the Matter of Annette Beasley, Irvington Board of Education, Essex County*, Commissioner Decision No. 223-21SEC, decided October 13, 2021; *In the Matter of Marcos Garciga, Cliffside Park Board of Education, Bergen County*, Commissioner Decision No. 224-21SEC, decided October 13, 2021; *In the Matter of Gary Yedman, Seaside Park Board of Education, Ocean County*, Commissioner Decision No. 230-21SEC, decided October 13, 2021. Therefore, the penalty of a reprimand for the board members who experienced technical difficulties, such as those in the cases cited by respondent, was the same as the penalty imposed on board members who provided other reasons – or no reason – for their late completion.

In other words, the technical difficulties did not impact the penalty imposed. Here, respondent does not appear to have experienced technical difficulties, as there is no suggestion that she was unable to access the training system. Nonetheless, even accepting respondent's circumstances as a technical difficulty, the Commissioner concludes that it does not constitute good cause for her late completion of the training.

Accordingly, respondent is censured for violating the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2024
Date of Mailing: September 5, 2024

[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.

Before the School Ethics Commission
Docket No.: T11-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Kathie Lavin,
Freehold Regional Board of Education, Monmouth County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Kathie Lavin (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that she had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Freehold Regional Board of Education, located in Monmouth County. As a result of her position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 4 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated May 8, 2024, May 21, 2024, and June 5, 2024, advising Respondent that the Commission required completion of

the training by June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete her required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent completed her training requirement, and also filed a response to the Commission's OTSC that did not dispute that she did not complete training in a timely fashion.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of her training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the issuance of an Order to Show Cause, but before the Commission issues its decision, receives a censure." *N.J.A.C.* 6A:28-4.3(b).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **censure**.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T11-24

Whereas, Kathie Lavin (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete her training program by December 31, 2023; and

Whereas, at its special meeting on June 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why she failed to complete her mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent completed her training requirement, and also filed a response to the Commission's OTSC that did not dispute that she did not complete training in a timely fashion;

Whereas, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement she was obligated to complete; and

Whereas, at its meeting on July 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of censure on Respondent; and

Whereas, at its meeting on July 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on July 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

319-24SEC
SEC Dkt. No. T12-24
Agency Dkt. No. 237-7/24

New Jersey Commissioner of Education

Final Decision

In the Matter of Toni Ann Alfano,
Tinton Falls Board of Education,
Monmouth County

The record of this matter, the decision of the School Ethics Commission (SEC), and the exceptions filed by respondent have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a penalty of censure. Respondent has not instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.* but has filed exceptions to the recommended penalty.

In her exceptions, respondent indicates that she takes her duties seriously and takes full responsibility for not completing the training in a timely manner. She promises to be more mindful of her actions and responsibilities moving forward.

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. While the Commissioner appreciates that respondent has taken responsibility for her failure and has indicated she will be more mindful in the future, the Commissioner does not find these statements to

constitute good cause to warrant a deviation from the SEC's recommendation or the provisions of *N.J.A.C.* 6A:28-4.3(b). Accordingly, respondent is censured for violating the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2024
Date of Mailing: September 5, 2024

[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.

Before the School Ethics Commission
Docket No.: T12-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Toni Ann Alfano,
Tinton Falls Board of Education, Monmouth County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Toni Ann Alfano (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that she had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Tinton Falls Board of Education, located in Monmouth County. As a result of her position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 2 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated May 8, 2024, and June 5, 2024, advising Respondent that the Commission required completion of the training by

June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete her required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent completed her training requirement, and also filed a response to the Commission's OTSC. Importantly, Respondent did not deny that she did not complete training in a timely fashion.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of her training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the issuance of an Order to Show Cause, but before the Commission issues its decision, receives a censure." *N.J.A.C.* 6A:28-4.3(b).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **censure**.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T12-24

Whereas, Toni Ann Alfano (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete her training program by December 31, 2023; and

Whereas, at its special meeting on June 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why she failed to complete her mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent completed her training requirement, and also filed a response to the Commission's OTSC that did not dispute that she did not complete training in a timely fashion; and

Whereas, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement she was obligated to complete; and

Whereas, at its meeting on July 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of censure on Respondent; and

Whereas, at its meeting on July 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted
by the School Ethics Commission at its public meeting
on July 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

320-24SEC
SEC Dkt. No. T13-24
Agency Dkt. No. 238-7/24

New Jersey Commissioner of Education

Final Decision

In the Matter of Teena Patel,
Tinton Falls Board of Education,
Monmouth County

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. To date, respondent has not notified the SEC that he has completed the required training. Respondent has neither filed exceptions to the recommended penalty, nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.*

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Accordingly, respondent is removed from the Board for violating the School Ethics Act.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2024
Date of Mailing: September 5, 2024

[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.

Before the School Ethics Commission
Docket No.: T13-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Teena Patel,
Tinton Falls Board of Education, Monmouth County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Teena Patel (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that she had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Tinton Falls Board of Education, located in Monmouth County. As a result of her position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 4 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated May 8, 2024, and June 5, 2024, advising Respondent that the Commission required completion of the training by

June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete her required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of her training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T13-24

Whereas, Teena Patel (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete her training program by December 31, 2023; and

Whereas, at its special meeting on June 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why she failed to complete her mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement she was obligated to complete; and

Whereas, at its meeting on July 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on July 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on July 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

321-24SEC
SEC Dkt. No. T16-24
Agency Dkt. No. 239-7/24

New Jersey Commissioner of Education

Final Decision

In the Matter of Gisselle Bond,
Roselle Board of Education,
Union County

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A.* 18A:12-33 by failing to timely complete the required board member training. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if respondent completed the required training before the issuance of the Commissioner's final decision and notified the SEC accordingly, the SEC recommended a sanction of a thirty-day suspension. To date, respondent has not notified the SEC that he has completed the required training. Respondent has not instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C.* 6A:4-1 *et seq.* but has filed exceptions to the recommended penalty.

In her exceptions, respondent indicates that all correspondence regarding this matter was sent to her personal email address, rather than her Board email address, and, as such, she was unaware of any issue until the SEC issued its decision on July 23, 2024. Respondent argues that she completed her Governance III training in October 2023, but the proof of the completed courses was never uploaded by the New Jersey School Boards Association (NJSBA), which offers the training

programs.[1] Respondent also contends that she completed the substantive portions of the Governance II training online, but mistakenly did not finish the signature section.[2] Respondent includes copies of what appear to be automated emails from the NJSBA on July 29 and 30, 2024, which confirm that she completed the trainings, as well as a copy of her transcript showing the courses as being completed on July 29 and 30, 2024. Respondent urges the Commissioner to reduce her penalty from a removal or suspension to a reprimand or warning.

Upon review, the Commissioner concurs with the penalty recommended by the SEC for respondent's failure to timely honor an obligation placed upon school officials by law. Initially, the Commissioner finds petitioner's argument that she did not see any notices about this matter unavailing. The record reflects that the SEC sent all emails regarding the training requirement, as well as the OTSC, to the same email address to which it sent the July 23, 2024 decision, which respondent clearly received. This email address is also the one that respondent used to forward the NJSBA's automated emails to her attorney, as demonstrated by Exhibit C to her exceptions, on August 1, 2024. As the email address used by the SEC was correct and active, there is no reason that respondent should not have received the SEC's emails, and the fact that respondent apparently overlooked them is not sufficient reason to reduce her penalty.

While respondent argues that she completed the training prior to the SEC's deadline, the record reflects that the NJSBA did not confirm that the training was completed until July 29 and 30, 2024 – after the SEC issued its decision. The Commissioner therefore concludes that respondent

[1] Respondent does not provide any documentation regarding her attendance at an October 2023 Governance III course.

[2] Respondent's certification does not indicate the date on which she allegedly competed the online Governance II course.

completed the training after the SEC issued its decision and, pursuant to *N.J.A.C.* 6A:28-4.3(c), a 30-day suspension is the appropriate penalty.

Accordingly, respondent is suspended from the Board for 30 days for violating the School Ethics Act.

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2024
Date of Mailing: September 5, 2024

[3] 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.

Before the School Ethics Commission
Docket No.: T16-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Gisselle Bond,
Roselle Board of Education, Union County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Gisselle Bond (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that she had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Roselle Board of Education, located in Union County. As a result of her position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 2 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated May 8, 2024, May 21, 2024, and June 5, 2024, advising Respondent that the Commission required completion of

the training by June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete her required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of her training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision, provided the board member or trustee provides written notice of successful completion of the training requirement.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner
Docket No.: T16-24

Whereas, Gisselle Bond (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete her training program by December 31, 2023; and

Whereas, at its special meeting on June 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why she failed to complete her mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why she did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement she was obligated to complete; and

Whereas, at its meeting on July 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be within forty-five (45) days after the mailing date of this decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education, provided the board member or trustee provides written notice of the successful completion of the training requirement; and

Whereas, at its meeting on July 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on July 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

324-24
OAL Dkt. No. EDU 11568-19
Agency Dkt. No. 171-7/19

New Jersey Commissioner of Education

Final Decision

Richard Derkacs,

Petitioner,

v.

Board of Education of the Essex County Schools of Technology, Essex County,

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 5, 2024
Date of Mailing: September 6, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. EDU 11568-19

AGENCY DKT. NO. 171-7/19

RICHARD DERKACS,

Petitioner,

v.

ESSEX COUNTY SCHOOLS OF TECHNOLOGY, BOARD OF EDUCATION, ESSEX COUNTY,

Respondent.

Kathleen Naprstek Cerisano, Esq., for petitioner, (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys)

M. Murphy Durkin, Esq., for respondent (Durkin & Durkin, LLC, attorneys)

Record Closed: July 17, 2024 Decided: July 18, 2024

BEFORE **DANIELLE PASQUALE**, ALJ:

This matter was transmitted to the Office of Administrative Law on August 22, 2019 for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The parties have agreed to a settlement and have prepared a Settlement Agreement and Mutual Release indicating the terms thereof. A copy of the Settlement Agreement and Mutual Release is attached and fully incorporated herein.

I have reviewed the record and the terms of settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures on the attached settlement agreement and the attached Board resolution.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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.

July 18, 2024
DATE

DANIELLE PASQUALE, ALJ

Date Received at Agency: July ~~18~~ 30 2024

E-Mailed to Parties: July 18, 2024

Attachment
/lr

Kathleen Naprstek Cerisano, Esq.
Attorney ID # 006441992
ZAZZALI P.C.
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Attorneys for Petitioner Richard Derkacs

RICHARD DERKACS, Petitioner, v. ESSEX COUNTY SCHOOLS OF TECHNOLOGY BOARD OF EDUCATION, ESSEX COUNTY, Respondent.	:	BEFORE THE COMMISSIONER OF EDUCATION/OFFICE OF ADMINISTRATIVE LAW OAL DKT. NO. EDU 11568-2019 AGENCY DKT. NO. 171-7/19 **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and General Release ("Settlement Agreement") is entered into by and between Petitioner Richard Derkacs ("Petitioner" or "Mr. Derkacs") and Respondent Essex County Vocational Technical Schools Board of Education, improperly identified as Essex County Schools of Technology Board of Education ("Respondent" or "District"), both of whom are collectively referred to as "the Parties."

WHEREAS Petitioner Richard Derkacs ("Mr. Derkacs") commenced employment as a teacher with Respondent Essex County Vocational Technical Schools Board of Education ("District") in September 2008 and served as a full-time teacher with the District through the 2018-2019 school year teaching classes in its Science program and its Culinary Arts Food Management program; and

WHEREAS in June 2019 Respondent authorized the reduction and reassignment of Petitioner from a full-time teaching position to a part-time (.2) teaching position for the 2019-

2020 school year in connection with the proposed elimination of the Culinary Arts Food Management Program; and

WHEREAS Petitioner filed a Petition of Appeal challenging the violation of his tenure and seniority rights by Respondent's decision to reduce his full-time teaching position to a .2 teaching position during the 2019-2020 school year; and

WHEREAS in May 2020 Respondent thereafter authorized the termination of Petitioner's employment in connection with a reduction in force to eliminate the position of Teacher of Earth Science; and

WHEREAS Respondent recalled Petitioner to employment in a full-time teaching position on or about September 1, 2023 for the 2023-2024 school year, and Petitioner continues in that position; and

WHEREAS, Petitioner and Respondent, upon consultation with their respective counsel, have independently concluded that it is in their respective best interests to settle and resolve this dispute, with each party to bear their own counsel fees, costs and disbursements;

NOW THEREFORE, it is agreed by and between the Parties hereto as follows:

1. Respondent agrees to pay to Petitioner the gross amount of $11,720.62, subject to standard and ordinary payroll deductions, which is the back pay of $88,730.00 Petitioner should have received for the 2020-2021 school year less monies Petitioner received from unemployment benefits and other sources during that time period.

2. Respondent agrees to pay to Petitioner the gross amount of $91,316.00, subject to standard and ordinary payroll deductions, which is the back pay Petitioner should have received for the 2021-2022 school year.

3. Respondent agrees to pay to Petitioner the gross amount of $93,506.00, subject to standard and ordinary payroll deductions, which is the back pay Petitioner should have received for the 2022-2023 school year.

4. Respondent shall be liable to the Division of Pensions and Benefits and/or Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) for the payment of Respondent's share, if any, of pension contributions for the back pay for the 2020-2021, 2021-2022 and 2022-2023 school years, as set forth in paragraphs 1, 2, and 3 above. Petitioner shall be liable for the employee's or member's share of pension contributions to TPAF, and these pension contributions shall be deducted from the back pay payments due to Petitioner, as set forth in paragraphs 1, 2, and 3 above.

5. The Parties understand that Respondent cannot assure that Petitioner will receive pension credit or any amount of a specific pension credit because that determination must be made by the Division of Pensions and/or the Board of Trustees of the TPAF. Respondent agrees to take all reasonable actions to assist Petitioner in acquiring pension credit for the back pay for the 2020-2021, 2021-2022 and 2022-2023 school years.

6. If Respondent has not already done so, it shall promptly reinstate all accrued sick days which Petitioner had at the time of the termination of his employment effective June 30, 2020.

7. Along with receiving fully seniority credit for the 2020-2021, 2021-2022 and 2022-2023 school years, Petitioner is also be entitled to 15 sick days for each of the three (3) school years; Respondent shall ensure that those forty-five (45) sick days are added to any accrued sick days held by Petitioner at the time of the termination of his employment.

8. With the seniority credit for the 2020-2021, 2021-2022 and 2022-2023 school years, Petitioner is also entitled to longevity for completing fifteen (15) years of service with the

District and is entitled to a longevity payment of $1,603.00 for the current school year (2023-2024. This payment shall be made by Respondent to Petitioner within thirty (30) days of approval of the terms and conditions of this settlement, if said payment has not already been incorporated into Petitioner's pay.

9. Petitioner shall withdraw the Petition of Appeal presently pending before the Office of Administrative Law and Commissioner of Education, with prejudice, when his counsel receives notice and documentation that Respondent has approved the terms and conditions of this settlement and executed same.

10. Respondent shall make payment to Petitioner of the back pay award of $196,542.62, less the pension and other payroll deductions set forth above, within thirty (30) days after the Division of Pensions and/or the Board of Trustees of the TPAF advise the Respondent of the amount due for back pension contributions.

11. Respondent shall also make payment to Petitioner of the sum of $2,473.00, subject to standard and ordinary payroll deductions, as compensation for teaching a 7th period class from September 1, 2019 to November 22, 2019 (62 days @$39.89 per day). This was the subject of a grievance and settlement negotiations between the parties prior to the termination of Petitioner's employment in June 2020. This payment shall be made by Respondent to Petitioner within thirty (30) days after the Division of Pensions and/or the Board of Trustees of the TPAF advise the Respondent of the amount due for back pension contributions.

12. This Settlement Agreement resolves any and all claims by Petitioner arising from Respondent's reduction and termination of his employment, effective June 30, 2019, and regarding Petitioner's allegation that Respondent acted unlawfully in terminating his employment and/or in failing to retain Petitioner in a full-time teaching position.

13. The Parties hereto agree that this Settlement Agreement may not be modified, altered, or changed except by written agreement signed by the Parties hereto. In the event, however, that this Agreement requires some modification to facilitate its acceptance by TPAF and its approval by the Commissioner of Education, the Parties agree to make such modification in a timely fashion to effectuate the intent of the Parties as to this Agreement. The Parties further acknowledge that this constitutes the entire agreement between them, superseding all prior written and oral agreements. If any provision of this Settlement Agreement is held to be invalid, the remaining provisions shall remain in full force and effect.

14. By signing this Settlement Agreement, the Parties certify that they have had the opportunity to discuss this Agreement with counsel. They are fully satisfied with the services of their counsel with respect to both this Settlement Agreement and all other aspects of this case and they enter into this Settlement Agreement knowingly, willingly, and without any coercion or improper inducements.

15. The Parties agree that this Settlement Agreement may be signed in counterparts and that facsimiles of signatures will have the same force and effect as original signatures.

16. This Settlement Agreement is subject to the approval of the NJ Office of Administrative Law and the Commissioner of Education and shall not be binding until said approvals are received.

17. By entering into this Settlement Agreement, each party releases and discharges the other with respect to all claims or rights that either party may have against the other for anything which has happened up until the date that this Settlement Agreement is executed by all parties. This includes without limitation, any and all actions, claims and liabilities of whatsoever kind or character, in law or equity, now known or unknown, suspected or unsuspected, directly or indirectly related to the Petitioner's employment with the Respondent. It specifically includes

without limitation, all claims which the Petitioner may have regarding Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), 29 U.S.C. §1161 *et seq.*, withholding of increment, discrimination on any basis, any federal or state civil rights law, claims under the Civil Rights Act of 1964, 42 U.S.C. §2000(e) *et seq.* as amended, 42 U.S.C. §1981 through 1988, the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*, of 1990, the New Jersey Law Against Discrimination, N.J.S.A. 10:501 *et seq.*, the Family and Medical Leave Act, 29 U.S.C. §2601 *et seq.*, the New Jersey Family Medical Leave Act, N.J.S.A. 34:19-1, *et seq.*, and any other federal or state civil rights claims, including claims of age discrimination and other rights and claims arising under the Age Discrimination in Employment Act and the Older Workers' Benefits Protection Act, rights under any collective bargaining agreement, disability payments, sick leave, salary or any other matter pertaining to her employment, any claims arising under common law, including but not limited to, theories of tort or contract (express or implied), assault, battery, defamation, discrimination, negligent supervision, intentional or negligent infliction of emotional distress, negligent hire/retention/supervision, tortious interference with an economic or prospective advantage, wrongful termination, breach of implied covenant of good faith and fair dealing, or a violation of public policy.

18. This Agreement is not an admission by any of the Parties and/or any of their agents, employees or representatives of any wrongdoing or liability and is being entered into solely for the purpose of economic expediency. There are no prevailing parties in this matter. The Settlement Sum is inclusive of attorneys' fees and costs. The Respondent is not obligated to pay any monies in excess of the settlement sum set forth herein.

19. The Parties have not relied upon any representations, promises, or agreements of any kind made to them in connection with this Settlement Agreement, except for those set forth in this Settlement Agreement.

20. This Settlement Agreement is made, entered into, and executed in the State of New Jersey, and shall in all respects be interpreted, enforced and governed under the law of the State of New Jersey.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year written below.

Richard Derkacs

Dated: 06/14/2024

Richard Derkacs

ZAZZALI P.C.
Attorneys for Petitioner

Dated: 6/14/2024

By: Kathleen Naprstek Cerisano, Esq.

Essex County Vocational Technical Schools Board of Education

By:

Dated: 6/24/2024

DURKIN & DURKIN, LLC
Attorneys for Respondent

Dated: 6/20/24

By: M. Murphy Durkin, Esq.

Essex County Vocational Technical Schools
BOARD OF EDUCATION

REV. EDWIN D. LEAHY, O.S.B.
PRESIDENT

ADRIANNE DAVIS
VICE PRESIDENT

MEMBERS

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SUPERINTENDENT

BERNETTA DAVIS
BUSINESS ADMINISTRATOR

LORI TANNER
BOARD SECRETARY

M. MURPHY DURKIN, ESQ
BOARD ATTORNEY

Extract From The Minutes Of A Meeting Of The
Essex County Schools of Technology Board of Education
As Recorded In The Official Minute Book

The Board of Education of the Essex County Schools of Technology Schools District in the County of Essex, New Jersey convened for the Regular Board Meeting on **June 10, 2024** at the LeRoy Smith, Jr. Public Safety Building, 60 Nelson Place, 14th Floor, Sheila Oliver Conference Room, Newark, NJ 07102. The members of the Board of Education present and absent at the time of this action were:

Present: Mr. Reginald Bledsoe, Mr. Salvatore Carnovale, Ms. LeeSandra Medina, Dr. Chris T. Pernell

Absent: Ms. Jennifer Carrillo-Perez, Ms. Adrianne Davis, Rev. Edwin D. Leahy, O.S.B.

STATE OF NEW JERSEY, COUNTY OF ESSEX

I, Lori Tanner, Board Secretary of the Board of Education in the County of Essex, State of New Jersey, hereby certify that the following extract from the minutes of the meeting of the Board of Education duly called and held on the date indicated has been compared by me with the original minutes as officially recorded in my office in the Minutes Book of said Essex County Vocational Technical Schools District; and is a true, complete copy thereof and of the whole of said original minutes so far as the same relate to the subject matter referred to in said extract in witness I have hereunto set my hand and affixed the corporate seal of said Essex County Vocational Technical Schools District.

Resolution #24-636: **Authorization for the District to Enter into a Settlement Agreement and Release with regard to a case captioned Richard Derkacs v. Essex County Schools of Technology Board of Education, Essex County, OAL Docket No. EDU-11568-2019 for the sum of $199,015.62, Local Funds**

WHEREAS, on or about July 17, 2019, Richard Derkacs ("Mr. Derkacs") filed an action captioned Richard Derkacs v. Essex County Schools of Technology Board of Education, Essex County with the Office of Administrative Law under docket no. EDU-11568-2019 alleging in part that his employment with the District was improperly terminated in furtherance of a reduction in force. The District thereafter filed the appropriate responsive pleadings to same; and

WHEREAS, during the pendency of the above referenced action, Mr. Derkacs's employment was reinstated with the District. Additionally, there have been numerous settlement discussions by and between the District and Mr. Derkacs, through his attorney, Kathleen Naprstek Cerisano, Esq. of Zazzali P.C., with regard to

settlement. These discussions have resulted in Mr. Derkacs agreeing to accept the sum of $199,015.62, subject to standard and ordinary payroll deductions, in full satisfaction of all claims. M. Murphy Durkin, Board Counsel, has further discussed this matter with the Superintendent of Schools who hereby recommends to the Board that they authorize the involved Settlement Agreement and Release; and

WHEREAS, Bernetta Davis, Business Administrator, hereby represents to the Board that there are sufficient funds within the District's Local Funds to fully fund the settlement and that said payment will not adversely affect the financial stability of the District; now

On the motion of Ms. Medina, seconded by Dr. Pernell, BE IT RESOLVED, that upon the recommendation of the Superintendent of Schools, the Board hereby authorizes the District to enter into a Settlement Agreement and Release with regard to the case captioned Richard Derkacs v. Essex County Schools of Technology Board of Education, Essex County under Office of Administrative Law docket no. EDU-11568-2019 in the sum of $199,015.62, pursuant to the terms and conditions of the Settlement Agreement and Release, a copy of which is attached hereto and incorporated herein as if fully set forth; and

BE IT FURTHER RESOLVED, that Dr. James Pedersen, Superintendent of Schools, and/or Bernetta Davis, Business Administrator, are hereby authorized by the Board to execute the Settlement Agreement and Release as referenced above.

Yeas: Mr. Bledsoe, Mr. Carnovale, Ms. Medina, Dr. Pernell, Ms. Davis, Fr. Leahy
Nays: None
Absent: Ms. Perez, Ms. Davis, Fr. Leahy

Lori Tanner
Board Secretary

July 16, 2024
Date

325-24

New Jersey Commissioner of Education

Final Decision

N.H., on behalf of minor child, S.A.,

Petitioner,

v.

Board of Education of the Kingsway Regional School District, Gloucester County,

Respondent.

Synopsis

Petitioner appealed the long-term suspension imposed by the respondent Board upon her daughter, S.A., for her alleged participation in an altercation in the cafeteria at Kingsway Regional High School on March 6, 2023. Petitioner contended that the Board, *inter alia*, failed to follow applicable statutes and regulations when imposing a long-term suspension upon S.A., rendering its decision arbitrary, capricious, and unreasonable. Petitioner sought to reverse the suspension and to compel the Board to expunge any reference to a long-term suspension from S.A.'s student record; petitioner further sought an order compelling the Board to allow S.A. to return to the general education setting immediately.

The ALJ found, *inter alia*, that: following a lengthy period of discussions, discovery, and motion practice, the respondent Board submitted a letter dated July 18, 2024, voluntarily withdrawing its answer and separate defenses to the petition; as such, the facts set forth in N.H.'s verified petition are uncontested. The ALJ concluded that justice, fairness in administration, and simplicity require that, consistent with the spirit of *N.J.A.C.* 6A:3-1.5(e) and *N.J.A.C.* 1:1-1.3, the facts outlined in petitioner's complaint be adopted and incorporated by reference. Accordingly, the ALJ ordered that S.A.'s long-term suspension be reversed; that S.A. be returned to the general education setting at Kingsway without restriction; that S.A.'s disciplinary record be amended to reflect a lesser violation of Kingsway's code of conduct; that all references to the improperly imposed long-term suspension be removed from S.A.'s student records and that such records be amended to reflect the initial short term suspension of eight days; and that S.A.'s attendance records reflect that from March 17, 2023 to June 14, 2024, S.A. received home instruction, without reference to any suspension.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter.

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

325-24
OAL Dkt. No. 13237-23
Agency Dkt. No. 298-10/23

New Jersey Commissioner of Education

Final Decision

N.H., on behalf of minor child, S.A.,

Petitioner,

v.

Board of Education of the Kingsway Regional School District, Gloucester County,

Respondent.

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, following the Kingsway Regional School District Board of Education's (Board) withdrawal of its opposition to the petition of appeal, the facts outlined in the petition should be adopted. The Commissioner further concurs with the ALJ's orders regarding the relief to be granted to petitioner, as comprehensively outlined in the Initial Decision. Accordingly, the Initial Decision is adopted as the final decision in this matter.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 5, 2024
Date of Mailing: September 6, 2024

[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 13237-23

AGENCY DKT. NO. 298-10/23

N.H. ON BEHALF OF MINOR CHILD, S.A.,

Petitioner,

v.

KINGSWAY REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION, GLOUCESTER COUNTY

Respondent.

Sarah E. Zuba, Esq., for petitioner N.H., on behalf of minor child, S.A. (Reisman, Carolla, Gran & Zuba, LLP, attorneys)

Stephen J. Edelstein, Esq., for respondent Kingsway Regional School District Board of Education, Gloucester County (Weiner Law Group, LLP, attorneys)

Record Closed: July 18, 2024 Decided: July 31, 2024

BEFORE **ROBERT D. HERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner, N.H., on behalf of her daughter, S.A., filed a verified petition seeking various relief from respondent, the Kingsway Regional School District Board of Education, Gloucester County (Board). The Board withdrew its answer and separate defenses

during the litigation. The issues presented are: (1) what to do when the respondent in a Department of Education matter withdraws its answer and separate defenses; and (2) what relief, if any, may be granted.

PROCEDURAL HISTORY

On March 6, 2023, S.A. was involved in an altercation at Kingsway Regional High School (KRHS). On March 7, 2023, disciplinary action was initiated against S.A., resulting in an eight-day out-of-school suspension. N.H. sought appeal of the infraction level and suspension imposed on S.A. On March 16, 2023, the superintendent, Dr. James Lavender, sought to increase the out-of-school suspension from eight days to indefinite.

On July 27, 2023, a disciplinary hearing was conducted before the Kingsway Regional School District Board of Education. At the conclusion of the hearing, the Board voted to uphold the infraction level and discipline recommended by Dr. Lavender. This was formalized in an undated Board resolution. On September 8, 2023, N.H. received a letter from the Board dated August 3, 2023, and a copy of the Board's resolution upholding the infraction level and discipline imposed.

On October 31, 2023, petitioner filed her verified petition with the Acting Commissioner of the Department of Education (Commissioner). On November 20, 2023, the Board filed an Answer to Petition of Appeal and Separate Defenses. On November 22, 2023, this matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

On December 26, 2023, petitioner filed her first motion for emergent relief. Following extensive discussions between counsel, the motion for emergent relief was withdrawn on January 18, 2024. After attempts at resolution proved unsuccessful, a final prehearing conference was conducted on February 14, 2024.

On March 1, 2024, the Board filed a motion for summary decision based upon the alleged failure to file an appeal within ninety days of notification of the disciplinary final

order pursuant to N.J.A.C. 6A:3-1.3(i). An order denying the Board's motion for summary decision was entered on April 16, 2024. On April 23, 2024, the Board applied to the Commissioner seeking interlocutory review and reversal of the April 16, 2024, order denying its motion for summary decision.

On May 3, 2024, in a four-page decision, the Commissioner denied the Board's request for interlocutory review. D.O.E. Order 178-24 (May 3, 2024). In the decision, the Commissioner explained the Board's obligations pursuant to N.J.A.C. 6A:16-7.3(c), N.J:A.C. 6A:16-7.3(d), and N.J.A.C. 6A:16-7.3(e). Further, and while S.A.'s suspension is ongoing, the Commissioner required the Board to make determinations pursuant to N.J.A.C. 6A:16-7.3(d) at its next scheduled meeting and at every scheduled Board meeting thereafter. Id. at 3–4.

Following the matter's return to the OAL, settlement discussions again commenced but, as before, failed to bear fruit. On May 20, 2024, petitioner filed a second emergent motion seeking to "[r]everse the Board's determination following the July 27, 2023 hearing to continue S.A.'s suspension; and . . . [o]rder the Board to allow S.A. to return to the general education setting without any further conditions or restrictions immediately."[1] On May 21, 2024, petitioner's motion seeking emergent relief was transmitted to the OAL for determination.

Also on May 21, 2024, the Board provided its opposition to petitioner's motion for emergent relief. The Board supplemented its opposition by way of certification from Dr. Lavender on May 23, 2024.

On May 24, 2024, in advance of oral argument, the administrative law judge (ALJ) sent counsel a letter with six questions for consideration and response. The Board provided a written response on May 25, 2024, and petitioner provided a written response the day thereafter.

[1] Petitioner's Motion for Emergent Relief, May 20, 2024, at 2.

On May 28, 2024, extensive oral argument was conducted. Following oral argument, the record remained open for the Board to submit a copy of the May 27, 2024, executive session "meeting minutes" and for petitioner to provide supplemental submissions involving extracurricular activities at KRHS. On May 30, 2024, the Board provided the meeting minutes. Also on May 30, 2024, petitioner provided supplemental submissions relating to the Naval Junior Reserve Officer Training Corps (NJROTC) cadet program at KRHS and S.A.'s request to partake in "senior portraits," which were scheduled at KRHS on June 20, 2024, and June 21, 2024.

On May 31, 2024, the OAL sent an email to the Board's counsel. First, the email asked if the Board consented to petitioner sitting for her senior portraits. Second, the email asked the Board if it considered anything additional, in greater depth, or with greater detail than what is contained in the May 27, 2024, summary in its May 16, 2024, Executive or Public Session(s).

In a response dated Friday, May 31, 2024, the Board advised that it did not consent to petitioner sitting for her senior portraits. After close of business on the same day, the Board emailed a response to the second query, advising that its considerations were reflected in Dr. Lavender's May 23, 2024, certification, which was previously submitted and of which a courtesy copy was provided with the response.

The Board's after-hours email of May 31, 2024, was reviewed by me on Monday, June 3, 2024. Following review and in an order dated June 4, 2024, petitioner's emergent relief was granted in part and denied in part.

By decision dated June 14, 2024, the Commissioner affirmed in part (senior portraits) and reversed in part (Commissioner then granting immediate reentry into KRHS and NJROTC) my order of June 4, 2024.

Following receipt of the Commissioner's June 14, 2024, decision, discussions were held between the ALJ and counsel. Ultimately, these discussions culminated in the Board withdrawing its Answer to Petition of Appeal and Separate Defenses. On July 18, 2024, the Board expressly withdrew its opposition to petitioner's verified petition.

FACTS

Following extensive discussions, discovery, motion practice, and upon receipt of the July 18, 2024, correspondence from the Board, and after a colloquy between the parties and myself, I **FIND** that respondent, Kingsway Regional School District Board of Education, by way of letter dated July 18, 2024, which is attached to this initial decision, knowingly and voluntarily withdrew its answer and separate defenses to petitioner's Verified Petition of Appeal. I **FURTHER FIND**, for the reasons set forth herein, that the facts set forth in petitioner's verified petition are uncontested, and for purposes of this initial decision, true. As such, the statements of fact set forth in petitioner's Verified Petition of Appeal, to wit, paragraphs 1–34, are hereby incorporated by reference.

LEGAL ANALYSIS AND CONCLUSION

The Board's withdrawal of its answer and separate defenses during the course of litigation presents a rather unusual issue for consideration. Pursuant to N.J.A.C. 6A:3-1.5(a), a respondent in Department of Education matters is required to "serve an answer upon the petitioner within 20 days after receipt of the petition, unless a shorter period is required by statute, regulation, or court order, or directed by the Commissioner due to the emergent nature of a matter." N.J.A.C. 6A:3-1.5(a). Where a respondent fails to answer such petition timely, notice is sent to petitioner advising that, "unless an answer is filed within 10 days of the receipt of said notice, each count in the petition shall be deemed admitted and the Commissioner may decide the matter on a summary basis." N.J.A.C. 6A:3-1.5(e). The opposite of this, where a respondent knowingly and voluntarily withdraws its answer, is not covered.

Essentially, there are four potential ways to go about this. The first is to return the matter to the agency for want of jurisdiction. See generally N.J.A.C. 1:1-3.3 (Return of Transmitted Cases) (withdrawal of answer not listed). This is economical but not particularly responsive to the situation. The second is to consider this an uncontested matter. In itself, this fits within the ambit of N.J.A.C. 6A:3-1.5(e) where each count is deemed admitted. However, N.J.A.C. 6A:3-1.5(e) involves those matters filed with the

Department of Education and where jurisdiction is not yet conveyed to the OAL. Third, the matter could be treated as one for summary disposition pursuant to N.J.A.C. 1:1-12.5(a). Though arguably no motion was filed, the administrative rules "may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice." N.J.A.C. 1:1-1.3(b). Fourth, and perhaps most importantly, pursuant to N.J.A.C. 1:1-1.3(a), the procedural rules "shall be construed 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). Together, N.J.A.C. 1:1-1.3(a) (construction of administrative rules) and N.J.A.C. 1:1-1.3(b) (focus on fairness and justice) are a potent combination.

It is now late July, and summer recess enters its final month. September, and with it the beginning of the new school year, will be here quickly. There is no reason to wait; there is no reason to delay. The fourth option, noted above, includes a combination of the prior three and makes the most sense in this circumstance. It is time.

Accordingly, I **CONCLUDE** that justice, fairness in administration, and, equally important, simplicity—both individually and collectively—require that the facts outlined in petitioner's verified complaint are hereby adopted and incorporated by reference. This is consistent with the spirit of N.J.A.C. 6A:3-1.5(e) and N.J.A.C. 1:1-1.3. Based on this, petitioner's requests for relief should be, and will be, granted.

ORDER

As a result of respondent's withdrawal of its opposition to petitioner's verified complaint, I **ORDER** that the following relief be granted based upon the relief sought in the Verified Petition of Appeal:

1. The Kingsway Regional School District Board of Education's determination to continue S.A.'s suspension on or about July 27, 2023, shall be and hereby is **REVERSED**.

2. S.A. shall be returned to the general education setting at Kingsway Regional High School forthwith, along with all rights of participation, privileges, and abilities associated therewith, without restriction.

3. In paragraph 32 of her verified petition, petitioner submits that the disciplinary charge of Tier IV.A. Assault, as set forth in the Kingsway Regional High School 2022–2023 Student Handbook, is unsupported and that any such finding by the Kingsway Regional School District Board of Education was "arbitrary, capricious, and unreasonable in light of the offense." Petitioner sought, in her demand for relief, at paragraph (d), "such other relief as is necessary and proper and within the jurisdiction of the Commissioner." Pursuant to this demand for relief, I **FURTHER ORDER** that petitioner's disciplinary/school record(s) be amended to reflect a violation of "Tier III.I. Incitement to Fight," a "Misdemeanor" violation, which includes "verbal or electronic threats and/or battery (unwanted physical contact)," for and relating to the March 6, 2023, altercation.

4. Pursuant to petitioner's demand for relief, at paragraph (b) of petitioner's verified petition, I **FURTHER ORDER** that references to the long-term suspension improperly imposed in this matter be removed from petitioner's disciplinary/school record(s) and that such records are amended to reflect the initial short-term suspension of eight days.

5. Pursuant to petitioner's demand for relief, at paragraph (b) and paragraph (d) of petitioner's verified petition, I **FURTHER ORDER** that petitioner's school attendance record reflect, from March 17, 2023, through June 14, 2024, inclusive, that petitioner received "home instruction" without reference to any suspension or reference to any action or inaction by Kingsway Regional High School, including its administration, by the Kingsway Regional School District administration, or by the Kingsway Regional School District Board of Education.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

July 31, 2024
DATE

ROBERT D. HERMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

RDH/sw/dc

LIST OF EXHIBITS

Petitioner's October 31, 2023, Verified Petition of Appeal (7 pages)

Respondent's July 18, 2024, letter to the ALJ (1 page)

326-24
OAL Dkt. No. EDU 14295-23
Agency Dkt. No. 322-11/23

New Jersey Commissioner of Education

Final Decision

D.R. and S.P., on behalf of minor child, A.R.,

Petitioners,

v.

Board of Education of the Township of South Brunswick, Middlesex County,

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 5, 2024
Date of Mailing: September 6, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
APPROVING SETTLEMENT
OAL DKT. NO. EDU 14295-23
AGENCY REF. NO. 322-11/23

D.R. AND S.P. ON BEHALF OF
MINOR CHILD A.R.,
Petitioner,

v.

TOWNSHIP OF SOUTH BRUNSWICK
BOARD OF EDUCATION,
Respondent.

Michelle M. Schott, Esq., for petitioner (Flanagan Barone & O'Brien, LLC, attorneys)

Kerri A. Wright, Esq., for respondents (Porzio, Bromberg & Newman, PC, attorneys)

Record Closed: July 12, 2024 Decided: July 18, 2024

BEFORE **JEFFREY N. RABIN**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle this case and have entered into an agreement. Their settlement agreement is attached to this decision.

Having reviewed the terms of their agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

I **FILE** my decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration. This recommended decision may be adopted, modified, or rejected by **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is empowered by law to make a final decision in this case. If the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not so act within 45 days, and unless such time limit is otherwise extended, this recommended decision becomes a final decision in accordance with N.J.S.A. 52:14B-10.

July 18, 2024
DATE

JEFFREY N. RABIN, ALJ

Date Received at Agency: July 23, 2024

Date Mailed to Parties: July 23, 2024

SETTLEMENT AGREEMENT AND RELEASE

BETWEEN THE

SOUTH BRUNSWICK BOARD OF EDUCATION

AND

D.R. and S.P. o/b/o A.R.

This **SETTLEMENT AGREEMENT AND RELEASE** ("the Agreement") is between the South Brunswick Board of Education ("the Board") and D.R. and S.P. ("Parents"), the parents and legal guardians of A.R. acting on behalf of A.R. (collectively, "the Parties").

WHEREAS, Parents filed a Petition of Appeal with the Commissioner of Education which is docketed as EDU 14295-2023, in regards to the Board's decision to discipline A.R., which said discipline was placed in the student's records; and

WHEREAS, a dispute arose between the Parties and in order to avoid the expense and uncertainty of litigation, the Parties agreed to enter into the within Agreement; and

WHEREAS, the Parties have negotiated the terms of settlement, in order to resolve this matter without the need for further litigation.

NOW, THEREFORE, the Parties agree to be bound as follows:

1. The District will expunge the disciplinary action at issue, including detentions and the suspension and remove any and all documentation related to the action, from A.R.'s student's records, within 10 days of full execution of this Agreement.

2. The District agrees that the allegation of conduct which gave way to the disciplinary action that is the basis for the Complaint in the above matter shall not be considered should an adverse disciplinary action be contemplated or taken by the District against A.R. based on acts of A.R. in the future that warrant discipline.

3. The Parents agree to withdraw their pending Petition of Appeal in reliance upon this Agreement and Release.

4. The Parents, on their own behalf and, to the fullest extent permitted by law, on behalf of A.R., hereby irrevocably and unconditionally releases and forever discharge the South Brunswick Board of Education, any and all related entities, its past or present board members, attorneys, agents, representatives, and employees from any and all claims or causes of action they may have or claim to have against the Board, its past or present board members, attorneys, agents, representatives, and employees both past and present, known and unknown, foreseen and unforeseen, at law or in equity, or which could be asserted on his behalf by any person, government authority, or entity, resulting from or relating to any act or omission of any kind occurring on or before the date of this Agreement, including any claims as against the Board, any and all related entities, its past or present board members, attorneys, agents, representatives, and employees; arising out of or relating in any way to the issues in the Petition of Appeal.

5. The Parties agree that they fully understand and consent to the terms set forth herein. Specifically, both Parties have consulted with and/or have had the opportunity to consult with their respective attorneys regarding the terms of this Agreement and, to the extent that the Parties are represented by counsel, they are satisfied with the legal services that they have received with respect to same. The Parties further acknowledge that this Agreement is the result of negotiations between represented Parties and that it shall not be interpreted as having been written solely by either party and that neither party shall be entitled to any deference in the interpretation of the terms and conditions of this Agreement.

6. Parent's signature below represents their agreement to the terms stated herein on behalf of themselves and their minor child, A.R.

7. It is expressly understood and agreed that this Agreement shall be subject to the laws of the State of New Jersey.

8. In the event that any term and/or provision of this Agreement is held to be void or unenforceable by any court, tribunal and/or governmental agency having jurisdiction thereof, such ruling shall not affect the validity of the remainder of the terms in this Agreement, which shall continue to be in full force and effect.

9. The undersigned represent that they each have the requisite authority to sign this Agreement on behalf of the respective party.

10. This Agreement may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto set their hands to this Agreement as follows:

Dinesh Kumar Rout
D.R. a/b/o A.R.

Date: 07/02/2024

S.P. o/b/o A.R.

Date: 07/02/2024

SOUTH BRUNSWICK
BOARD OF EDUCATION

Scott Feder, Superintendent of Schools

Date: 7/8/24

327-24
OAL Dkt. No. EDU 14294-23
Agency Dkt. No. 327-11/23

New Jersey Commissioner of Education

Final Decision

P.P., on behalf of minor child, V.P.,

Petitioner,

v.

Board of Education of the Township of South Brunswick, Middlesex County,

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 5, 2024
Date of Mailing: September 6, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
APPROVING SETTLEMENT
OAL DKT. NO. EDU 14294-23
AGENCY REF. NO. 327-11/23

P.P. ON BEHALF OF
MINOR CHILD V.P.,
Petitioner,

v.

TOWNSHIP OF SOUTH BRUNSWICK
BOARD OF EDUCATION,
Respondent.

Michelle Schott, Esq., for petitioner (Flanagan Barone & O'Brien, LLC, attorneys)

Bradley R. Flynn, Esq., for petitioner (Montgomery Law, PLLC, attorneys)

Kerri A. Wright, Esq., for respondents (Porzio, Bromberg & Newman, PC, attorneys)

Record Closed: July 12, 2024 Decided: July 18, 2024

BEFORE **JEFFREY N. RABIN**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle this case and have entered into an agreement. Their settlement agreement is attached to this decision.

Having reviewed the terms of their agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

I **FILE** my decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration. This recommended decision may be adopted, modified, or rejected by **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is empowered by law to make a final decision in this case. If the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not so act within 45 days, and unless such time limit is otherwise extended, this recommended decision becomes a final decision in accordance with N.J.S.A. 52:14B-10.

July 18, 2024
DATE

JEFFREY N. RABIN, ALJ

Date Received at Agency: July 23, 2024

Date Mailed to Parties: July 23 2024

SETTLEMENT AGREEMENT AND RELEASE

BETWEEN THE

SOUTH BRUNSWICK BOARD OF EDUCATION

AND

P.P. o/b/o V.P.

This **SETTLEMENT AGREEMENT AND RELEASE** ("the Agreement") is between the South Brunswick Board of Education ("the Board") and P.P. ("Parent"), the parent and legal guardian of V.P. acting on behalf of V.P. (collectively, "the Parties").

WHEREAS, Parent filed a Petition of Appeal with the Commissioner of Education which is docketed as EDU 14294-2023, in regards to the Board's decision to discipline V.P., which said discipline was placed in the student's records; and

WHEREAS, a dispute arose between the Parties and in order to avoid the expense and uncertainty of litigation, the Parties agreed to enter into the within Agreement; and

WHEREAS, the Parties have negotiated the terms of settlement, in order to resolve this matter without the need for further litigation.

NOW, THEREFORE, the Parties agree to be bound as follows:

1. The District will expunge the disciplinary action at issue, including detentions and the suspension and remove any and all documentation related to the action, from V.P.'s student's records, within 10 days of full execution of this Agreement.

2. The District agrees that the allegation of conduct which gave way to the disciplinary action that is the basis for the Complaint in the above matter shall not be considered should an adverse disciplinary action be contemplated or taken by the District against V.P. based on acts of V.P. in the future that warrant discipline.

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3. The Parent agrees to withdraw their pending Petition of Appeal with prejudice.

4. The Parent, on their own behalf and, to the fullest extent permitted by law, on behalf of V.P., hereby irrevocably and unconditionally releases and forever discharges the South Brunswick Board of Education, any and all related entities, its past or present board members, attorneys, agents, representatives, and employees from any and all claims or causes of action they may have or claim to have against the Board, its past or present board members, attorneys, agents, representatives, and employees both past and present, known and unknown, foreseen and unforeseen, at law or in equity, or which could be asserted on his behalf by any person, government authority, or entity, resulting from or relating to any act or omission of any kind occurring on or before the date of this Agreement, including any claims as against the Board, any and all related entities, its past or present board members, attorneys, agents, representatives, and employees; arising out of or relating in any way to the issues in the Petition of Appeal.

5. The Parties agree that they fully understand and consent to the terms set forth herein. Specifically, both Parties have consulted with and/or have had the opportunity to consult with their respective attorneys regarding the terms of this Agreement and, to the extent that the Parties are represented by counsel, they are satisfied with the legal services that they have received with respect to same. The Parties further acknowledge that this Agreement is the result of negotiations between represented Parties and that it shall not be interpreted as having been written solely by either party and that neither party shall be entitled to any deference in the interpretation of the terms and conditions of this Agreement.

6. Parent's signature below represents their agreement to the terms stated herein on behalf of themselves and their minor child, V.P.

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7. It is expressly understood and agreed that this Agreement shall be subject to the laws of the State of New Jersey.

8. In the event that any term and/or provision of this Agreement is held to be void or unenforceable by any court, tribunal and/or governmental agency having jurisdiction thereof, such ruling shall not affect the validity of the remainder of the terms in this Agreement, which shall continue to be in full force and effect.

9. The undersigned represent that they each have the requisite authority to sign this Agreement on behalf of the respective party.

10. This Agreement may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto set their hands to this Agreement as follows:

P.P. o/b/o V.P.

7750583

Date: 07 / 01 / 2024

SOUTH BRUNSWICK
BOARD OF EDUCATION

Lisa M. Rodgers

Lisa Rodgers, President

Date 7/8/24

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328-24
OAL Dkt. No. EDU 05664-24
Agency Dkt. No. 92-4/24

New Jersey Commissioner of Education

Final Decision

B.P., on behalf of minor child, A.L.,

Petitioner,

v.

Board of Education of the Township of Morris, Morris County,

Respondent.

The record of this matter, the proposed Settlement and Mutual Release Agreement (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 3 of the Agreement references actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement. Further, the Commissioner notes that paragraph 7 of the Agreement includes a confidentiality clause. The parties are reminded that the Board must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* in regard to information concerning this matter, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed

upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 5, 2024
Date of Mailing: September 6, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 05664-24
AGENCY DKT. NO. 92-4/24

B.P. ON BEHALF OF MINOR CHILD, A.L.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF MORRIS, MORRIS COUNTY,
Respondent.

B.P., petitioner, pro se

Melanie D. Lipomanis, Esq., for respondent (Porzio, Bromberg & Newman, P.C., attorneys)

Record Closed: July 24, 2024 Decided: July 25, 2024

BEFORE **R. TALI EPSTEIN**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the

Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have settled this case and have entered into an agreement. Their settlement agreement and the certified resolution of the Morris Township Board of Education approving same are attached to this decision.

Having reviewed the terms of their settlement agreement, I have determined that the settlement is voluntarily, consistent with the law, and fully dispositive of all issues in controversy between the parties.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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.

July 25, 2024
DATE

R. TALI EPSTEIN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____
cc

SETTLEMENT AGREEMENT

This settlement agreement ("Agreement") made
by and between

Morris School District Board of Education ("Board")

AND

Ms. B.P. o/b/o A.L.,

WHEREAS, the Board is duly organized as a public school district under the laws of the State of New Jersey; and

WHEREAS, "residency" for purposes of statutory eligibility to be enrolled in a public school district is defined as where a parent and child live and sleep full-time; and

WHEREAS, following the District's investigation which included residential surveillance and a home inspection, the Board determined that Ms. P. and A.L. do not reside at 114 Franklin Street, Apartment 8B2, Morristown, New Jersey; and

WHEREAS, the Board has determined that A.L. is no longer entitled to a free education within the District pursuant to *N.J.S.A.* 18A:38-1 *et seq.*; and

WHEREAS, Ms. P. appealed to the Commissioner of Education to overrule the Board's residency decision, and the District intends to seek an award of tuition from Ms. P. for January 1, 2024 through the last date of A.L.'s attendance in a District school in that pending proceeding; and

WHEREAS, in order to avoid the time and expense of further litigation of this matter before the Commissioner of Education, the Parties agreed to enter into a settlement agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the Board and Ms. P. (collectively "Parties" and each individually a "Party") desire to enter into the within Agreement as follows:

1. **2023-2024 School Year:** A. L. shall be permitted to remain in the District for the remainder of the 2023-2024 school year.

2. **Tuition Abeyance:** Conditioned upon the fulfilment of the terms of this Agreement, the Board agrees not to seek an award of tuition for A.L. for attending school in the District as a non-resident student, from January 1, 2024 through June 30, 2024 school year.

3. **2024-2025 School Year:** Following the completion of the 2023-2024 school year, the Parties agree that A.L. shall be removed from the District's enrollment and enrolled in the school district where the student then resides no later than June 30, 2024 for the start of the 2024-2025 school year. Ms. P. shall provide the District with proof of enrollment in the resident district no later than July 15, 2024. The Parties further agree and acknowledge that the Board shall have no further financial obligation toward A.L.'s education, and Ms. P. shall not attempt to re-enroll A.L. in the District unless and until Ms. P. and A.L. become actual and observable full-time residents within the Morris School District.

4. **Withdrawal and Release.** In exchange for the consideration set forth herein, including, but not limited to the Board permitting A.L. to complete the 2023-2024 school year and holding its collection of tuition for A.L.'s attendance from January 1, 2024 through June 30, 2024, in abeyance subject to the terms of this Agreement, Ms. P. releases and gives up any and all claims and rights she may have against the Board for any damages or injuries to A.L. in connection with A.L.'s education, including any claim for compensatory education, compensatory damages, punitive damages, or any damages or injuries to A.L., arising out of alleged acts or omissions, whether known or unknown, that have taken place through the date of this Agreement. As used in this Agreement, the term "Board" means: the Morris School District Board of Education, its current or former elected or appointed officials, administrators, employees, attorneys, agents,

servants, representatives, predecessors and successors, insurance carriers, and all other persons or entities for whom any of the above have been or may be legally responsible. Ms. P. specifically releases the following claims as to the Board:

a. Any and all civil and administrative claims and rights she may have against the Board for any damages or injuries, including any civil claim for compensatory damages, punitive damages, or any damages or injuries to A.L. arising out of the residency/domicile or education of the minor child A.L. during the time period he attended school in the District, whether known or unknown, that have taken place through the date of this Agreement; and

b. Any and all claims that could have been brought in any civil or administrative venue that Ms. P. could assert now, or in the future, resulting from any action or failure to act occurring prior to the time of this Agreement, under any provision of any law, common or statutory, of the United States, New Jersey or any other state, city, county, or locality, including but not limited to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132; the New Jersey Law Against Discrimination, *N.J.S.A.* 10:1-2; and *N.J.A.C.* 6A:14-1 *et seq.*; and

c. Any and all available claims for attorney's fees and expert costs, and any other fees and costs, under any law or regulation.

5. **Agreement Not to Sue.** Ms. P. agrees not to file any lawsuit or claim against the Board, based on any events, whether known or unknown, occurring prior to the date of the execution of this Agreement, in any court or tribunal of the United States, New Jersey or any other state, city, county, or locality, for any claims released in this Agreement.

6. **Indemnification and Hold Harmless.** Ms. P. agrees to defend, indemnify and hold harmless the Board and its representatives, insurers, third party administrators and attorneys from any claims arising up to the date this Agreement is duly executed, including, but not limited to, the following: (A) Any claim that may be brought by Ms. P. during and at any time subsequent to the term of this Agreement that challenges A.L.'s residency and/or domicile in the District; (B) Any claim that may be brought by Ms. P. during and at any time subsequent to the term of this Agreement, alleging a denial of FAPE under the Individuals with Disabilities Education Act, 20

U.S.C. § 1400 *et seq.* and its implementing regulations while this Agreement is in effect; (C) Any claims that may be brought by Ms. P. during and at any time subsequent to the term of this Agreement alleging a violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; (D) Any claims that may be brought by Ms. P. during and at any time subsequent to the term of this Agreement alleging a violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132; and (E) Any claims that may be brought by Ms. P. during and at any time subsequent to the term of this Agreement alleging a violation of the New Jersey Law Against Discrimination, *N.J.S.A.* 10:1-2.

7. **Confidentiality.** Ms. P. specifically acknowledges and agrees that this Agreement was reached without any admission by the Board of any of the acts or omissions alleged or those that could have been alleged. Ms. P. agrees that they will keep the terms of this Agreement confidential, to the extent permitted by law. Ms. P. acknowledges that this confidentiality requirement is a material term to this Agreement.

8. **Board Remedy for Breach of Agreement.** The Parties acknowledge that under the terms of this Agreement, the Board has agreed to hold its demand and collection efforts for tuition payment in abeyance for the period A.L. attended a district school as a non-resident from January 1, 2024 through present. In the event Ms. P. does not abide by the terms of this Agreement and enrolls A. L. as a student in the 2024-2025 school year, and A.L. is subsequently found to be a non-resident of the District, as defined in this Agreement, the District will not be bound by this term, and specifically preserves its right to demand and seek collection remedies for all tuition owed for the 2023-2024 and 2024-2025 periods in which A.L. attended a District school as a non-resident.

9. **No Precedent.** The Parties agree that this Agreement may not be used to establish precedent in any future proceeding of any type whatsoever involving the Board and that it shall be inadmissible in any such proceeding, other than a proceeding to enforce or prove the existence of same.

10. **Who is Bound.** The Parties and their agents are bound by this Agreement. Those who succeed to their rights and responsibilities, such as heirs, the executors of their estate, or their personal or legal representatives, are also bound.

11. **Entire Agreement.** This Agreement contains the sole and the entire agreement between Ms. P. and the Board, and fully supersedes any and all prior agreements and understandings between Ms. P. and the Board pertaining to the subject matter of this Agreement. Ms. P. represents and acknowledges that she has not relied upon any representation or statement by the Board, or its counsel or representatives, with regard to the subject matter of this Agreement, which is not set forth in this Agreement. No other promises or agreements shall be binding unless in writing, signed by Ms. P. and the Board, and expressly stated to be a modification of this Agreement.

12. **Waiver.** No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or any subsequent breach, whether of the same or a different provision of this Agreement. Neither party may waive any of its rights or any obligations of the other party or any provision of this Agreement except by an instrument in writing signed by that party.

13. **Assignment.** Neither party may transfer or assign any of its rights or obligations under this Agreement without the prior written consent of the other, and any such transfer or assignment or attempt thereat shall be null and void.

14. **Section Headings.** Section headings are for reference purposes only and shall not in any way affect the meaning or interpretation of any provision of this Agreement.

15. **Counterparts.** This Agreement may be executed in any number of counterparts, which, taken together, shall constitute but one instrument. It is not necessary that all parties sign all or any one of the counterparts, but each party must sign at least one counterpart for the Agreement to be effective.

16. **Board Approval.** This Agreement is subject to Board approval before taking effect.

17. **Signatures.**

BY SIGNING THIS AGREEMENT MS. P. STATES THAT:

A. SHE HAS READ IT;

B. SHE AGREES WITH EVERYTHING IN IT;

C. SHE HAS BEEN ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTING THIS AGREEMENT AND HAD AN OPPORTUNITY TO DO SO;

D. SHE HAS SIGNED THIS AGREEMENT KNOWINGLY AND VOLUNTARILY.

Ms. P.

Dated: July 11, 2024

Morris School
District Board of Education

By: Katie Cole, Board President

Anthony LoFranco,
Business Administrator/Board Secretary

Dated: 7/22/24

EXTRACT FROM THE MINUTES OF A MEETING OF THE BOARD OF EDUCATION OF MORRIS SCHOOL DISTRICT, MORRIS COUNTY, NEW JERSEY, AS RECORDED IN THE OFFICIAL MINUTE BOOK.

The Board of Education of Morris School District, in the County of Morris, New Jersey, convened in Regular Session on **Monday, July 22, 2024, at 6:30 p.m.** at Morristown High School Learning Commons, 50 Early Street, Morristown, NJ 07960.

The following members of the Board of Education were present: **Mrs. Katie Cole, Mrs. Meredith Davidson, Ms. Lucia Galdi, Mr. Cary Lloyd, Ms. Linda K. Murphy, Mrs. Susan Pedalino, and Mrs. Melissa Spiotta.**

The following Resolution was offered by **Mrs. Davidson,** seconded by **Mrs. Spiotta** and adopted by the Board of Education by the following roll call vote:

Roll Call:	
AYES:	Ms. Galdi, Mr. Lloyd, Ms. Murphy, Mrs. Pedalino, Mrs. Spiotta, Mrs. Davidson, Mrs. Cole
NOES:	None
ABSTAIN:	None
ABSENT:	Dr. Rodriguez, Mr. Smith, Ms. Wall

POLICY

STIPULATION OF SETTLEMENT

Motion #3 that, upon the recommendation of the Superintendent, the Board of Education approve a Stipulation of Settlement resolving a dispute pertaining to student #704223 which is on file in the office of the Business Administrator.

STATE OF NEW JERSEY)
)ss
COUNTY OF MORRIS)

I, **Anthony Lo Franco, Business Administrator/Board Secretary** of Morris School District, in the County of Morris, State of New Jersey, hereby certify that the foregoing Extract from the Minutes of the Meeting of the Board of Education of said district, duly called and held on **Monday, July 22, 2024** compared by me with the original Minutes as officially recorded in my office in the Minute Book of said Morris School District Board of Education, and is a true complete copy thereof and of the whole of said original Minutes so far as the same relate to the subject matter referred to in said Extract.

In witness, I have hereunto set my hand and affixed the corporate seal of said Board of Education this **24th day of July, 2024.**

(Seal)

Business Administrator/Board Secretary

329-24R+
OAL Dkt. No. 09628-20
Agency Dkt. No. 199-9/20

New Jersey Commissioner of Education

Final Decision

G.W. and K.W., on behalf of M.W.,

Petitioners,

v.

Board of Education of the Borough of Ringwood, Passaic County,

Respondent.

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

Petitioners filed an appeal of the Board's determination that their child, M.W., was not the victim of harassment, intimidation, and bullying (HIB). Petitioners were initially represented by counsel, who was subsequently permitted to withdraw. M.W.'s father, G.W., took over handling the case, but notified the OAL in February 2024 that M.W.'s mother, K.W., would be handling the case going forward.

On April 3, 2024, the Board requested the Administrative Law Judge's (ALJ) approval to file a motion to dismiss. On April 9, 2024, the ALJ denied the request but granted permission for the Board to file a motion for summary decision. On April 17, 2024, K.W. sent two emails to the OAL to advise that she did not have a copy of any filings in the case prior to April 8, 2022, and requested information

on how she could obtain a copy. The record does not contain any response from the OAL to K.W.'s emails.

The Board filed its second motion for summary decision on April 30, 2024. On June 10, 2024, K.W. again emailed the OAL, indicating that she did not have a copy of the motion or any of the case filings, and requesting copies. The OAL responded to indicate that K.W.'s request should be made directly to the Department of Education (DOE). Also on June 10, 2024, counsel for the Board emailed the OAL to provide proof that she had sent the motion for summary decision to K.W. by both email and mail. On June 14, 2024, the ALJ wrote to the parties stating that petitioners had prior legal counsel who should have given the file to them, and that a request for the file should have been directed to the former attorney. The ALJ set a deadline of June 20, 2024 for petitioners to respond to the Board's motion for summary decision.

When petitioners did not file a response to the motion for summary decision, the ALJ considered the motion unopposed. The ALJ found that the record was devoid of evidence supporting any of the elements of a charge of HIB.[1] As such, the ALJ concluded that there were no unresolved issues of material fact that would necessitate a plenary hearing, and that the Board's HIB determination should be affirmed.

In her exceptions, K.W. argues that she was denied access to the OAL case file and was therefore unable to respond to the Board's motion for summary decision. Petitioner requests that

[1] The Board concedes that M.W. reasonably perceived that the alleged perpetrator's conduct was motived by an actual or perceived distinguishing characteristic. The Board also concedes that the conduct occurred on school grounds. *Respondent's Brief in Support of Motion for Summary Decision*, p. 6.

the Commissioner order the OAL to provide her with a copy of the case file, as well as the opportunity to respond to the motion for summary decision after she receives the file.[2]

In response, the Board argues that its attorney sent the entirety of the discovery in this matter to K.W. on April 18, 2024. The Board also notes that K.W. could have sought a copy of the file from her former attorney, or from the DOE, as directed by the ALJ. As such, the Board urges the Commissioner to reject K.W.'s argument that she did not have access to the case file. Finally, the Board contends that there is no evidence that the incident at issue caused a substantial disruption to M.W. or the orderly operations of the district, and therefore its finding that there was no act of HIB should be affirmed.

Upon review, the Commissioner rejects the Initial Decision. Notwithstanding the fact that K.W. was provided with a copy of the discovery and the second motion for summary decision by the Board's attorney, she did not have access to the complete case file. In particular, the petition, answer, first motion for summary decision and briefs and exhibits related thereto, and the ALJ's Order denying that motion would have been critical to petitioner in responding to the second motion for summary decision.

The OAL referred K.W. to the DOE for a copy of her case file. The DOE did not receive any request from K.R, and although it would have provided all documents that it had in its possession in response to such a request, as K.W. correctly points out in her exceptions, the DOE would not have had access to the entire case file at that time. As of June 10, 2024, the DOE was only in possession of the filings submitted prior to the transmittal of the case to the OAL. Notably, the DOE did not have,

[2] K.W. also filed a document that she characterized as a motion seeking an Order that the DOE email her a copy of the record.

and could not have provided to K.W., the pleadings related to the Board's first motion for summary decision, or the ALJ's December 16, 2021 Order denying that motion.

The ALJ also indicated that K.W. could obtain a copy of the file from her former counsel. While this may be true, even if she had requested a copy of the file in this way, her former counsel would not have a complete copy of the file either, having withdrawn as counsel in 2022, well before K.W. made her request.

Given the unique circumstances of this matter, the Commissioner accepts K.W.'s argument that without a copy of the complete case file, she was unable to respond to the motion for summary decision. Accordingly, the Commissioner disagrees with the ALJ that the motion should have been considered unopposed and concludes that this matter must be remanded to the OAL so that the motion may be properly litigated. The Commissioner notes that, on the same date that this decision is mailed to the parties, the Office of Controversies and Disputes will provide a complete copy of the record in this matter to K.W. If K.W. still fails to respond to the motion for summary decision within 20 days, or any extension of that due date that the ALJ may grant, the motion may then be considered unopposed. If K.W. responds, the motion should be decided in the usual course.

Accordingly, the Initial Decision is rejected. This matter is remanded to the OAL for further proceedings.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2024
Date of Mailing: September 9, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUMMARY DECISION
OAL DKT. NO.: EDU 09628-20

G.W. AND K.W. ON BEHALF OF M.W.,
Petitioners,

v.

BOARD OF EDUCATION OF THE BOROUGH OF RINGWOOD, PASSAIC COUNTY,
Respondent.

K.R., and **G.W.**, parents of M.W., petitioner, pro se

Jessika Kleen, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: June 20, 2024 Decided: June 27, 2024

BEFORE: **JOHN P. SCOLLO,** ALJ:

STATEMENT OF THE CASE

Petitioners, G.W. and K.W., parents of M.W., filed for a Fair Hearing following the Ringwood Board of Education's (a/k/a the District's) determination that HIB charges

brought against Joan Bredin ("Bredin"), M.W.'s teacher, did not support a finding of HIB conduct. In the Motion at bar, the Respondent seeks Summary Decision ordering the dismissal of the Petitioner's appeal.

PROCEDURAL HISTORY

On or about December 6, 2019, Joan Bredin provided a reading assignment, a three-page story titled "An Engine Without Brakes" to M.W., then a sixth grade special education student, who had been diagnosed as Attention Deficit Hyperactivity Disorder ("ADHD").

On December 13, 2019, G.W. and K.W. (a/k/a K.R.), M/W.'s parents, learned about the assignment and made an HIB complaint. Anti-Bullying Specialist, Eric R. Erler (the "Investigator") investigated the allegations of the complaint by interviewing Bredin and a paraprofessional (a teacher's aide) who worked in the same classroom with M.W. G.W. and K.W. did not give consent for M.W. to be interviewed and so he was not interviewed. On January 8, 2020, Erler filed his HIB Investigation Narrative in which he concluded that the incident (i.e., the circumstances surrounding the assignment of the story to M.W. by Bredin) did not meet the criteria for HIB. On February 24, 2020, the Ringwood Board of Education voted to adopt the Investigator's conclusion. On May 14, 2020, counsel for G.W. and K.W. sent a letter in lieu of the appearance of G.W. and K.W. in furtherance of their appeal of the District's determination. On May 27, 2020, the HIB/Discipline Appeal Committee met. On June 1, 2020, the Board of Education voted to take no further action, thus affirming its February 24, 2020 decision to adopt the Investigator's conclusion that the criteria for HIB had not been met. On September 14, 2020, G.W. and K.W. filed a Petition of Appeal from the Board of Education's June 1, 2020 decision with the Commissioner of Education. On September 21, 2020, the Board of Education filed its Answer to the Appeal. A hearing was scheduled for April 28 and 30, 2021. In March, 2021 the two sides filed their respective motions for summary decision. Settlement discussions ensued without resolution of the matter. Subsequently, Opposition papers, Replies, and various supporting papers were submitted. On December 16, 2021 both motions

were denied. On June 7, 2022, the Honorable JoAnn Candido, ALJ entered an Order Granting the motion of Robert Thurston, Esq. to be relieved as counsel for Petitioners. Subsequently, in light of related civil litigation pending in Federal District Court, the matter was held in abeyance. In September, 2023 counsel for Respondent inquired of Judge Scollo about the status of this matter and whether this matter would be given a trial date. In response, Judge Scollo requested a status report from the parties regarding the state of the related civil litigation. On February 22, 2024, Respondent's counsel supplied a status report and requested leave to file a Motion to Dismiss EDU 09628-20. Judge Scollo denied leave to file a Motion to Dismiss but granted leave for Respondent to file a Motion for Summary Decision. Counsel for Respondent filed a Motion for Summary Decision on April 30, 2024 chiefly citing as its bases the failure of the Petitioners to set forth evidence that the student (M.W.) was harmed, or that the alleged incident substantially disrupted or interfered with the orderly operation of the school or the rights of the allegedly targeted student or of other students.

On April 8, 2024, the Tribunal sent correspondence to both sides granting leave to the Respondent, Ringwood BOE to file a Motion for Summary Decision and stating that UAPR 1:1-12.5 required the party opposing a Motion for Summary Decision to submit Opposition papers within twenty (20) days. As noted above, Respondent Ringwood BOE filed its motion for summary decision on April 30, 2024. Therefore, Petitioners' Opposition papers were due on May 20, 2024. On June 10, 2024, K.R. (the mother of M.W. and formerly known as "K.W.") inquired with Judge Scollo's secretary, Diana Batista, about how to obtain papers from her file. K.R. claimed that she did not have a copy of Ringwood BOE's Summary Decision Motion; that she did not have her case filings; and that she wanted leave from the Tribunal to allow her fourteen (14) days from the date of her receipt of the Motion to file Opposition papers. Ms. Batista directed K.R. to contact the Department of Education for copies of her papers. On June 10, 2024, Attorney Kleen (counsel for the Ringwood BOE) sent emails enclosing proof that she served the Motion for Summary Decision upon the petitioners on April 30, 2024, including a copy of the envelope in which the Motion was contained. On June 14, 2024, in response to K.R.'s June 10, 2024 correspondence, Judge Scollo wrote to the parties stating that the Petitioners had prior legal counsel

who should have given the file to the Petitioners when his representation of the Petitioners concluded and from whom a copy of the file should be obtainable. Referencing his April 8, 2024 letter, Judge Scollo noted that the Opposition papers were due on May 20th and were now twenty-five (25) days overdue. Nonetheless, Judge Scollo granted the Petitioners until Thursday, June 20, 2024 at 12:30 p.m. to submit their Opposition papers. The Petitioners did not submit their Opposition papers by the 12:30 p.m. deadline on Thursday, June 20, 2024 and said Opposition papers were not submitted by the Tribunal's close of business at 4:30 p.m. on June 20, 2024. Therefore, the Motion was deemed to be unopposed.

ANALYSIS OF LEGAL AND FACTUAL ISSUES

Analysis of the Parties' Respective Positions

The Petitioners' claim has been that the assigning of the story to M.W. was inherently outrageous and the evidence of its outrageous nature is so one-sided that only possible conclusion is that it constitutes bullying. Therefore, argue the Petitioners, the School District's determination that Ms. Bredin's action was not an act of HIB (bullying) is erroneous. The Tribunal notes that Petitioners' accusation is not rooted in established facts.

The Ringwood BOE's position is that the investigation team found that Ms. Bredin's rationale for assigning the story to M.W. was free from any kind of improper motive and, applying all HIB criteria, concluded that Ms. Bredin's actions did not constitute an act of HIB. The BOE maintains that the HIB investigation and the conclusion reached by the Anti-Bullying Specialist and the subsequent February 24, 2020 BOE vote adopting the conclusion of the Anti-Bullying Specialist were conducted in accordance with the procedures set forth in N.J.S.A. 18A:37-14, commonly referred to as "The Anti-Bullying Bill of Rights Act" and were therefore conducted properly. The Ringwood BOE's Motion is supported by Certifications and attachments.

Findings of Fact

Ringwood BOE's Motion for Summary Decision was filed on April 30, 2024. Under UAPR 1:1-12.5 a party has twenty days to file Opposition papers to his adversary's Motion for Summary Decision. I **FIND** that the Motion for Summary Decision was duly served by the Machado Law Firm upon the Petitioners as evidenced by Attorney Kleen's statement and by her submission of a copy of the envelope bearing the postmark of April 30, 2024. I **FIND** that the Petitioners did not file Opposition papers within the twenty-day period allowed for the filing of Opposition papers under UAPR 1:1-12.5. Although the Tribunal granted the Petitioners additional time (to Thursday, June 20, 20024 by 12:30 p.m.) to submit their Opposition papers, I **FIND** that no such papers were received by the Tribunal by 12:30 p.m. or even by the close of business at 4:30 p.m. on June 30, 2024.

I **FIND** that G.W. and K.W. did not allow the HIB investigators to interview M.W. I **FIND** that had M.W. been interviewed by the HIB investigators, then the investigators, the parents and this Tribunal would likely have obtained essential factual evidence regarding whether M.W. reasonably perceived that Ms. Bredin's assigning of the article to him was motivated by an actual or perceived characteristic or by a distinguishing characteristic of M.W. I **FIND** that had the HIB investigators been allowed to interview M.W., it would have enabled the investigators to explore whether or not M.W. was adversely affected by the assignment of the article, whether the assignment substantially disrupted or interfered with the orderly operation of the school, and whether the assignment adversely affected the rights of other students. I **FIND** that the parties were afforded sufficient time to conduct discovery. I **FIND** that the record before me is devoid of the types of factual evidence that is necessary to support any of the elements of a charge of HIB.

APPLICABLE LAW

The Standard for Summary Decision

A Motion for Summary Decision may be granted if the papers and discovery presented, as well as, any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the Motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c). See Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954) and Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995).

The HIB Statute

N.J.S.A. 18A:37-14 defines "Harassment, intimidation or bullying" as, any gesture, any written, verbal or physical act, or any electronic Communication, whether it be a single incident or a series of incidents, that is:

> [1] reasonably perceived as being motivated either by any actual or perceived characteristic such as race, color, religion, ancestry, national origin, gender sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic,
>
> [2] that takes place on school property, at any school-sponsored function, on a school bus, or takes place off school grounds as provided for in N.J.S.A. 18A:37-15.3, [3] that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. A reasonable person should know, under the circumstances, will have the effect of physically or

emotionally harming a student or damaging a student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property; or

b. Has the effect of insulting or demeaning any student or group of students; or creates a hostile educational environment for the student by interfering with a student's education or be severely or pervasively causing physical or emotional harm to the student."

Board of Education's HIB Decisions Are Afforded Presumption of Validity

The decision of a local board of education should not be disturbed absent a finding that the action below was arbitrary, capricious, or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 6, 2008), (citing Thomas Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), *aff'd*, 46 N.J. 581 (1966)). In an appeal of a District's finding, with respect to an HIB investigation, the burden of proving "unreasonableness" of Board action is on Petitioners. G.M. v. Roselle Park Borough Bd. of Educ., 95 N.J.A.R.2d (EDU) 107, 109. Courts have held that "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewage Co. v. Dep't of Envtl. Prot., 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), *aff'd*, 131 N.J. Super. 37 (App. Div. 1974). "Thus in order to prevail, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." T.B.M., see also, W.C.L. and A.L. ex rel L.L. v. Tenafly Bd. of Educ., OAL Dkt. No. EDU 3223-12 (2013).

Motion Practice Before the Tribunal

Under the OAL's Uniform Administrative Rules of Procedure (UAPR), a party wishing to oppose his adversary's Motion for Summary Decision must file written Opposition papers within twenty days of the filing of the Motion. UAPR 1:1-12.5.

LEGAL ANALYSIS AND CONCLUSIONS

Having found that the Petitioners did not submit Opposition papers to the Ringwood BOE's Motion for Summary Decision, I **CONCLUDE** that said Motion for Summary Decision is unopposed.

Having found that there is no evidence before me that would tend to support any of the elements of a charge of HIB, I **CONCLUDE** that the Petitioners have failed to raise any unresolved issues of material fact that would necessitate a plenary hearing.

I **CONCLUDE** that the Petitioners have failed to overcome their burden of demonstrating that the decision of the BOE in regard to the HIB charges against Ms. Bredin was tainted by bad faith or that the decision of the BOE was made in utter disregard of the circumstances before it. I further **CONCLUDE** that the determination of the BOE that Ms. Bredin did not commit an act of HIB should be and hereby is **AFFIRMED**.

CONCLUSION

For all of the above reasons, I **CONCLUDE** that Respondent Ringwood BOE's Motion for Summary decision should be and hereby is **GRANTED**.

ORDER

This matter having been brought before the Tribunal by counsel for the Respondent Ringwood BOE seeking Summary Decision, and the Tribunal having considered the submissions, and for good cause:

It is on this twenty-first (27^{h}) day of June, 2024,

ORDERED that the Respondent Ringwood BOE's Motion for Summary Decision is hereby **GRANTED**; and it is further

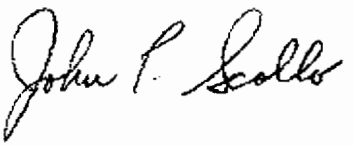
ORDERED that the Tribunal's Order Granting Summary Decision in favor of the Ringwood BOE shall be immediately sent to the parties and / or their counsel by email; and it is further

ORDERED that both sides shall immediately acknowledge receipt of this **ORDER** by email.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.



June 27, 2024

DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

LIST OF MOVING PAPERS

Respondent's Motion for Summary Decision

Copy of April 30, 2024 Envelope from Attorney Kleen to Petitioners

330-24
OAL Dkt. No. 00188-22
Agency Dkt. No. 222-11/21

New Jersey Commissioner of Education

Final Decision

Andrew Policastro,

Petitioner,

v.

Board of Education of the Borough of Tenafly, Bergen County,

Respondent.

The record of this matter, the August 14, 2024 Order of Administrative Law Judge (ALJ) Margaret M. Monaco, respondent Tenafly Board of Education's (Board) request for interlocutory review, and petitioner's objection and response thereto have been reviewed and considered.

Petitioner filed a complaint with the Board, alleging that Tenafly High School principal James Morrison and vice principal Richard Suchanski disregarded attendance policies at Tenafly High School in 2020 and 2021, and requested that the Board, via the New Jersey Department of Education, suspend their licenses for one year. The Board denied the request, and petitioner appealed. The petition indicates that the relief he is requesting is to "[s]uspend for 1 year the administrative licenses of [Morrison and Suchanski] for inefficiency (a tenure level offense)."

The Board filed a motion for summary decision, arguing that its relaxation of attendance polices during the Covid-19 pandemic did not violate federal or State law or Board policy. The Board further contended that even assuming petitioner's allegations were true, he cannot

compel the Board to discipline or certify tenure charges against its employees.[1] The ALJ denied the Board's motion, concluding that the evidence at this juncture is insufficient to dispose of the matter via summary decision, and that a proper weighing requires a full development of the facts at an evidentiary hearing.

The Board requested interlocutory review of the ALJ's Order, reiterating the arguments made in its motion for summary decision. Petitioner objected to the request.

Upon review, the Commissioner concludes that the Board is entitled to summary decision. Even if there are disputed issues of fact regarding the Board's attendance policies and the administrators' implementation of those policies,[2] those disputes do not alter the conclusion that, as a matter of law, petitioner is not entitled to the relief he seeks. The specific relief that petitioner seeks is a one-year suspension of Morrison and Suchanski's licenses. The suspension of an administrator's certificate (or "license") is an action solely within the authority of the State Board of Examiners, pursuant to *N.J.A.C.* 6A:9B-4.5. The Commissioner has previously determined that an individual may not compel the revocation of a teacher's certificate and dismissed a petition of appeal seeking that relief. *C.S., o/b/o minor child, I.S. v. Rikki Frischman*, Commissioner Decision 32-23, decided Feb. 2, 2023. Similarly, the Commissioner concludes that here, petitioner may not compel the suspension of Morrison and Suchanski's certificates. While petitioner, in his objection, attempts to distinguish *C.S.* on procedural grounds, the Commissioner

[1] The Board also sought summary decision on the grounds that petitioner had not complied with certain procedural requirements. The Commissioner concurs with the ALJ that this portion of the Board's motion should be denied, for the reasons detailed in the ALJ's Order.

[2] The Commissioner does not reach any conclusions regarding the merits of petitioner's allegations, as it is unnecessary to do so.

concludes that the petition in this matter seeks the same relief as the petition in *C.S.*, and that it fails for the same reason.

Petitioner has also characterized this matter as an appeal of the Board's denial of his request that the Board file tenure charges against Morrison and Suchanski for inefficiency. Initially, the Commissioner notes that even if the Board had filed tenure charges against the administrators, and those charges had been sustained by an arbitrator, the result would not have been a suspension of their certificates. An action to suspend an administrator's certificates by the Board of Examiners is a completely separate process from tenure charges filed by a board of education. *See Morison v. Willingboro Bd. of Educ.*, 478 *N.J. Super.* 229 (App. Div. 2024); *I/M/O the Certificates of Nicholas Cilento, State Bd. of Examiners, N.J. Dept. of Educ.*, 2024 *N.J. Super.* Unpub. LEXIS 1342 (App. Div. Jun. 26, 2024). Accordingly, even if the Commissioner were to determine that the Board should have filed tenure charges against Morrison and Suchanski, that determination would not result in the relief petitioner requests and, therefore, his petition must fail as a matter of law.

Moreover, while the filing of tenure charges is not the relief specified in the petition of appeal, giving petitioner leeway because he is pro se, the Commissioner will also address the issue of whether the Board should have filed tenure charges. Tenured employees are protected against dismissal or reduction in compensation by New Jersey's tenure laws. *N.J.S.A.* 18A:28-1 *et seq.* Petitioner requested that the Board file tenure charges against Morrison and Suchanski for inefficiency. Inefficiency charges are based on the employee's evaluations and require specific numbers of consecutive ineffective or partially effective ratings. *N.J.S.A.* 18A:6-17.3. Petitioner has not provided any evidence that Morrison or Suchanski received evaluations that

would warrant inefficiency charges. Absent such evaluations, the Board would be without authority to pursue inefficiency charges, and the Commissioner concludes that petitioner cannot compel the Board to do something that it lacks the authority to do.[3]

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

IT IS SO ORDERED.[4]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2024
Date of Mailing: September 9, 2024

[3] Alternatively, and again giving petitioner leeway, if the petitioner were requesting that the Board file tenure charges against Morrison and Suchanski for reasons other than inefficiency, his claim still fails as a matter of law. Tenure charges may only be commenced through a written charge, accompanied by a written statement of evidence under oath to support the charge. *N.J.S.A.* 18A:6-11. Even if the Commissioner accepted that an individual could file such a charge, petitioner failed to do so.

[4] 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.

331-24

New Jersey Commissioner of Education

Final Decision

E.C. and S.C., on behalf of minor children, C.C. and K.C.,

Petitioners,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

Synopsis

Pro se petitioner challenged a decision by the Elizabeth School District finding that his two minor children improperly attended school within the District for several months while they resided with him outside the District. Petitioner contended that he and his wife, S.C., owned two homes, one in Elizabeth and the other in Newark. In early 2023, petitioner and his wife separated, and S.C. remained in Elizabeth while E.C. moved to the Newark house. Because S.C. traveled frequently to her home country of Ecuador, E.C. acted as the primary custodial parent during her absences. Eventually E.C. moved the children to the Newark house temporarily, always intending to move them back to Elizabeth with their mother. The District sought to impose a penalty pursuant to statute at the rate of $99.63 per day per child while they lived outside the District.

The ALJ found, *inter alia*, that: *N.J.S.A.* 6A:22-1 et. seq. governs student residency requirements within certain school districts; in order to be eligible to attend public school within a municipality, students must be domiciled within the town where the school is located; there are several exceptions to the statutory requirement requiring residency within the district, including Family Crisis and being the child of divorced or separated parents; based on the petitioner's undisputed testimony, and taking into account the limited nature of the residency investigation conducted by the school district, petitioner's children fell into the categories of both Family Crisis and separation, and as such were entitled to continue to attend the Elizabeth Public Schools during the entirety of the 2022-2023 school year pursuant to *N.J.A.C.* 6A:22-3.1(a)(1)(i). Accordingly, the ALJ granted petitioners' appeal and reversed the district's determination regarding tuition owed for the period when the children were temporarily residing outside of Elizabeth.

Upon review, the Commissioner concurred with the Administrative Law Judge that petitioners' minor children were entitled to attend school in the Elizabeth school district during the entirety of the 2022-2023 school year pursuant to *N.J.A.C.* 6A:22-3.1(a)(1)(i). Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, the petitioners' appeal was granted, and the Board's counterclaim for tuition was denied.

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.

331-24
OAL Dkt. No. EDU 03974-23
Agency Dkt. No. 100-4/23

New Jersey Commissioner of Education

Final Decision

E.C. and S.C., on behalf of minor children, C.C. and K.C.,

Petitioners,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

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 that petitioners' minor children were entitled to attend school in the Elizabeth school district during the entirety of the 2022-2023 school year pursuant to *N.J.A.C.* 6A:22-3.1(a)(1)(i).

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby granted. Respondent Board's counterclaim for tuition reimbursement is denied.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2024
Date of Mailing: September 9, 2024

[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
DISMISSAL
OAL DKT. NO. EDU 03974-23
AGENCY DKT. NO. 100-4/23

E.C. AND S.C. ON BEHALF OF MINOR CHILDREN C.C. AND K.C.,

Petitioners,

v.

CITY OF ELIZABETH BOARD OF EDUCATION, UNION COUNTY,

Respondent.

E.C., petitioner, pro se

Brian Kane, Esq., for respondent (LaCorte, Bundy, Varady & Kinsella, attorneys)

David M., Interpreter

Record closed: June 13, 2024 Date of Decision: July 25, 2024

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE

Petitioning parent challenges a decision by the Elizabeth School District finding that his two minor children improperly attended school within the District for several

months while they resided with him outside the District. The District further seeks to impose a significant penalty pursuant to statute at the rate of $99.63 per day per child while they were living outside the District.

PROCEDURAL HISTORY

On or about March 13, 2023, the Elizabeth School district sent final Notices of Ineligibility for petitioner's two minor children C.C. and K.C. to remain students within the District due to a change of Domicile.

Petitioner sought an internal appeal within District and was denied.

Pursuant to statute, the District allowed both children to remain as students pending the outcome of a formal appeal before the Office of Administrative Law.

The Department of Education transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. Jurisdiction is conferred under N.J.S.A. 18A:6-9. The case was filed at the Office of Administrative Law (OAL) on May 8, 2023.

FACTUAL DISCUSSION

According to petitioner, he and his wife, from whom he is separated, own two homes, one in Elizabeth and another in Newark.

Like many couples who separate, no formal written agreement was created, but the couple separated in early January 2023. At that time, petitioner moved into the Newark residence.

Petitioner testified that his wife often traveled to her home country of Ecuador, leaving him to care for the couple's children. Though at first, he visited them often, the children often expressed disappointment when he had to leave and so they asked if they could reside with him. At all times relevant herein, petitioner's wife, (the mother of the children) remained a resident of Elizabeth.

Out of respect for his wife's desire to live separately, petitioner stated that he allowed the children to move in with him in Newark for the balance of the 2023 school year, and he arranged to transport them to Elizabeth. Since he was out of work due to an injury he suffered at a jobsite, he was able to provide transportation for them to and from Newark, which he does not deny became the children's temporary home. He did indicate however, that it was never the intention to have the children permanently reside in Newark, and in fact at the time of the final date of hearing, petitioner had moved back into the Elizabeth where he and his wife reside in separate bedrooms. (The Newark property has since been rented out.)

Testifying for Elizabeth was William Buteau ("Mr. Buteau"), who serves as a school investigator.

Prior to assuming his duties with the District, Mr. Buteau worked as a police officer with the Elizabeth Police Department.

According to Mr. Buteau, on or about March 1, 2023, a secretary from the District contacted him and requested an investigation be opened against petitioner and his two children. Apparently, the referral came from the District's IT Department, which noted a series of "pings' from the children's laptop computers that were coming from outside the geographic boundaries of the District. (To further support its case against petitioner, the District presented eight pages of documents from certain dates in March, April and May 2023 showing the "pings" from outside Elizabeth). It should be noted that though Mr. Buteau testified to the ping record, the documents were not certified nor did an IT expert testify concerning ho computer use is tracked.)

Mr. Buteau went on to say that he also reached the conclusion that the children were not eligible to attend school in Elizabeth because on one occasion he parked his vehicle outside petitioner's other residence in Newark, where he observed petitioner put the children in his car and drive away on a school day. (Mr. Buteau admits that part of the way from Newark to Elizabeth, he lost track of the vehicle, and he did not attempt to trace or follow petitioner or his children again.)

When asked if he did any further investigation such as parking outside the school to see if petitioner picked the children up to take them to Newark, he indicated that due to a heavy caseload, he did not take time to see where the children went after school.

Finally, Mr. Buteau was asked whether he had any interactions directly with petitioner, and/or attempted to interview him. Other than one short interaction when petitioner came to school to explain his domestic situation, he did not pursue anything further with petitioner.

FINDINGS OF FACT

1. At all times relevant herein, petitioner and his wife were residents of the City of Elizabeth.
2. At the start of the 2022-23 school year, both of petitioner's children, C.C. and K.C. were enrolled as students in the district.
3. Some time at the beginning of 2023, petitioner and his wife separated, with petitioner moving to a home they owned in the City of Newark.
4. Petitioner commenced visiting his children as often as he could, and when his wife made trips to Ecuador, petitioner acted as the primary custodial parent.
5. Some time in early March 2023, both children expressed to petitioner that they missed him and wanted to see him more.
6. Believing at the time that it was better for he and his wife to remain apart, petitioner arranged for both children to temporarily move into the Newark home with him.
7. Since he was out of work due to a job injury, petitioner was able to transport the children to school each day.

8. Petitioner does not deny that the children were residing with him in Newark temporarily.
9. Though this temporary arrangement remained in effect for the balance of the 2023 school year, since he did not want to harm his children's' education, within the first months of the 2023-24 school year, petitioner moved back to Ellizabeth residing in the same home as his wife, though they created separate areas and slept in separate bedrooms.
10. At all times relevant herein, petitioner wife, (to whom he was still married) and the mother of the children still resided in Elizabeth.

LEGAL STANDARD AND CONCLUSIONS

N.J.S.A. 6A:22-1 et. seq. governs student residency requirements within a certain school district. In order to be eligible to attend public school within a municipality, students must be domiciled within the town where the schools are located, unless the District itself has an agreement with a neighboring district for its residents to attend school outside the district.

N.J.S.A. 6A:22-6.2 allows for a student who has moved outside the district to remain a student within the contested district provided an appeal has been filed. However, the district can still pursue tuition reimbursement from the parents of the student for the period of time in question once the appeal is completed.

There are several exceptions to the statutory requirement requiring residency within the district, one of which is "Family Crisis." Another exception is being the child of divorced or separated parents.

Based on the petitioner's undisputed testimony, compared against the limited nature of the investigation conducted by the Elizabeth investigator, **I CONCLUDE** that petitioner's children fell into both categories of "Family Crisis" and Separation, and as such were entitled to continue to attend the Elizabeth Schools from March 2023 through October 2023 when the first day of appeal started.

I FURTHER CONCLUDE that since for the sake of the children, after a few months, petitioner moved back to Elizabeth on a permanent basis, no tuition should be assessed against petitioner while the appeal was pending in good faith.

ORDER

It is hereby **ORDERED** that the petitioners' circumstances fall within the "Family Crisis" and Separation exceptions to the residency statue. Accordingly, the appeal is **GRANTED** and the determination seeking tuition payments for attending school while temporarily domiciled out-of-District is **REVERSED.**

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.

July 25, 2024
DATE

ANDREW M. BARON, ALJ

Date Received at Agency: July 25, 2024

Date E-Mailed to Parties: July 25, 2024

lr

APPENDIX

Witnesses

For Petitioners:

E.C.

For Respondent:

William Buteau

Exhibits

Petitioner:

P-1 Miscellaneous submissions concerning children's certificates and progress in schools and medical information as well as letter from petitioner explaining domestic separation from mother of children

Respondent:

P-1 Investigator's Memorandum

P-2 Demographic information for C.C. and K.C.

P-3 EBOE laptop tracking for K.C.

P-4 EBOE laptop tracking for C.C.

P-5 Notice of Initial Determination

P-6 Final notice of ineligibility C.C.

P-7 Final notice of ineligibility K.C.

P-8 Petitioner's submissions

P-9 EBOE 22-23 school calendar

P-10 EBOE 23-24 school calendar

332-24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificate of Stephanie Beal, Board of Education of the Township of Piscataway, Middlesex County.

Synopsis

This matter was opened before the Commissioner of Education on October 12, 2023, by way of an Order to Show Cause served by the petitioner, Board of Education of the Township of South Brunswick, upon respondent Stephanie Beal, requiring her to show cause why an order should not be entered suspending her teaching certificate pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law. Petitioner initially participated in two pre-hearing telephone conferences in the matter before advising that she no longer wished to contest the suspension of her teaching certificate.

Upon review, the Commissioner concluded that the allegations, which respondent has chosen not to deny, may be deemed admitted and justify suspension of respondent's certificates. Accordingly, summary decision was granted to the Board, and respondent's certificates were suspended for a period of one year from the date of the filing of this decision – a copy of which was forwarded to the State Board of Examiners for the purpose of effectuating this order.

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.

332-24
OAL Dkt. No. 12782-23
Agency Dkt. No. 258-9/23

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificate of Stephanie Beal, Board of Education of the Township of Piscataway, Middlesex County

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 that respondent's resignation from employment with no notice justifies suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, the Initial Decision is adopted as the final decision in this matter. Respondent's teaching certificates are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2024
Date of Mailing: September 9, 2024

[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 12782-23
AGENCY DKT. NO. 258-9/23

TOWNSHIP OF PISCATAWAY BOARD OF EDUCATION, MIDDLESEX COUNTY,
Petitioner,
v.
STEPHANIE BEAL,
Respondent.

David B. Rubin, Esq., for petitioner

Stephanie Beal, respondent, pro se

Record Closed: June 18, 2024 Decided: July 31, 2024

BEFORE **MICHAEL R. STANZIONE**, ALJ:

STATEMENT OF THE CASE

Petitioner, Township of Piscataway Board of Education (Board), seeks the suspension of respondent's teaching certificate for one year for failing to comply with the requirement that she continue her employment during a sixty-day-notice period pursuant to N.J.S.A. 18A:26-10.

PROCEDURAL HISTORY

Respondent filed an order to show cause and affidavit on October 12, 2023. The Board filed an answer on November 15, 2023. The matter was transmitted to the Office of Administrative Law, where on November 16, 2023, 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.

A prehearing telephone conference was scheduled for December 21, 2023, and both parties appeared and agreed to schedule another conference. A prehearing telephone conference was scheduled for February 28, 2024; both parties appeared and agreed to schedule another conference to permit them time to work on discovery. A prehearing telephone conference was scheduled for March 26, 2024. Prior to the conference, respondent emailed the OAL to advise that she no longer contested the suspension of her teaching certificate and did not intend to participate in further discussions about this matter. Respondent failed to appear for the March 26, 2024, telephone conference. A Zoom conference was scheduled for April 23, 2024, but respondent failed to appear. A hearing was scheduled to be conducted via Zoom on June 14, 2024; respondent again failed to appear. The Board presented its proof, and the record remained open for respondent to explain her non-appearance and for the Board to provide additional information. When no explanation was received from respondent regarding her failure to appear, the record closed on June 18, 2024.

FACTUAL DISCUSSION

Based on the presentation and submission of evidence by petitioner, I **FIND** the following as **FACTS**:

1. Respondent was hired by the Board and began her employment as a teacher on October 3, 2022.

2. Her employment contract required sixty days' advance notice of any resignation.

3. On August 14, 2023, respondent submitted her resignation effective immediately and indicated that she would not return to work for the upcoming 2023–2024 school year.

4. The first day for her to report for the 2023–2024 school year was September 5, 2023. R-2 at 3.

5. The Board reminded respondent of the requirement to continue her employment for the sixty-day notice period. On August 29, 2023, respondent acknowledged receipt of this information via email. R-2 at 1.

6. In her August 29, 2023, email, respondent confirmed that she did not intend to work during the sixty-day-notice period and that she understood the Board could act against her teaching certificate. Id.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

N.J.S.A. 18A:26-10, applicable to non-tenured certificated staff, states in pertinent part: "Any teaching staff member employed by a board of education . . . who shall, without the consent of the board . . . cease to perform his duties before the expiration of the term of his employment, shall be deemed guilty of unprofessional conduct, and the commissioner may . . . suspend his certificate for a period not exceeding one year." See also N.J.A.C. 6A:9B-4.8. The purpose of the statute is "to provide notice to the school so that a suitable replacement can be hired without adversely impacting students." Penns Grove-Carneys Point Bd. of Educ. v. Leinen, 94 N.J.A.R. 2d (EDU) 405, 407.

As the Commissioner has recognized, N.J.S.A. 18A:26-10 "is clear and explicit as to the requisite conditions for a cause of action to arise under its terms, namely, 1) a teaching staff member ceases to perform his [or her] duties before the expiration of the term of his [or her] employment, and 2) the board does not consent to the teaching staff member's action." In re Suspension of the Teaching Certificate of Fesolowich, OAL Dkt. No. EDU 11608-05, Comm'r (September 14, 2006). Non-tenured teachers who violate

the notice requirements in their employment contracts will generally be found guilty of "unprofessional conduct" under N.J.S.A. 18A:26-10, warranting suspension of their teaching certificate. See In re Suspension of the Teaching Certificate of Creekmur, OAL Dkt. No. EDU 4041-11, Initial Decision (November 21, 2011), adopted, Comm'r (January 4, 2012).

The Commissioner of Education has established a one-year suspension as the presumptive consequence for failing to fulfill the required notice-of-resignation requirement. "Generally, the Commissioner has imposed the full one-year suspension of a teaching certificate for leaving a district without adequate notice. . . . . In rare circumstances in which the Commissioner has seen fit to lessen the suspension period, it was for compelling reasons." (Citation omitted.) Board of Educ. of Borough of Alpine v. Leonid Yuz, OAL Dkt. No. EDU 1116-06, Initial Decision (July 17, 2008), adopted, Comm'r (September 23, 2008). See also Penns Grove-Carneys Point Bd. of Educ. v. Leinen, observing that "[m]ost cases have resulted in the suspension of any and all teaching certificates for the maximum, one-year permitted if the Commissioner finds the teacher guilty of violating N.J.S.A. 18A:26-10."

These principles were applied in the In re Suspension of the Teaching Certificate of Schvamberg, EDU 09828-13, adopted, Comm'r (March 5, 2014), involving another non-tenured teacher in the Piscataway School District who received a one-year suspension of her certificate for failing to honor her sixty-day notice obligation. In that case, when respondent accepted employment with the school district, she knew that personal issues would likely affect her ability to serve out her contract term yet failed to advise the district.

Here, respondent by submitting her resignation on August 14, 2023, did not give the requisite sixty-day notice. Accordingly, I **CONCLUDE** that respondent failed to give sixty-day notice to the Board that she was terminating her employment, and thus she violated N.J.S.A. 18A:26-10. Respondent's teaching certificate shall be suspended for one year.

ORDER

Based on the foregoing findings of fact and conclusion of law, it is **ORDERED** that the decision of the Township of Piscataway Board of Education is **AFFIRMED**. It is further **ORDERED** that respondent's teaching certificate will be suspended for one year.

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.

July 31, 2024
DATE

Michael R. Stanzione
MICHAEL R. STANZIONE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

WITNESSES

For petitioner:

None

For respondent:

None

EXHIBITS

For petitioner:

R-1 Certification of Colleen Pongratz

R-2 Emails attached to the Certification of Colleen Pongratz

For respondent:

None

333-24E
OAL Dkt. No. EDU 09936-24
Agency Dkt. No. 227-7/24

New Jersey Commissioner of Education

Order on Emergent Relief

Mercy Transportation, Inc.,

Petitioner,

v.

Educational Services Commission of New Jersey,

Respondent.

The record of this emergent matter and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. This matter shall continue at the Office of Administrative Law with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2024
Date of Mailing: September 9, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON
EMERGENT RELIEF
OAL DKT. NO. EDU 09936-24
AGENCY DKT. NO. 227-7/24

MERCY TRANSPORTATION, INC.,
Petitioner,
v.
EDUCATIONAL SERVICES COMMISSION OF NEW JERSEY
Respondent.

Kevin W. Weber, Esq. and **Julia E. Browning, Esq.** for petitioner (Gibbons, PC, attorneys)

Caitlin W. Lundquist, Esq., for respondent (Busch Law Group, attorneys)

BEFORE **MARY ANN BOGAN**, ALJ:

Petitioner Mercy Transportation, Inc. (Mercy), a school bus transportation company who had been contracted with Educational Services Commission of New Jersey (ESCNJ), seeks emergent relief in the form of an order enjoining respondent from implementing the terms of the July 8, 2024, resolution disqualifying Mercy from future bidding from May 30, 2024 for a period of three years based on "prior negative experience" prior to providing Mercy with the opportunity to be heard before the ESCNJ,

contrary to the principles of due process that allow for a bidder to be afforded a hearing before potential disqualification.

The respondent, in opposition, contends that Mercy was properly notified and it cannot meet the criteria for emergent relief.

The Department of Education (DOE) transmitted the matter to the Office of Administrative Law, where it was filed on July 24, 2024, and scheduled for oral argument on July 31, 2024. A conference call was held on July 29, 2024, wherein the petitioner's attorney requested to schedule oral argument for July 30, 2024 to accommodate scheduling conflicts. Accordingly, all counsel agreed to reschedule the oral argument for July 30, 2024, on which day oral argument was conducted.

FACTUAL DISCUSSION

Mercy has been providing school bus transportation in central New Jersey since 2003. ESCNJ offers educational and business services to a number of school districts. ESCNJ is responsible for the coordination of transportation services statewide to approximately 14,000 students and 700 transportation routes. ESCNJ has contracted Mercy to provide student transportation services for multiple routes in Middlesex County since 2003. Mercy has approximately eighty employees. For the 2023–2024 school year, Mercy had eleven open transportation contracts with ESCNJ, consisting of sixty-four different routes, serviced by fifty-five buses and sixty-five employees. ESCNJ has never reported any prior negative experiences with the quality of transportation services that Mercy provided during those school years.

Mercy acknowledges that there was an incident on the MK59 open contact route on May 6, 2024. On that date, two children were not dropped off at school and neither the bus driver nor the bus aide discovered the children on the bus until a couple of hours after drop-off. In addition, video on the bus was not working at the time of the incident.

Thereafter, by letter dated May 30, 2024, Mercy was notified by Chris Sarate, respondent's cooperative transportation coordinator of its disqualification from bidding for three years. The letter states:

> As per [N.J.S.A.] 18A:39-11.3, the Board Members of the Educational Services Commission of New Jersey, by resolution will disqualify the bidder Mercy transportation for a defined period of three years for "prior negative experience at the June 7, 2024, Board meeting.

ESCNJ's letter specified that Mercy was being disqualified due to N.J.S.A. 18A:39-11.3.b(2):

> "the bidder defaulted on a transportation contract thereby requiring the board of education to utilize services of another contractor to complete the contract" and stated that "Mercy Transportation may no longer bid or quote on any routes, trips or athletics until a period of three years has been completed"... Mercy was also fined $5,000.
>
> [Pet. Ex. 2]

On June 5, 2024 Mercy received another disqualification letter from ESCNJ stating:

> As per [N.J.S.A.] 18A:39-11.3, the Board Members of the Educational Services Commission of New Jersey by resolution, will disqualify the bidder, Mercy Transportation for a defined period of three years for "prior negative experience" at the June 7, 2024 Board Meeting.
>
> Mercy was informed that ESCNJ may be pursuant to [N.J.S.A.] 18A:39-11.3 [a] disqualif[ied] . . . bidder who would otherwise be determined to be the lowest responsible bidder for a pupil transportation contract, if the board of education finds that it has had prior negative experience with the bidder. The disqualification shall be for a reasonable defined period of time which shall not exceed three years.
>
> This letter rejected Mercy for routes VP59-Fall FY25 from May 15, 2024 bid for prior negative experience. Mercy Transportation may no longer bid or quote on any routes, trips or athletics for the FY25 school year. This will include

> the 6/19/24 bid as FY25 routes are the only routes available and until a period of three years has been completed starting from July 1, 202[4] until July 1, 2027, which is the start of the new school year, FY25.

After receiving the May 30, 2024 disqualification letter, Mercy also received cancellation notices for every single contract that Mercy entered into with ESCNJ.

On June 4, 2024, routes S459 and S772 were cancelled. Pet. Ex. 4 and 5. On June 27, 2024, ESCNJ placed a resolution to disqualify Mercy on its Executive Committee agenda and voted to approve the disqualification on July 8, 2024. The approved disqualification includes disqualification from bidding or quoting on any routes, trips or athletics for any defined period of three years from July 1, 2024 through June 30, 2027 for prior negative experiences as per Title 18A:39-11.3.

Mercy was never notified of the executive session to vote on the July 7, 2024 resolution until it issued an Open Public Records Act (OPRA) and received records that included the resolution that was signed at a meeting held on July 7, 2024, without any notification to Mercy.

By letter dated June 5, 2024, Mercy was notified that ESCNJ would review a resolution to disqualify it for a three-year period at its June 7, 2024 meeting and it has been rejected for route, VP59-Fall FY25 from May 15, 2024 bid for prior negative experience and could no longer bid or quote on any routes, trips or athletics for FY25 year.

The respondent asserts that Mercy will be unable to demonstrate the necessary criteria for emergent relief as it cannot demonstrate that it will prevail on the merits. The respondent maintains that it provided proper notification to Mercy of the impending resolution to cancel the contracts and bid on future contracts, and its argument seeking a showing of due process violations is without merit.

The respondent sets forth that Mercy breached its contractual obligations when it failed to comply with the regulations governing the operation of pupil transportation and

nothing in the bid specifications requires a hearing prior to invoking the cancellation terms set forth in the contract. In that regard, if a contractor fails to comply with its contract terms it will result in the assessment of a penalty. Here, respondent sets forth that Mercy failed to inspect the vehicle at the conclusion of the route. The contract provides failure to inspect the vehicle at the conclusion of each route resulting in a student remaining on the vehicle will result in a $5,000 penalty and loss of route. Pet. Ex. 1. In addition, Mercy failed to ensure the proper operation of its surveillance system to record audio and visual activities while the bus is in service. As a result, Mercy was unable to provide a recording of the May 6, 2024 incident when two preschool age students were left completely unattended and without adult supervision on the bus for approximately four hours. Respondent sets forth numerous other incidents that they believe occurred during the 2023–2024 school year also supported its determination that petitioner should be disqualified from bidding or quoting on any routes or trips for athletics for a defined period of three years due to "prior negative experiences" pursuant to N.J.S.A. 18A:39-11.3. Mercy contends that its first notification of these new claims was on July 29, 2024 in the respondent's response to the emergent relief. These new claims were not set forth in the violation notices and it has no further information on their merits.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 6A:3-1.6, provides in pertinent part that where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case.

As set forth in N.J.A.C. 1:6A-12.1(e), N.J.A.C. 6A:3-1.6(b) and N.J.A.C. 6A:14-2.7(s), an application for emergent relief will be granted only if it meets the following four requirements:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying the petitioner's claim is settled;

3. The petitioner have a likelihood of prevailing on the merits of the underlying claim; and

4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

See also N.J.A.C. 1:1-12.6(b), citing Crowe v. DeGioia, 90 N.J. 126 (1982), which echoes the regulatory standard for this extraordinary relief. It is well established that a moving party has the burden of proving each of the four elements of emergent relief.

Turning to the first criteria, it is well settled that relief should not be granted except "when necessary to prevent irreparable harm." Crowe, 90 N.J. at 126. In this regard, harm is generally considered irreparable if it cannot be adequately redressed by monetary damages. Id. at 132–33. Moreover, the harm must be substantial and immediate. Judice's Sunshine Pontiac, Inc. v. Gen. Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976) (citation omitted). More than the risk of irreparable harm must be demonstrated. Continental Group, Inc. v. Amoco Chems. Corp., 614 F.2d 351, 359 (D.N.J. 1980). The requisite for injunctive relief is a "clear showing of immediate irreparable injury," or a "'presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by common law.'" Ibid. (citation omitted.)

Petitioner sets forth that its due process rights were blatantly disregarded when a resolution to disqualify them from bidding on July 8, 2024 for three years by failing to provide them with an opportunity to be heard. Due process has encompassed the elements of notice and an opportunity to be heard. The U.S. Supreme Court has identified three critical elements of due process, which it described as flexible and dependent on the situation: (1) the private interests affected by official action; (2) the risk of depriving those interests through the procedures used; and (3) the interest of the government. Mathews v. Eldridge, 424 U.S. 319, 334–35 (1976).

In the instant matter, Mercy argues that it has been unlawfully deprived of its right to conduct business when respondent disqualified them from future bidding that could result in financial harm and tarnish its reputation. While it appears that there are some discrepancies in ESCNJ's notifications to Mercy, these future claims of harm can be addressed in a plenary hearing.

For the foregoing reasons, I **CONCLUDE** that Mercy has not demonstrated it will suffer irreparable harm if the requested emergent relief is not granted.

Although all four standards for emergent relief must be met, the three remaining prongs of the standards for emergent relief will be addressed.

The second criteria, emergent relief "should be withheld when the legal right underlying petitioners' claim is unsettled." Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. at 304–305. Here, the legal right underlying Mercy's claim is not settled. Although ESCNJ may have violated Mercy's due process that allows a bidder to be afforded a hearing, its legal rights underlying its claims are not settled

For the foregoing reasons, I **CONCLUDE** that petitioner did not demonstrate that the legal rights to enjoin ESCNJ from disqualifying them from future bidding are settled.

Under the third emergent relief prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115-16 (E&A 1930)). Here, the likelihood of petitioner's success on the merits of whether ESCNJ had adequate reason under the contract to disqualify petitioner from future bidding, is unclear.

For the foregoing reasons, I **CONCLUDE** that petitioners have not demonstrated a likelihood of success on the merits.

The final requirement relates to the equities and interests of the parties. Crowe, 90 N.J. at 134. Here, Mercy claims that it has suffered irreparable harm by the premature cancellation of multiple contracts and the rejection form the VP59 route for which it had been selected as the successful bidder and any future renewed contracts. However, here again, these claims will be addressed at a plenary hearing. Furthermore, the potential harm in paralyzing the commission's ability to plan for school transportation needs, and the need to safely transport school students outweighs Mercy's interest and must be ensured during this intermediary period of time.

I **CONCLUDE** that Mercy would not suffer greater harm than the ESCNJ if the requested emergent relief is not granted. Accordingly, I **CONCLUDE** that petitioner did not satisfy all four requirements for emergent relief.

Therefore, I **CONCLUDE** that petitioner's request for emergent relief be **DENIED**.

ORDER

For the foregoing reasons set forth above, it is hereby **ORDERED** that petitioners' request for emergent relief is **DENIED**.

This order on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter.

This order on application for emergency relief may be adopted, modified or rejected by **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

July 31, 2024
DATE

MARY ANN BOGAN, ALJ

MAB/nn
c: Clerk OAL-T

APPENDIX

EXHIBITS

For petitioner

Brief

For respondent

Brief

334-24
OAL Dkt. No. EDU 02740-24
Agency Dkt. No. 363-12/23

New Jersey Commissioner of Education

Final Decision

Johanna Rivera-Caban,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

The record of this matter, which was transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-14.4 and includes an advisement of petitioner's failure to appear at a scheduled telephone conference on July 18, 2024 has been reviewed. Petitioner did not file an explanation for the failure to appear, notwithstanding the opportunity to do so. Accordingly, this matter is no longer deemed to be a contested case before the Commissioner and is hereby dismissed with prejudice.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2024
Date of Mailing: September 9, 2024

[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.

335-24
OAL Dkt. No. EDU 06907-24 (EDU 00882-24 on remand)
Agency Dkt. No. 365-12/23

New Jersey Commissioner of Education

Final Decision

T.G., on behalf of minor child, A.G.,

Petitioner,

v.

Board of Education of the West Essex Regional School District, Essex County,

Respondent.

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 that petitioner's failure to appear for multiple telephone conferences or to respond to respondent's motion to dismiss demonstrates that petitioner has abandoned her appeal.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2024
Date of Mailing: September 9, 2024

[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
DISMISSAL
OAL DKT. NO.: EDU 06907-24
AGENCY DKT. NO. 365-12/23

T.G., ON BEHALF OF MINOR CHILD, A.G.,
Petitioner,
v.
WEST ESSEX REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION,
Respondent.

ON REMAND
OAL DKT. NO.: EDU 00882-24

T.G., parent of **A.G.,** petitioner, pro se

Patrick F. Carrigg, Esq., for respondent (Lenox, Socey, Formidoni, Giordano, Carrigg, Lang & Casey, LLC, attorneys)

Record Closed: July 31, 2024 Decided: August 2, 2024

BEFORE **WILLIAM COURTNEY**, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

This matter was originally transmitted to the Office of Administrative Law (OAL) on January 17, 2024. Petitioner alleges that her minor son A.G. was the subject of harassment, intimidation, bullying ("HIB") and discrimination by one of his teachers

employed by the West Essex District Board of Education ("District"). Petitioner filed this action as an appeal to a determination by the District that the actions of A.G.'s teacher did not constitute HIB.

Notice that a prehearing telephone conference would take place at 2:30 pm on March 18, 2024 was sent via email and regular mail to petitioner on March 1, 2024. Counsel for the District appeared for the prehearing conference on March 18, 2024 and no one appeared on behalf of petitioner. There was also no communication from petitioner indicating she would not or could not attend. A second prehearing conference was then scheduled for March 26, 2024 and notice was again sent to petitioner via email and regular mail. Included in this second notice was the following statement:

> **NOTICE** - You failed to appear at the initial prehearing conference scheduled for March 18, 2024. **YOUR FAILURE TO APPEAR AT THIS RESCHEDULED PREHEARING CONFERENCE ON MARCH 26, 2024 AT 2:00 PM MAY RESULT IN THE DISMISSAL OF YOUR APPEAL.**

Despite receipt of specific notice that her complaint might be dismissed, petitioner failed to appear for the rescheduled prehearing conference. There was also no communication from petitioner indicating why she did not appear or if she intended to pursue this appeal.

As a result of petitioner's failure to appear at both scheduled prehearing conferences and failure to provide this tribunal with any reason for her absence, this tribunal issued an Initial Decision on April 17, 2024 ordering that the case be dismissed. That Initial decision was filed with the COMMISSIONER OF THE DEPARTMENT OF EDUCATION for consideration on April 17, 2024 and on May 10, 2024 the matter was remanded to the Office of Administrative Law for further proceedings.

REASON FOR REMAND

In its May 10, 2024 Final Decision, the Commissioner indicated the decision to remand was made for two reasons. The first reason was that the Initial Decision indicated the scheduling notices were sent to parties via email and not regular mail as required by N.J.A.C. 1:1-9.5(c).[1] The second reason was that the email address used for the notice was incorrect due to a typographical error on the transmittal form.

PROCEEDINGS OF REMAND

On June 3, 2024, this tribunal issued a Notice of Telephone Prehearing Conference that was to take place on June 20, 2024 at 2:30 pm. The Notice was sent to the parties via regular mail in accordance with N.J.A.C. 1:1-9.5(c) and via email. As was the case at the two prior conferences on March 18, 2024 and March 26, 2024, counsel for respondent West Essex Board of Education appeared at the June 20, 2024 prehearing conference and the petitioner failed to appear. Petitioner did not communicate with the court to provide a reason for her non-appearance.

In an effort to provide petitioner with one final opportunity to participate in the appeal she chose to file, a new notice was sent to the parties via regular mail and email on June 20, 2024 setting a new prehearing conference date of July 9, 2024. As was the case on the three prior prehearing conference dates, respondent appeared, and the petitioner failed to appear. Petitioner also failed to offer any reason for her non-appearance. On July 16, 2024, respondent filed a Motion to Dismiss for Lack of Prosecution. In accordance with N.J.A.C. 1:1-12.2(b), any opposition to respondents' motion was due on July 26, 2024. As of the date of this Initial decision, August 2, 2024 petitioner has filed no opposition to respondent's motion and has not sought any extension of time to submit any opposition. Accordingly, respondent's motion to dismiss is unopposed.

[1] As indicated above, the scheduling notices sent to the parties on March 1, 2024 and March 26, 2024 were indeed sent via email and regular mail.

LEGAL ANALYISIS

Since this matter was remanded, petitioner has failed to appear at both, properly noticed, prehearing conferences. If a party does not appear at any scheduled proceeding before the OAL, after appropriate notice, the ALJ is required to hold the matter for one day before taking any action. N.J.A.C. 1:1-14.4(a). If no explanation for the part's nonappearance is provided withing one day, "the ALJ shall direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c)." N.A.J.C. 1:1-14.4(a). Absent exigent circumstances, a petitioner's failure to prosecute the matter should result in its dismissal. N.O. v. Board of Education of Bridgewater-Raritan School District, 96 N.J.A.R. 2d (EDU) 746 (1996); R.J. v. Board of Education of the Lower Camden County Regional School District, 97 N.J.A.R. 2d (Edu) 155 (1996).

The petitioner has failed to appear for any of proceedings in this case for which she was properly noticed. Petitioner has also failed to provide any explanation for her failure to participate in the scheduled proceedings. Accordingly, I **FIND** and **CONCLUDE** that the petition of appeal has been abandoned and that the Clerk of the Office of Administrative Law should return the matter to the Department of Education for appropriate disposition. I further **FIND** and **CONCLUDE** for the reasons set forth above, that respondent's Motion to Dismiss petitioner's appeal for lack of prosecution should be granted.

ORDER

For the reasons set forth above,

It is on this 2nd day of August, 2024 **ORDERED** that:

1. Respondent's Motion to Dismiss petitioner's appeal for Lack of Prosecution is **GRANTED**; and

2. The Clerk of the Office of Administrative Law return this matter to the Department of Education for appropriate disposition.

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.

August 2, 2024

DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency: August 2, 2024

Date Mailed to Parties: August 2, 2024

db

336-24
OAL Dkt. No. EDU 04881-24
Agency Dkt. No. 85-4/24

New Jersey Commissioner of Education

Final Decision

L.C., on behalf of minor child, K.R.,

Petitioner,

v.

Board of Education of the Township of Gloucester, Camden County,

Respondent.

The record of this matter, which was transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-14.4 and includes an advisement of petitioner's failure to appear at a scheduled conference on June 3, 2024, has been reviewed. Petitioner did not file an explanation for the failure to appear. Accordingly, this matter is no longer deemed to be a contested case before the Commissioner and is hereby dismissed with prejudice.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2024
Date of Mailing: September 9, 2024

[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

ORDER OF RESCISSION
OAL DKT. NO. EDU 04881-24
AGENCY DKT. NO. 85-4/24

L.C. ON BEHALF OF MINOR CHILD, K.R.,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWNSHIP OF GLOUCESTER, CAMDEN COUNTY,

Respondent.

L.C., petitioner, pro se

Daniel H. Long, Esq., for respondent (Wade, Long, Wood & Long, LLC, attorneys)

BEFORE **KIMBERLEY M. WILSON**, ALJ:

Petitioner, L.C., on behalf of minor child, K.R., appeals the decision of respondent, the Board of Education of the Township of Gloucester, Camden County (District or Board), finding that K.R. resided within the Maple Shade Public School District, not the District. The Board filed a counterclaim against L.C., seeking tuition and costs for the time that K.R. attended the District schools but resided in the Maple Shade Public School District.

On or around April 2, 2024, L.C. requested a fair hearing. The New Jersey Department of Education (Department) transmitted the matter to the Office of Administrative Law (OAL), where it was filed as a contested case on April 11, 2024. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On April 22, 2024, the OAL sent the parties a notice of telephone prehearing, scheduling an initial conference for May 3, 2024, at 3:30 p.m. This notice was sent to the parties via email. L.C. did not appear for the May 3, 2024, initial conference; counsel for the District did appear.

By letter dated May 6, 2024, I requested that L.C. provide me with a written response with the reason for her failure to appear for the May 3, 2024, status conference by the close of business on May 20, 2024, pursuant to N.J.A.C. 1:1-14.4. I also stated that if I did not hear from L.C. by the close of business on May 20, 2024, I would return the file as an uncontested matter to our clerk's office, who would then return the matter to the Department for the appropriate disposition.

I did not receive any response from L.C. by May 20, 2024, and prepared a Letter Order dated May 22, 2024, indicating that I would be returning this file to our clerk's office, who would then return it to the Department. The Letter Order was sent to the parties via email and regular mail.

On or around May 22, 2024, I received the following email from L.C.:

> **I was Never sent an invitation for any pre trial or whatever the correct term would be no phone call or anything Not even for my son who's in BHP. The notice I received was letter stating I missed something and the date wasn't even correct. How can a person miss a hearing if the hearing date was never passed or present at the time of delivery**
> **I need phone calls not emails . . . please . . . .**

On or around May 23, 2024, I sent L.C. the following response via email:

Dear L.C.:

I hope this email finds you well. I have received your email dated May 22, 2024, in response to my Letter Order. When you send an email or letter to my office, please make sure that you are including Daniel H. Long, counsel for the Board of Education, on your email or letter. I have copied Mr. Long on this email so that he is aware of your correspondence and my response.

To reiterate the history of this case, on April 22, 2024, at 2:29 p.m. by email, our office sent you and Mr. Long a Notice of Telephone Prehearing that scheduled a telephone prehearing conference for Friday, May 3, 2024, at 3:30 p.m. A copy of that notice is attached. I have a copy of the April 22, 2024, email sent to you with the Notice of Telephone Prehearing, and our office sent that April 22, 2024, email to the same email address that you used for the email below.

You did not appear for the telephone prehearing conference on Friday, May 3, 2024, at 3:30 p.m. Mr. Long appeared for the telephone prehearing conference.

On Tuesday, May 7, 2024, our office sent you a letter dated May 6, 2024, by email and regular mail, asking you to provide a written response for your failure to appear for the Friday, May 3, 2024, status conference by May 20, 2024. Again, my May 6, 2024, letter was sent to the same email address that you used for the email below. I did not receive a response from you by May 20, 2024, and therefore, I issued the Letter Order dated May 22, 2024, advising that I was returning the file back to the New Jersey Department of Education because the matter was not contested. In response, I received the below email from you.

Please understand that our office does not call parties regarding prehearing conferences and hearing dates, as it is not permitted in the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1, et seq.

I am scheduling a hearing for Monday, June 3, 2024, at 9:30 a.m. via Zoom so that we [may] discuss whether this matter should still be sent to the New Jersey Department of Education as an uncontested case. Our office will send

separate notice of this hearing to you and Mr. Long by email and regular mail.

Should you have any questions or concerns, please let me know.

Very truly yours,

Kimberley M. Wilson
Administrative Law Judge
New Jersey Office of Administrative Law

On May 23, 2024, the OAL sent the parties a Notice of Status Conference, scheduling a Zoom hearing for June 3, 2024, at 9:30 a.m. I did not receive an email, telephone call, or any other communication from L.C. indicating that she was not available on June 3, 2024, for the status conference.

On June 3, 2024, at 9:30 a.m., I appeared on Zoom for the status conference. Counsel for the District appeared for the June 3, 2024, status conference; L.C. did not. Since the June 3, 2024, status conference, I have not heard from L.C. regarding her failure to appear for either the May 3, 2024, status conference or the June 3, 2024, status conference. During this conference, counsel for the Board indicated on the record that the Board was withdrawing its counterclaim, seeking tuition reimbursement from L.C.

On June 11, 2024, I issued a second Letter Order, setting forth the procedural history and indicating that for L.C.'s failure to appear at the June 3, 2024, status conference, I was returning the file to our clerk's office as an uncontested case.

On or around June 25, 2024, I issued a third Letter Order, setting forth the procedural history for this matter, and advising that the matter was no longer contested and would be returned to the clerk's office.

On or around June 26, 2024, counsel for the Board affirmed in writing that the Board withdrew its counterclaim against L.C., seeking tuition reimbursement from L.C.

On further consideration, N.J.A.C. 1:1-14.4(a) does not require any type of order, Letter Order or otherwise, from the OAL when a party fails to appear for a proceeding. Accordingly, I am rescinding the May 22, 2024, Letter Order; the June 11, 2024, Letter Order; and the June 25, 2024, Letter Order.

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.

June 28, 02024

DATE

KIMBERLEY M. WILSON, ALJ

Mailed to Parties: June 28, 2024

KMW/dw/jm
c: Clerk OAL-T

339-24
OAL Dkt. No. EDU 02750-23
Agency Dkt. No. 55-3/23

New Jersey Commissioner of Education

Final Decision

L.K. and M.K., on behalf of minor child, M.K.,

Petitioner,

v.

Board of Education of the Township of Nutley, Essex County,

Respondent.

The record of this matter, the proposed Settlement Agreement and Release (Agreement), and the Initial Decision issued by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 7 of the Agreement includes a confidentiality clause. The parties are reminded that the Board must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.*, in regard to information concerning this matter, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter. The matter is hereby dismissed, subject to compliance with the terms of the settlement consistent with applicable public records law.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 16, 2024
Date of Mailing: September 18, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 02750-23
AGENCY DKT. NO. 55-3/23

L.K. AND M.K. ON BEHALF OF MINOR CHILD, M.K.,

Petitioners,

v.

BOARD OF EDUCATION OF THE TOWNSHIP OF NUTLEY, ESSEX COUNTY,

Respondents.

L.K. and M.K. on behalf of minor child. **M.K.**, petitioners pro se

Jaclyn S. D'Armenio, Esq., (Inglesino and Taylor, attorneys) for respondents

Record Closed: August 12, 2024 Decided: August 19, 2024

BEFORE **ERNEST M. BONGIOVANNI,** ALJ:

On March 24, 2023, the matter was transmitted to the Office of Administrative Law for determination as a contested case.

The parties have agreed to an amicable resolution of the matter and submitted the attached Settlement Agreement and the Board's Resolution via e-mail on August 12, 2024.

Having reviewed the record and the settlement terms, I **FIND** as follows:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or the signatures of their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

Therefore, I **CONCLUDE** that the agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. Accordingly, it is **ORDERED** that the parties comply with the settlement terms, and it is **FURTHER ORDERED** that the proceedings in this matter be concluded.

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.

August 19, 2024

DATE

Ernest M. Bongiovanni

ERNEST M. BONGIOVANNI., ALJ

Date Received at Agency: August 20, 2024

Date Mailed to Parties: August 20, 2024

id

INGLESINO | TAYLOR, LLC
R. Scott Eveland, Esq. (Attorney Id. No. 028451990)
600 Parsippany Road
Parsippany, New Jersey 07054
(973) 947-7111
Attorneys for Respondent, Nutley Board of Education

L.K. and M.K., on behalf of minor child, M.K Petitioners, v NUTLEY BOARD OF EDUCATION, ESSEX COUNTY Respondent.	STATE OF NEW JERSEY DEPARTMENT OF EDUCATION CONTROVERSIES & DISPUTES OAL DOCKET #: EDU 2750-23 AGENCY DKT. NO. 55-3/23 **SETTLEMENT AND RELEASE**

This Settlement Agreement and General Release (the "Agreement") is entered into this 23rd day of July 2024 MK LK, by and between the Nutley Board of Education (the "Board" or "Respondent"), with offices located at 371 Franklin Ave, Nutley, NJ 07110, (hereinafter referred to as the "District"), and L.K. and M.K. o/b/o M.K. who are domiciled in Nutley, NJ (hereinafter referred to as the "Parents") (each a Party and collectively the "Parties.").

WHEREAS, M.K. is a fourteen (14 15 MK LK) year old student residing within the District, operated by the Board;

WHEREAS, on or about November 1, 2022, an allegation of Harassment Intimidation and Bullying ("HIB") was reported to the District in accordance with the Anti Bullying Bill of Rights Act, N.J.S.A. 18A:37-13 et seq.;

X.L. D.Z.

WHEREAS, the reported HIB was assigned by the District an incident case number of #237463_NHS_11022022

WHEREAS, an investigation of the reported HIB was commenced by the Anti-Bullying Specialist for the High School ("ABS") on or about November 2, 2022;

WHEREAS, upon completion of her investigation, on or about November 4, 2022, the ABS determined the HIB was founded and issued an investigative report;

WHEREAS, this finding was reported to and affirmed by the Superintendent;

WHEREAS, on or about November 7, 2022, Parents were advised of the investigative findings of the ABS and determination of the Superintendent;

WHEREAS, on or about November 8, 2022, Parents requested an appeal of the HIB determination to the Board;

WHEREAS, with consent of the Parents, on November 29, 2022, the Board held an appeal hearing for the HIB determination;

WHEREAS, on December 5, 2022, the Board provided a written post hearing determination to the Parents, affirming the superintendent determination that the incident constituted an incident of HIB (the "Board's Decision");

WHEREAS, the Parents filed a Petition of Appeal of the Board's Decision before the Commissioner of Education of New Jersey Office of Controversies and Disputes (hereinafter referred to as the "Parents' Petition") on or about March 3, 2023, asserting, that the Board's Decision was arbitrary capricious and unreasonable due to both factual errors and errors in the HIB procedure;

WHEREAS, the Parents' Petition was assigned Agency Dkt. No. 55-3/23 and OAL Docket No. EDU 2750-23;

WHEREAS, the Parent's Petition was transmitted to the Office of Administrative Law on or

about March 24, 2023, and assigned to the Honorable Ernest M. Bongiovanni, A.L.J.; and

WHEREAS, the Parties are desirous of resolving the issues in dispute and have reached an amicable resolution thereby avoiding the time and expense associated with further litigation,

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. **Expungement of the Student Record.** The Parties agree that any reference to the HIB or to the Board's Decision shall be expunged from the student record of M.K.

2. **Payment of Attorney's Fees and Costs.** Each party shall bear their own attorneys' fees, costs, expert witness fees, and/or other for the entirety of any matter or matters related to the subject matter of this Agreement.

3. **Withdrawal of Parent's Petition** The terms of this Agreement represent the compromise and resolution of disputed claims between the Parties. Parents shall immediately withdraw Parent's Petition through the date of this Agreement.

4. **Non-Admission of Liability.** This Agreement shall not constitute, be interpreted, construed, or used as evidence of any admission of fact, law, responsibility, or liability on the part of any party.

5. **Submission for Final Decision.** The Parties agree to submit this Agreement to an Administrative Law Judge for approval in full settlement of all issues pertaining to this matter. If approved, this Agreement shall be incorporated into a Final Decision by an Administrative Law Judge. Nothing contained herein shall be interpreted as preventing the Parties from filing a lawsuit to enforce the terms of this Agreement.

6. **Board Approval and Ratification.** This Agreement is subject to ratification by the Board and is without prejudice to any party if the terms are not agreed upon. The representatives of the

Board shall recommend the terms of this Agreement to the Board for approval. Every effort shall be made for this matter to be reviewed by the Nutley Board of Education at its next regularly scheduled meeting.

7. **Confidentiality**. The terms of this Agreement shall be held in strictest confidence by all Parties and shall not be publicized or disclosed in any manner whatsoever, except as may be required by law. The Parties agree that M.K.'s statement that he does not have any HIB charge or finding on his student record is not a breach of this confidentiality provision.

8. **Indemnification.** For any other complaints related to the subject matters encompassed in the Parent's Petition, the Parents agree jointly and severally, to indemnify and hold harmless the Board, its officers, employees, administrators, and/or agents for any claim, complaint, suit, demand, cost, expense or legal fee, penalty, loss or judgment (collectively, "liability") or any challenge successful or unsuccessful, brought by anyone on behalf of M.K. and in any judicial or administrative court, tribunal or other forum, through the date of this Agreement.

9. **Entire Agreement.** This Agreement constitutes the entire understanding of the Parties hereto and shall supersede any prior agreements between the Parties with respect to its subject matter. Further, there are no representations, warranties, covenants, or undertakings other than those expressly set forth herein. Each party acknowledges and agrees that they are not relying upon any oral statements, representations, promises or expectations which are not expressly and explicitly set forth in this Agreement, which alone fully and completely expresses all agreements between the Parties.

10. **Miscellaneous.**

a. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey.

b. The undersigned represent that they have the requisite authority to sign this Agreement on behalf of the respective party.

c. The Parties may execute this Agreement in counterparts, each of which is deemed an original and all of which only constitute one (1) original.

d. A modification or waiver of any of the provisions of this Agreement shall be effective and enforceable, only if made in writing, signed, and duly authorized by all Parties and executed with the same formality as the Agreement.

e. The terms and conditions set forth herein shall be deemed severable. If any clause or provision contained herein shall be held unenforceable by a court of competent jurisdiction, it shall not affect the validity of any other clause or provision, all of which shall continue in full force and effect.

f. The Parties recognize that each had the opportunity to be represented by legal counsel and that they sign this within Agreement as their own voluntary act and deed, and that they understand the duties and obligations enumerated herein.

11. **Accord and Satisfaction.** The Parties acknowledge that they are entering into this Agreement of their own accord and without any undue influence, coercion or pressure of any kind; that all the provisions of this Agreement, as well as all questions pertinent thereto, have been fully and satisfactorily explained to them; that they have given due consideration to such provisions and questions and understand them clearly; that the provisions of this Agreement are in all respects acceptable to them and that they, therefore, accept these provisions in full and final satisfaction of all claims and demands which have been raised or which could have been raised in any litigation related to M.K. up until the date of this Agreement and related to all subject matters encompassed in this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

[SIGNATURES PAGE]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the date and year set forth:

For the Petitioners:

L.K. o/b/o M.K.

M.K. o/b/o M.K.

Salvatore Ferraro, Board President

Dated: 7/23/24

~~Dave DiPisa, Board Secretary~~ Kat Baca Secretary

Dated: 7/23/24

Nutley Public Schools

Kent Bania
Superintendent
371 Franklin Avenue 2nd Fl
Nutley, New Jersey 07110
973-661-8796
kbania@nutleyschools.org

RESOLUTION

August 5, 2024

APPROVAL OF SETTLEMENT AGREEMENT

BE IT RESOLVED THAT the Board of Education approves a settlement agreement regarding student 6815885389. A copy of the settlement agreement is on file in the Board of Education Office

Sincerely,

Kent Bania
Superintendent

340-24
OAL Dkt. No. EDU 02923-23
Agency Dkt. No. 338-12/23

New Jersey Commissioner of Education

Final Decision

Maria Perez-Ruiz,

Petitioner,

v.

Board of Education of the Township of Fairview, Bergen County,

Respondent.

The record of this matter, the proposed Settlement Agreement (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 16, 2024
Date of Mailing: September 18, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 02923-24
AGENCY DKT. NO. 338-12/23

MARIA PEREZ-RUIZ,
Petitioner,
v.
TOWNSHIP OF FAIRVIEW
BOARD OF EDUCATION,
BERGEN COUNTY,
Respondent.

Albert J. Leonardo, Esq. for petitioner (Zazzali P.C., attorneys)

Mary C. McDonnell, Esq., for respondent (Pfund McDonnell, P.C., attorneys)

Record Closed: August 12, 2024 Decided: August 12, 2024

BEFORE **JULIO C. MOREJON**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle this case and have entered into an agreement. Their settlement agreement is attached to this decision.

Having reviewed the terms of their agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

I **FILE** my 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 is empowered by law to make a final decision in this case. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not so act within 45 days, and unless such time limit is otherwise extended, this recommended decision becomes a final decision in accordance with N.J.S.A. 52:14B-10.

August 12, 2024
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency: August 12, 2024

Date E-Mailed to Parties: August 12, 2024

lr

Reyes, Elisa [OAL]

From: Mary McDonnell <mmcdonnell@pfundmcdonnell.com>
Sent: Thursday, August 8, 2024 1:22 PM
To: Reyes, Elisa [OAL]; Albert J. Leonardo
Subject: [EXTERNAL] RE: EDU 02923-2024 Maria Perez-Ruiz v. Board of Education of the Township of Fairview, Bergen Co. (before Judge Morejon)
Attachments: Resolution 8-7-2024 - Signed.pdf; Settlement Agreement - Signed.pdf

Good afternoon-
Attached please find the executed settlement agreement and Resolution related to the above referenced matter.

Please advise if you require any additional information.

Thank you, Mary

Mary C. McDonnell, Esq.

PFUND MCDONNELL, P.C.
139 Prospect Street
2nd Floor
Ridgewood, NJ 07450
Phone: (201) 857-5040
Fax: (201) 857-5041
www.pfundmcdonnell.com

From: Reyes, Elisa [OAL] <Elisa.Reyes@oal.nj.gov>
Sent: Thursday, August 8, 2024 11:04 AM
To: Albert J. Leonardo <aleonardo@zazzali-law.com>; Mary McDonnell <mmcdonnell@pfundmcdonnell.com>
Subject: RE: EDU 02923-2024 Maria Perez-Ruiz v. Board of Education of the Township of Fairview, Bergen Co. (before Judge Morejon)

Yes, once received and reviewed, Judge Morejon will issue his initial decision settlement.

Elisa Reyes
Judicial Support Specialist to the:
Honorable Danielle Pasquale 973-648-6025
Honorable Andrew M. Baron 973-648-6022
Honorable Julio C. Morejon 973-648-6087
fax. 973-648-2358
e-mail: elisa.reyes@oal.nj.gov

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

***CONFIDENTIALITY NOTICE**: This email message and all attachments transmitted with it may contain State of New Jersey legally privileged and confidential information intended solely for the use of the addressee only. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachment is prohibited. If you have received this message in error, please notify the sender immediately and delete this message.*

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into effective as of the ____ day of _____, 2024 ("the Effective Date"), by and between MARIA PEREZ-RUIZ ("Perez-Ruiz") and the FAIRVIEW BOARD OF EDUCATION (the "Board").

WHEREAS, the Board is a body public and corporate, organized and existing by virtue of the laws of the State of New Jersey, N.J.S.A. 18A:11-1 which is entrusted with maintaining and governing the public schools of the Fairview School District;

WHEREAS, the Board has its administrative offices located at 130 Hamilton Avenue Fairview, New Jersey 07022;

WHEREAS, Perez-Ruiz is a former employee of the Board;

WHEREAS, Perez-Ruiz filed a Petition with the New Jersey Commissioner of Education, captioned Maria Perez-Ruiz v. Fairview Board of Education, Bergen County, OAL Docket No. EDU-02923-2024 N, Agency Docket No. 338-12/23, asserting that the Board unlawfully terminated her employment; (hereinafter "the Action");

WHEREAS, the Board has denied any unlawful action on its part;

WHEREAS, the parties desire to resolve and settle all outstanding matters between them pursuant to the terms and conditions set forth in this Agreement; and,

NOW, THEREFORE, intending to be legally bound hereby and in consideration of the mutual covenants and conditions set forth in this Agreement, the Parties agree as follows:

1. **Settlement Terms**

Perez-Ruiz and the Board agree that the Board shall pay, as back pay minus mitigation, the gross amount of Five Thousand Dollars and No Cents ($5,000.00), minus usual and customary withholdings, including FICA, State and Federal taxes, pension contributions, and other legally required deductions, in full satisfaction of all claims in the Action for compensatory damages known or unknown, asserted or unasserted including, but not limited to, claims for legal or equitable relief, reinstatement, back or front pay, lost benefits, and contract claims as of the date of the execution of this agreement. This sum shall be paid within thirty (30) calendar days of the date the Commissioner of Education approves this Agreement as follows:

a. The sum of Five Thousand Dollars and No Cents ($5,000.00), less usual and customary withholdings, including FICA, State and Federal taxes, pension contributions, and other legally

required deductions in the form of a check made payable to Perez-Ruiz.

b. Any employer-side payroll taxes and/or penalties relating thereto, if any, are the sole responsibility of the Board.

c. The gross amount of Five Thousand Dollars and No Cents ($5,000) constitutes full back pay minus mitigation due to Perez-Ruiz for the time period October 5, 2023, through December 4, 2023.

d. In consideration of the above, Perez-Ruiz hereby releases, acquits and forever discharges the Board, its current and former members, officers, directors, servants, employees, agents, successors, attorneys, assigns and affiliates, of and from any and all issues, causes of action, claims, liabilities, demands, indemnities, which have accrued regarding Perez-Ruiz's employment or termination by the Board and the Fairview Public School District, as of the date of the execution of this agreement, including, but not limited to, any and all damages (whether compensatory, incidental, punitive or otherwise), experts' fee or costs, excluding any claims that cannot be waived by law.

2. **Stipulation of Dismissal**

Perez-Ruiz and the Board agree that by executing this Agreement, it (and a Board resolution) shall be submitted to the Administrative Law Judge for issuance of an Initial Decision approving the settlement. If the settlement is approved by both the Administrative Law Judge and the Commissioner of Education, Perez-Ruiz's pending Petition will be dismissed with prejudice.

3. **Assent to Terms**

Perez-Ruiz and the Board hereby acknowledge that they entered into this Agreement with a full understanding of their rights and that they were fully informed of the implications of this Agreement. Perez-Ruiz has reviewed this Agreement with Albert J. Leonardo, Esq. and acknowledges she is satisfied with the quality of the services received. The parties enter into this Agreement without duress and of their own free will and volition and acknowledge that they were given a full and fair opportunity to fully consider this Agreement. This Agreement must be formally approved by the Board and this Agreement will be deemed null and void without said approval. All reasonable efforts will be made to timely obtain approval from the Board.

4. **No Admission of Liability**

Perez-Ruiz and the Board acknowledge and agree that this Agreement is a compromise and neither this Agreement, nor any consideration provided pursuant to this Agreement, is, nor shall be taken or construed to be, an admission or concession by Perez-Ruiz or the Board of any kind with respect to any fact, liability, or fault whatsoever.

It is expressly understood that the arrangement herein is predicated exclusively upon the special circumstances of this matter and shall not be construed to represent any policy or procedure of the Board, nor the interpretation of any terms contained in any agreement between the Board and the Fairview Education Association.

5. **Non-Disparagement**

Each party to this agreement agrees not to disparage or make or solicit any comments, statements, or the like to the media, the public or to others that may be considered derogatory or detrimental to the good name or business reputation of the other, related to the circumstances of this action only.

6. **Successors and Assignees**

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, assignees, heirs, officers, employees, officials and agents.

7. **Amendment; Severability; No Waiver**

This Agreement shall not be amended, changed or modified except in a writing signed by all parties. The provisions of this Agreement are severable. If it is determined by a court or administrative agency of competent jurisdiction that a specific clause of this Agreement is illegal or unenforceable, the remainder of the Agreement shall not be affected by such a ruling and shall remain in full force and effect unless doing so would destroy the essential nature of this Agreement. Any failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or of any other provision.

8. **No Further Consideration**

Perez-Ruiz and the Board each expressly acknowledge and represent that neither party will seek nor be entitled to any further consideration from the other in connection with this Agreement other than the consideration as detailed herein.

9. **Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matters herein, and supersedes and integrates any and all prior representations,

negotiations, discussions, understandings and agreements, whether oral or written. Each party acknowledges that neither the other party, nor any agent or attorney of the other party, has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement to induce it to execute this Agreement.

10. Counterparts

This Agreement may be signed in counterparts and shall be binding as if all Parties executed the original thereof. A facsimile or electronically-transmitted signature shall have the same effect as an original signature.

11. Law Governing

This Agreement shall be governed by the laws of the State of New Jersey.

12. Confidentiality

The terms of this Agreement shall be held in strictest confidence by all parties and shall not be publicized or disclosed in any manner whatsoever, except that: (a) either party may disclose this Agreement in confidence to their attorneys, accountants, auditors, immediate family members, union representatives, and tax preparers; (b) the Board may disclose this Agreement as necessary to fulfill its obligation under the Open Public Records Act, as well as all other standard or legally required reporting or disclosure requirements; and (c) as necessary with regard to any proceeding for the enforcement of this Agreement or as required by law.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this agreement consisting of this and four (4) preceding pages on the dates set forth below

Witness

Maria Perez-Ruiz

Dated 01/15/2024

Dated 07/15/2024

STATE OF NEW JERSEY)

ss:

COUNTY OF Bergen)

I certify that on July 15, 2024, Maria Perez-Ruiz personally came before me and acknowledged under oath, to my satisfaction, that she

(a) is named in and personally signed this document, and
(b) signed this document as her voluntary act and deed

CARLA NOLAZCO
Notary Public, State of New Jersey
Comm. # 50003703
My Commission Expires 07/23/2028

Notary Public Signature

FAIRVIEW BOARD OF EDUCATION

Attest

By: Angelo D'Arminio Jr., President

Rita Juliano, Board Secretary

Dated

Dated

RESOLUTION

BOARD OF EDUCATION
BOROUGH OF FAIRVIEW
COUNTY OF BERGEN, STATE OF NEW JERSEY

Meeting of August 7, 2024

WHEREAS, Maria Perez-Ruiz (Perez-Ruiz), a former employee of the Fairview School District (District), alleged a violation, misinterpretation, or misapplication of the District's agreement with the Fairview Education Association, the policy of the Fairview Board of Education, law, or administrative decision concerning the effective date of her resignation; and;

WHEREAS, Perez-Ruiz filed a grievance with her principal; and

WHEREAS, the principal denied the applicant's grievance; and

WHEREAS, Perez-Ruiz filed a petition of appeal with the Commissioner of the New Jersey Department of Education-New Jersey Office of Administrative Law (OAL); and

WHEREAS, Perez-Ruiz sought monetary damages; and

WHEREAS, certain negotiations took place between the District and Perez-Ruiz through their respective legal counsel; and

WHEREAS, considering the vagaries of litigation and the cost of same, the parties seek to enter into a written settlement agreement, which encompasses the terms of the settlement of the OAL action (Settlement Agreement); and

WHEREAS, the terms of the Settlement Agreement are in the best interests of the District;

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Borough of Fairview as follows:

1. The Settlement Agreement with Perez-Ruiz be and hereby is approved, and the Board President and Board Secretary be and hereby are authorized and directed to execute same on behalf of the District.

2. The Business Administrator is authorized and directed to issue such checks and to make such payments as required by the terms of the Settlement Agreement.

I, the undersigned, hereby certify that I am the secretary to the Fairview Board of Education. I further certify that the foregoing resolution has been duly adopted by the Board and such resolution is in full force and effect as of the date first written above.

Rita Juliano, Board Secretary

341-24
OAL Dkt. No. EDU 01613-24
Agency Dkt. No. 10-1/24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificate of Shaira Rose Cruz, Board of Trustees of the Empowerment Academy Charter School, Hudson County.

The record of this matter, the proposed Settlement Agreement (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed.

Upon such review, the Commissioner notes that Paragraph 2 of the Agreement references actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement. Further, with respect to Paragraph 7, "Confidentiality of Agreement", the Board is reminded that it must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.*, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the

Agreement. Assuming same, the matter is hereby dismissed, subject to compliance with the terms of the settlement consistent with applicable public records law.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 16, 2024
Date of Mailing: September 18, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 01613-24
AGENCY DKT. NO. 10-1/24

BOARD OF EDUCATION OF THE EMPOWERMENT ACADEMY CHARTER SCHOOL, INC., HUDSON COUNTY,
Petitioner,
v.
IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATE OF SHAIRA ROSE CRUZ,
Respondent.

Thomas O. Johnston, Esq., for petitioner (Johnson Law Firm, LLC, attorney)

Shaira Rose Cruz, respondent, pro se

Record Closed: August 19, 2024 Decided: August 19, 2024

BEFORE **MATTHEW G. MILLER**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to

settle this case and have entered into an agreement. Their settlement agreement is attached to this decision.

Having reviewed the terms of their agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

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.

Matt Miller

August 19, 2024
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency: August 20, 2024

Date Mailed to Parties: August 20, 2024

sej

SETTLEMENT AGREEMENT

This settlement agreement ("Agreement") made
by and between

EMPOWERMENT ACADEMY CHARTER SCHOOL, INC.
(Hereinafter referred to as "EMPOWERMENT")

AND

SHAIRA ROSE CRUZ
(Hereinafter referred to as "Ms. Cruz")

WITNESSETH:

WHEREAS, Ms. Cruz was employed by EMPOWERMENT, pursuant to an Employment Agreement, dated June 22, 2023 for the 2023-2024 school year; and

WHEREAS, on or about January 12, 2024, EMPOWERMENT filed an Order to Show Cause with the Office of Controversies and Disputes within the State of New Jersey, Department of Education, docketed as 10-1/24 and titled as, *In the Matter of the Suspension of the Teaching Certificate of Shaira Rose Cruz, Board of Trustees of the Empowerment Academy Charter School, Inc., Hudson County*; and

WHEREAS, on or about February 1, 2024, the aforesaid case was transferred to the State of New Jersey, Office of Administrative Law, Docket No. EDU 01613-2024N; and

WHEREAS, the parties desire to enter into a settlement for any and all claims arising from Ms. Cruz's abandonment of her employment with EMPOWERMENT;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties desire to enter into this Agreement as follows:

1. **EXECUTION DATE.** As used in this Agreement, the "Execution Date" shall mean the date as of which the Agreement is fully executed.

2. **CONSIDERATION.** In consideration of the release described in Section 3 below, Ms. Cruz agrees to not enter into employment with any public school, including any charter school, private school for the disabled, or any other position requiring a teacher certification, through one year from the Execution Date. Upon receipt of the fully executed Agreement, EMPOWERMENT's counsel will file a request with the Office of Administrative Law that the matter be dismissed, in accordance with this Settlement Agreement. If Ms. Cruz violates her agreement herein by accepting employment, which is prohibited hereunder, prior to the one-year expiration date of this Agreement, she shall be in material breach of this Agreement and agrees to an immediate one-year suspension of her teaching certification issued by the New Jersey Department of Education. Ms. Cruz further consents to the jurisdiction of the Commissioner of Education to enforce such suspension, as a dispute that arises under the New Jersey school laws.

3. **RELEASE.** In consideration for the agreement described in Section 2 above, the parties hereby mutually release each other and any of their predecessors, successors, parents, agents, affiliates or subsidiary entities, and its or their present or former officers, directors, agents, including EMPOWERMENT'S Board of Trustees, representatives, employees, attorneys, committees, trustees, fiduciaries, trusts and their respective successors and assigns, heirs, executors and personal or legal representatives (hereinafter collectively referred to, together with EMPOWERMENT, as the "Parties") from any and all claims or causes of action they may have or claim to have against another party arising out of or related to Ms. Cruz's employment with EMPOWERMENT. The claims released include, but are not limited to:

a. all statutory claims, including but not limited to claims arising under the New Jersey Law Against Discrimination (as amended), the New Jersey Civil Rights Act, the New Jersey Conscientious Employee Protection Act (as amended), the New Jersey Family Leave Act, Title VII of the Civil Rights Act of 1964 (as amended), Sections 1981 through 1988 of Title 42 of the United States Code (as amended), the Americans with Disabilities Act of 1990 (as amended), the

Rehabilitation Act, the Employee Retirement Income Security Act of 1974 (as amended), the Fair Labor Standards Act (as amended), the Uniformed Services Employment and Reemployment Rights Act of 1994, the National Labor Relations Act (as amended), the Federal Warn Act (as amended), the New Jersey Millville Dallas Airmotive Plan Job Loss Notification Act (as amended), the Family and Medical Leave Act of 1993, the Occupational Safety and Health Act (as amended), the Equal Pay Act (as amended), the New Jersey Minimum Wage Law (as amended), the New Jersey Wage and Hour Law (as amended), Equal Pay Law for New Jersey (as amended), the New Jersey Worker Health and Safety Act (as amended), the Labor Management Relations Act (as amended) and State Education Laws, N.J.S.A. 18A et seq.;

b. all claims arising under the United States or New Jersey Constitutions;

c. all claims arising under any Executive Order or derived from or based upon any State or Federal regulations;

d. all common law claims, including but not limited to any and all rights to discovery, claims for wrongful discharge, constructive discharge, violation of public policy, breach of an express or implied contract, breach of an implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, defamation, conspiracy, tortious interference with contract or prospective economic advantage, promissory estoppel, equitable estoppel, fraud, misrepresentation, detrimental reliance, retaliation, and negligence;

e. all claims for any compensation including commissions, back wages, front pay, punitive damages, pay increases, bonuses or awards, fringe benefits, disability benefits, severance benefits, reinstatement, retroactive seniority, pension benefits, contributions to retirement plans, or any other form of economic loss;

f. all claims for personal injury, including physical injury, mental anguish, emotional distress, pain and suffering, embarrassment, humiliation, damage to name or reputation, interest, liquidated damages, and punitive damages; and

g. all claims for costs, interest, and attorneys' fees.

Ms. Cruz understands that she has been given a period of twenty-one (21) calendar days to review and consider this Agreement before signing it. Ms. Cruz also understands that she is free to use as much of the twenty-one (21) day period as she wishes or considers necessary before deciding to sign the Agreement. Ms. Cruz may revoke her signature of the Agreement within seven (7) calendar days of signing it by delivering written notice of revocation to Thomas

Johnston, Esq., 151 Forest Street, Suite A, Montclair, New Jersey 07042. If Ms. Cruz has not revoked her signature of this Agreement by written notice received within the seven (7) day period, it becomes effective immediately thereafter (the "Effective Date").

4. **NON-ADMISSION OF LIABILITY**. This Agreement shall not be construed as an admission by either party of any of the acts or omissions alleged, or which could have been alleged against the other party. The Parties specifically deny any liability whatsoever for any damages, injuries or other claims made by either party against the other party.

5. **AGREEMENT NOT TO SUE.** Each party mutually represents that they have not, and agrees will not, file any lawsuit or claim against the other based on any events, whether known or unknown, occurring prior to the date of the execution of this Agreement, including, but not limited to, any events related to, arising out of, or in connection with, Ms. Cruz's employment with EMPOWERMENT, or the termination of such employment, in any court or tribunal of the United States, New Jersey, or any other state, city, county, or locality. Parties expressly represent that they have not filed a lawsuit or claim or initiated any other administrative proceeding other than as noted herein, and further promise not to initiate a lawsuit or to bring any other claim pursuant to N.J.S.A. 18A:26-10 arising out of or in any way related to Ms. Cruz's employment by EMPOWERMENT. Ms. Cruz also acknowledges and agrees that while this release does not preclude her from filing a charge with the Public Employment Relations Commission, the Equal Employment Opportunity Commission or a similar state or local agency, or from participating in any investigation or proceeding with such an agency, she will not personally recover monies, and expressly waives the right to recover such monies, for

any complaint or charge filed against EMPOWERMENT with any federal, state or local board, agency or court.

6. **NON-DISPARAGEMENT.** The Parties agree that they will not at any time, from the time of signing this Agreement, through any medium, either orally or in writing, including but not limited to, electronic mail, television or radio, computer networks or internet bulletin boards, blogs, social media, such as Facebook, LinkedIn, or X (formerly Twitter), or any other form of communication, disparage, defame, impugn, damage or assail the reputation of the other party, but rather shall act in good faith to refrain from any conduct or communication which might reasonably be expected to cause the recipient of a communication to question the business condition, integrity, competence, good character or professionalism of the other party.

7. **CONFIDENTIALITY OF AGREEMENT.** The Parties agree to maintain in confidence and not to disclose the terms of this Agreement except that Ms. Cruz may disclose this agreement to her immediate family and professional tax advisor, unless otherwise required by law.

8. **CONSIDERATION.** Ms. Cruz acknowledges that the only consideration she has received for signing this Agreement is that set forth herein. No other promise, inducement, threat, agreement or understanding of any kind or description has been made with her or to her to cause her to enter into this Agreement.

9. **SEVERABILITY.** Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language set forth in Section 3, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. If the

general release language in Section 3 is found to be illegal or unenforceable, Ms. Cruz and EMPOWERMENT agree to execute a binding replacement release.

10. CONSTRUCTION. The Parties and their representatives have participated fully in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

11. AMENDMENT. This Agreement may only be amended by a writing signed by all of the Parties to this Agreement.

12. AGREEMENT ENTERED VOLUNTARILY. Ms. Cruz acknowledges that she:

a. has carefully read and fully understands all of the terms of this Agreement;

b. understands that by signing this Agreement, she is waiving her rights under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, 29 U.S.C. § 621, et seq., as well as all rights to all claims described in Section 2 of this Agreement, and that she is not waiving any rights after the date that this Agreement is signed;

c. knowingly and voluntarily agrees to all of the terms set forth in this Agreement;

d. knowingly and voluntarily intends to be legally bound by this Agreement;

e. is receiving consideration in addition to anything of value to which she is already entitled;

f. is hereby advised to consult with an attorney prior to the signing of this Agreement; and

g. has not been coerced, threatened, or intimidated in any way into signing this Agreement.

13. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties and fully supersedes any and all prior contracts or agreements between the

Parties pertaining to compensation or severance, and it likewise fully supersedes any and all other conflicting agreements or understandings between the Parties.

14. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed, including execution by electronic signature (e.g. pdf or tif file), in one or more counterparts, each of which shall be deemed an original, and which shall collectively be deemed to be one and the same instrument.

Ms. Shaira Rose Cruz

Date: 7/30/2024

For Empowerment Academy Charter School, Inc.

Name: Angelo Thanos

Title: Director of Education

Date: 7-26

342-24
OAL Dkt. No. EDU 02199-24
Agency Dkt. No. 23-1/24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Ashley Loiodice, Board of Education of the Borough of Brielle, Monmouth County.

The record of this matter, the proposed Settlement Agreement (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 16, 2024
Date of Mailing: September 18, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
APPROVING SETTLEMENT
OAL DKT. NO. EDU 02199-24
AGENCY DKT. NO. 23-1/24

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATES OF ASHLEY LOIODICE, BOROUGH OF BRIELLE, BOARD OF EDUCATION, MONMOUTH COUNTY.

Cherie L. Adams, Esq., for petitioner, Borough of Brielle, Board of Education, Monmouth County (Adams, Lattiboudere, Croot & Herman, attorneys)

Ashley Loiodice, respondent, pro se

Record Closed: August 14, 2024 Decided: August 16, 2024

BEFORE **SARAH H. SURGENT**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle this case and have entered into an agreement, which was placed on the record on August 14, 2024, and is attached hereto. (J-1).

Having reviewed the terms of the agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this matter.

I therefore **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** herein, and that this matter is **CONCLUDED**.

I **FILE** my decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration. This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is empowered by law to make a final decision in this case. If the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not act within 45 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.

August 16, 2024
DATE

Sarah H. Surgent
SARAH H. SURGENT, ALJ

Date Received at Agency: August 19, 2024

Date Mailed to Parties: August 19, 2024

SHS/nn

ADAMS LATTIBOUDERE CROOT & HERMAN, LLC
555 Route 1 South, Suite 240
Iselin, NJ 08830
(973) 6437000
Attorneys for Petitioner Brielle Board of Education

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATE OF ASHLEY LOIODICE (GAHR, MAIDEN NAME) -and- BRIELLE BOARD OF EDUCATION	OAL Docket No.: EDU 02199-2024 S Agency Ref. No.: 23-1/24 **AGREEMENT**

WHEREAS, the Brielle Board of Education ("Board" or "District") is a local education agency; and

WHEREAS, Ashley Loiodice (Gahr, maiden name) ("Respondent") executed an employment contract with the District for the 2023-2024 school year on or about May 31, 2023; and

WHEREAS, Respondent was employed as a Fourth Grade Teacher at Brielle Elementary School for the 2023-2024 year; and,

WHEREAS, on November 20, 2023, Respondent submitted a letter of resignation to the Superintendent of the Brielle School District, noting December 21, 2023, as her last day; and

WHEREAS, on November 21, 2023, the Superintendent advised Respondent of the contractual 60-day notice requirement; and,

WHEREAS, Respondent nonetheless abandoned her position and did not return to the District after December 21, 2023; and

WHEREAS, Respondent's abandonment of her position has caused Brielle students to suffer a disruption in their learning and academic programs; and

WHEREAS, on January 25, 2024, the District filed a request for an Order to Show Cause, pursuant to N.J.A.C. 6A:3-3.1, and to suspend Respondent's teaching certificate for one (1) year in accordance with N.J.S.A. 18A:26-10 and18A:28-9; and

J-1

WHEREAS, in consideration of the District not proceeding with its request for a license suspension of one calendar year, Loiodice and the District wish to set forth the conditions of their agreement pursuant to the terms set forth below;

NOW THEREFORE, on their own behalf, Loiodice and the District hereby agree to the following items:

1. Ashley Loiodice agrees to accept a license suspension of her teaching certificate from July 25, 2024 through January 25, 2025.

2. Ashley Loiodice acknowledges she is due no compensation from the District and hereby also waives any claims she might have against the District through the date of the agreement, including in connection with this order to show cause.

3. The District agrees to accept this suspension through January 25, 2025 in resolution of the above proceeding and shall not proceed further with its request for a license suspension of one (1) full calendar year.

The parties hereby acknowledge their agreement to the terms set forth above by signing below.

BRIELLE BOARD OF EDUCATION

By: _____ Date: 7/25/2024

Ashley Loiodice
Ashley Loiodice

7/23/2024
Date

343-24
OAL Dkt. No. EDU 08877-21
Agency Dkt. No. 173-9/21

New Jersey Commissioner of Education

Final Decision

Board of Education of the Lower Cape May Regional High School District, Cape May County,

Petitioner,

v.

New Jersey Department of Education, Office of School Finance,

Respondent.

The record of this matter, the Initial Decisions of the Office of Administrative Law (OAL) issued January 30, 2023, and August 5, 2024, the exceptions filed by petitioner, Board of Education of the Lower Cape May Regional High School District (Board) pursuant to *N.J.A.C.* 1:1-18.4, and the reply thereto filed by the New Jersey Department of Education, Office of School Finance (OSF) have been reviewed and considered.

At issue is the Board's challenge to OSF's March 31, 2020, and December 31, 2020, determinations that the Lower Cape May Regional High School District was the district of residence for then minor child K.C. for the 2019-2020 and 2020-2021 school years and was therefore financially responsible for K.C.'s education when K.C. was placed at residential State facilities or group homes during those years.

K.C. is the child of J.C., biological father, and C.B., biological mother. According to the record, K.C. lived with her maternal grandmother, L.T., in Lower Cape May until February 2019. It is not known from the record whether L.T. ever obtained legal custody of K.C., as there are no court orders in the record to indicate same, and L.T. did not participate in the proceedings at the OAL. It is also not known from the record where K.C.'s parents were residing in February 2019.

In February 2019, the Department of Children and Families (DCF), Division of Child Protection and Permanency (DCPP) placed K.C. in a residential placement. It is not known from the record whether the Superior Court of New Jersey initially awarded legal custody of K.C. to DCPP in February 2019 when she was placed in a residential facility, or at some point thereafter. But as of October 2, 2019, according to a court order in the record filed under docket number FN-05-89-12, the Superior Court of New Jersey, Chancery Division, Cape May County, continued custody, care and supervision of K.C. with DCPP.[1]

On October 21, 2019, the Superior Court transferred legal custody of K.C. from DCPP to K.C.'s father, J.C., but continued physical custody with K.C.'s current placement, Spring House/Legacy Treatment Home. This court order indicates that J.C. was living in Sussex County at that time. On or about December 5, 2019, J.C. enrolled K.C. at High Point Regional High School in Sussex, New Jersey. However, the apparent plan to discharge K.C. to J.C.'s home fell through, as he subsequently told DCPP that he was not willing to care for K.C. Consequently, on December 11, 2019, the Superior Court awarded legal custody to DCPP once again, and K.C. was

[1] "FN" child protection proceedings in Superior Court are initiated by DCPP's filing of a verified complaint and order to show cause for custody, care and supervision or care and supervision of the subject child or children. *See, e.g., N.J. Div. of Youth & Fam. Servs. v. W.F.*, 434 *N.J. Super.* 288, 291 (App. Div. 2014). Because the record in this matter does not contain the verified complaint or order to show cause, it is not known when the litigation commenced, or when DCPP was first awarded custody of K.C.

placed at Legacy Treatment Services. K.C. remained at said placement until July 21, 2020, when DCPP placed her at East Mountain Youth Lodge/Carrier Clinic. She attended school there from September 6, 2020, until April 19, 2021.

When children are placed in residential State facilities or group homes by agencies such as DCF, "local school districts remain financially responsible for their educational services" pursuant to the State Facilities Education Act of 1979, *N.J.S.A.* 18A:7B-1 to -13 (the Act). *Bd. of Educ. of Borough of Highland Park v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 13316-14, Initial Decision at 10 (Nov. 30, 2015), *adopted*, Commissioner Decision No. 14-16 (Jan. 15, 2016). Accordingly, the Act provides that "[f]or each State-placed child who is resident in a district and in a State facility on the last school day prior to October 16 of the prebudget year, and for each district-placed child who is resident in a district and in a State facility on the last school day prior to October 16 of the budget year, the Commissioner of Education shall deduct from the State aid payable to that district an amount equal to the approved per pupil cost established pursuant to [*N.J.S.A.* 18A:7F-24]." *N.J.S.A.* 18A:7B-2.

To determine where financial responsibility rests, the Commissioner is responsible for identifying the district of residence for children in residential placements pursuant to the Act, which states that "[t]he district of residence for children who are in residential State facilities, or who have been placed by State agencies in group homes . . . shall be the present district of residence of the parent or guardian with whom the child lived prior to h[er] most recent

admission to a State facility or most recent placement by a State agency."[2] *N.J.S.A.* 18A:7B-12(b). The Act further provides that "[i]f the district of residence cannot be determined according to the criteria contained herein . . . the State shall assume fiscal responsibility for the tuition of the child." *N.J.S.A.* 18A:7B-12(d). *See, e.g., Bd. of Educ. of Borough of Buena v. N.J. Dep't of Educ.*, 96 *N.J.A.R.2d* (EDU) 288 (1995) (holding that the child's district of residence could not be determined when adoptive parents surrendered their parental rights and were no longer child's parents or guardians as a matter of law).

"Residence" as utilized within Title 18A "means domicile, unless a temporary residence is indicated." *N.J.S.A.* 18A:1-1. "[T]he domicile of the child follows that of the parent or guardian having legal custody over him or her." *L.D.M. v. Bd. of Educ. of Twp. of W. Orange*, Commissioner Decision No. 151-01, at 3 (2001). *See also Mansfield Twp. Bd. of Educ. v. State Bd. of Educ.*, 101 *N.J.L.* 474, 479 (Sup. Ct. 1925) (holding that persons other than parents having "legal control" over children are "those to whose care and custody children are committed by operation of law" and "have the legal status of parent or guardian"). "For purposes of determining domicile and

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[2] The related regulations offer additional guidance, including that "[t]he 'present district of residence' of a child in a residential State facility, defined in *N.J.S.A.* 18A:7F-45 . . . means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16." *N.J.A.C.* 6A:23A-19.2(a)(1). "The 'present district of residence' of a child placed by a State agency in a group home . . . means the New Jersey District of residence of the child's parent(s) or guardian(s) as of the date of the child's most recent placement by the State agency." *N.J.A.C.* 6A:23A-19.2(a)(2). "In subsequent school years spent in the educational placement made by a State agency, the child's 'present district of residence' shall be determined in the same manner as for a child in a residential State facility as set forth in (a)1 above." *Ibid.* "If the State becomes the child's legal guardian after the date of the child's initial placement by a State agency, the State will assume financial responsibility for the child's education costs in subsequent school years." *N.J.A.C.* 6A:23A-19.2(a)(3).

entitlement to a public education, the Commissioner can find no distinction in the case law between 'guardianship' and 'custody.'" *V.S.-L. v. Bd. of Educ. of City of Garfield*, Commissioner Decision No. 281-07, at 8 (July 9, 2007). Both terms "clearly signify positions of authority created to allow legal control of another human being who, because of age, physical or mental condition, cannot take responsibility for him or herself." *Ibid.*

Based upon information received from DCF that K.C. had lived with L.T., a resident of Lower Cape May, since August 2014, and immediately prior to her placement at a residential facility by DCPP in February 2019, OSF determined that the Lower Cape May Regional High School District was K.C.'s district of residence for the 2019-2020 and 2020-2021 school years.[3] Following receipt of the Board's petition of appeal, the Office of Controversies and Disputes transmitted the matter to the OAL. Ultimately, following an extended period of motion practice and discovery, the Administrative Law Judge (ALJ) granted OSF's motions for summary decision upon concluding that Lower Cape May Regional High School District was K.C.'s district of residence for both the 2019-2020 and 2020-2021 school years.

Specifically, the ALJ found and concluded that Lower Cape May Regional High School District was K.C.'s district of residence for the 2019-2020 school year because "[i]t is undisputed that K.C. resided with her grandmother prior to her placement at a State residential facility in

[3] When identifying the proper district of residence pursuant to *N.J.S.A.* 18A:7B-12(b), the Commissioner is permitted to rely upon "the address submitted by . . . the Department of Children and Families . . . on forms prepared by the Department of Education" and need not conduct his own investigation. *N.J.A.C.* 6A:23A-19.2(b). However, a board of education may contest OSF's district of residence determination and provide additional information for OSF to consider. *N.J.A.C.* 6A:23A-19.2. If OSF declines to issue a redetermination, a board of education may commence proceedings before the Commissioner and "bears the burden of proving that the . . . [district of residence] determination was arbitrary, capricious or without reason." *Bd. of Educ. of Twp. of Delaware v. N.J. Dep't of Educ.*, Commissioner Decision No. 177-06S, at 12 (May 10, 2006).

February 2019. Respondent correctly states that on October 15, 2019, L.T., K.C.'s grandmother had legal custody of K.C. who resided within the boundaries of the petitioner's school district." January 30, 2023, Initial Decision at 8. Regarding the 2020-2021 school year, the ALJ likewise concluded that Lower Cape May Regional High School District was K.C.'s district of residence "because K.C. resided with her grandmother prior to placement by the DCF." August 5, 2024, Initial Decision, at 12.

In their exceptions, the Board contends that the ALJ incorrectly assumed that L.T. was K.C.'s legal guardian absent a court order indicating same, and erroneously conflated physical custody with legal custody. In its reply exceptions, OSF maintains that L.T. did have legal custody of K.C. and claims that a court order from August 2014 transferring legal custody of K.C. to L.T. in fact exists, although said order was not part of the record before the ALJ. Reply Exceptions, at 16.

Absent a court order or credible testimony from L.T., the ALJ's finding that L.T. had legal custody of K.C. prior to her February 2019 placement by DCPP is unsupported by the record. Even if L.T. assumed physical custody of K.C. at some point prior to February 2019, that fact does not automatically make L.T. the legal guardian or legal custodian of K.C. without a court order. For purposes of identifying K.C.'s district of residence for the 2019-2020 and 2020-2021 school years, it is critical to know who had legal custody of K.C. during those years. Consequently, the Commissioner has determined that a remand to the OAL is necessary to determine whether L.T., at any point in time, obtained legal custody of K.C. via a court order. *See L.D.M., at 3* ("[T]he domicile of the child follows that of the parent *or guardian having legal custody over him or her*.") (emphasis added).

Accordingly, this matter is remanded to the OAL for further proceedings consistent with this decision. Upon remand, all custody orders involving K.C. should be entered into the record, so that the ALJ may make findings of fact as to when L.T. obtained legal custody of K.C., and when DCPP obtained legal custody of K.C.

IT IS SO ORDERED.[4]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 17, 2024
Date of Mailing: September 18, 2024

[4] 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 08877-21
AGENCY DKT. NO. 173-9/21

LOWER CAPE MAY REGIONAL HIGH SCHOOL DISTRICT, BOARD OF EDUCATION, CAPE MAY COUNTY,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION, OFFICE OF SCHOOL FINANCE,

Respondent.

Brett E. J. Gorman, Esq., appearing for petitioner (Parker McCay, P.A., attorneys)

Sadia Ahsanuddin, Deputy Attorney General, appearing for respondent (Matthew J. Platkin, Attorney General of New Jersey)

Record closed: May 31, 2024 Decided: August 5, 2024

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

The Board of Education of the Lower Cape May Regional High School District, Cape May County (petitioner/Board) challenges the determination of the New Jersey Department of Education, Office of School Finance (respondent/OSF) that the petitioner is the district of residence of the minor child, K.C., for the 2019–20 and 2020–21 school years and thus is responsible for her educational costs during those school years.

PROCEDURAL HISTORY

On March 31, 2020, the OSF determined that the petitioner was the responsible school district for K.C.'s educational costs for the 2019–20 school year. On September 10, 2021, the petitioner filed a Petition of Appeal,[1] and the matter was transmitted as a contested case to the Office of Administrative Law (OAL), where it was filed on October 27, 2021. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On October 25, 2021, respondent filed a motion to dismiss in lieu of an answer. N.J.A.C. 6A:3-1.5(g). Petitioner submitted a response on November 4, 2021, and on February 2, 2022, the Hon. Jeffrey R. Wilson denied the motion. On or about August 11, 2022, Judge Wilson was appointed to the Superior Court of New Jersey, and the case was reassigned to the undersigned.

On August 22, 2022, the respondent filed a motion for partial summary decision, and the petitioner filed a motion for summary decision. On September 16, 2022, the East Mountain School (EMS) filed a motion to intervene. On September 20, 2022, the petitioner filed its opposition to respondent's motion for partial summary decision, and the respondent filed its opposition to the petitioner's motion for summary decision.

[1] N.J.A.C. 6A:23-19.2(d) mandates that appeals must be filed within thirty days of the final notice that a child was determined to be a resident of the district. The petitioner's appeal was filed beyond the thirty-day requirement because it relied upon the OSF's advice not to file an appeal because J.C. had assumed custody and transferred K.C. to another school district. (PMSD, Exhibit 13, DOE 11.)

On September 27, 2022,[2] the petitioner filed its opposition to the EMS's motion to intervene. The respondent did not submit a response to the motion to intervene. The respondent was granted a one-week extension to file its reply brief, which was submitted on October 4, 2022.

On October 27, 2022, the undersigned denied EMS's motion to intervene but granted EMS participation status. Oral argument on the motions for summary decision and partial summary decision was held on December 19, 2022. On January 30, 2023, the undersigned denied the petitioner's motion for summary decision and granted the respondent's motion for partial summary decision, finding that the petitioner was the district of residence for the 2019–20 school year. However, there remained an issue of material fact regarding K.C.'s residence after July 1, 2020, for the 2020–21 school year.

On April 19, 2023, the undersigned signed a protective order for an in-camera review of K.C.'s records from the Division of Children and Families (DCF). The parties obtained the records from the DCF regarding K.C.'s residency after July 1, 2020. Based on that previously undisclosed discovery, the parties filed cross-motions for summary decision on April 9, 2024. The parties were granted extensions to submit their oppositions and replies. The respondent filed its opposition and reply to the petitioner's motion for summary decision on May 20, 2024, and the petitioner filed its reply on May 31, 2024.

FACTUAL DISCUSSION AND FINDINGS

The following **FACTS** are undisputed, and I therefore **FIND**:

1. K.C. was a minor child of J.C., her biological father, and C.B., her biological mother. C.B. did not have physical or legal custody of K.C. during the period relevant to this controversy.

[2] Petitioner filed a letter dated September 30, 2022, opposing the motion to intervene and requesting the opportunity to submit a more detailed response. A letter brief dated September 27, 2022, was submitted.

2. K.C. was diagnosed with bipolar disorder, depression, post-traumatic stress disorder, anxiety, attention deficit hyperactivity disorder, self-injurious behavior and suicidal ideations. (Petitioner's Motion for Summary Decision (PMSD), Exhibit 10.)

3. In a letter dated December 31, 2020, the OSF determined that the petitioner was the district of residence for K.C. for the 2020-21 school year. (PMSD, Exhibit 2.)

4. K.C. resided with her maternal grandmother, L.T., in Lower Cape May until February 2019, when the Division of Children and Families (DCF) placed K.C. in a residential placement. (Id.)

5. In an Order dated October 2, 2019, the Hon. M. Susan Sheppard, P.J.F.P., continued physical custody with the DCF. The Order scheduled a discharge planning conference for October 9, 2019, to facilitate discharging K.C. to her father's custody upon consent of counsel. A compliance review was scheduled for October 21, 2019. (PMSD, Exhibit 3.)

6. On October 21, 2019, Judge Sheppard transferred legal custody of K.C. to her father, J.C., but continued physical custody with K.C.'s then current placement, Spring House/Legacy Treatment Home. L.T. was terminated from the litigation. A compliance review was scheduled for November 13, 2019. (PMSD, Exhibit 4.)

7. J.C. authorized the release of K.C.'s pupil records to High Point Regional High School on October 21, 2019. (Respondent's Opposing Brief, Exhibit A, P003-004.)

8. Physical and legal custody for K.C. remained unchanged at the compliance review held on November 13, 2019. Another compliance review was scheduled for December 11, 2019. (PMSD, Exhibit 5.)

9. According to the DCF Contact Sheet, Mariah Berger, the new DCF caseworker for K.C., wrote on December 2, 2019, that she contacted High Point Regional to inquire about the delay in enrolling K.C. On December 5, 2019, High Point Regional staff responded that J.C. came to the school on November 27, 2019, to complete the paperwork but was unable to do so because the school closed early; the school reopened on December 2, 2019, however, a severe snowstorm caused power outages, and the school was closed. The High Point Regional staff person stated that they were reviewing K.C.'s file and would reach out to J.C. and were also requesting pupil records from the petitioner. (PMSD, Exhibit 9.)

10. Mariah Berger also drafted summary notes stating that on December 5, 2019, she contacted J.C., who stated that there was no longer an option for K.C. to live with him and that Ms. Berger was no longer welcome in his home. (Id.)

11. On December 11, 2019, Judge Sheppard ordered physical custody to remain with DCF at Spring House "until successful completion of the program." The Order did not specify K.C.'s legal custody. (PMSD, Exhibit 6.) The Judge further ordered:

> [T]he court is not currently requiring J.C. to comply with services based on his current position that he is not willing to care for K.C. and for other reasons stated on the record. Monmouth Regional School District, which covers Spring House, shall be considered the home school district for K.C. for school/homebound instruction purposes. The court determines that the removal of the child(ren) K.C. is necessary to avoid ongoing risk to the life, safety or health of the child(ren). Continuation of residence in the home would be contrary to the welfare of the child(ren) because J.C. strongly indicates that he is not willing to care for K.C. She cannot be maintained safely in his home. She has . . . health issues that need to be addressed in her current placement at Spring House and for the other reasons stated on the record and other due cause existing. (Ibid.)

12. On December 11, 2019, K.C. was placed at Legacy Treatment Services. (PMSD, Exhibit 8.)

13. In a letter dated December 11, 2019, DCP&P caseworker Mariah Berger and supervisor Cynthia Ginnetti notified J.C. that K.C. had been placed in an out-of-home placement and was in DCP&P's custody, and as such, K.C.'s new school placement was Monmouth Regional High School. J.C. was given five business days to challenge this placement. This letter listed Lower Cape May Regional School District as the "District of Residence" and Monmouth Regional School District as the "Resource Home District." The rationale given for this placement was:

> The distance of the out of home placement to your child's present school – [K.C.] is placed in a Legacy Treatment Solutions Program located in Monmouth County, NJ. Monmouth Regional High School is the district that is closest in proximity to [K.C.]'s placement. (Ibid.)

14. Mss. Berger and Ginnetti sent separate letters to the Monmouth Regional School District and High Point Regional School District dated December 12, 2019, stating that K.C. was in DCP&P's custody at Spring House-Legacy Treatment Solutions and the new school placement was Monmouth Regional High School. In both letters, High Point Regional School District was listed as "District of Residence," and Monmouth Regional School District was listed as "Resource Home District." (Ibid.)

15. In separate letters dated January 22, 2020, caseworker Berger and supervisor Reneta Angelastro notified Monmouth Regional High School and Lower Cape May Regional High School that K.C. was in DCP&P's custody at Spring House-Legacy Treatment Services and was to be enrolled in the Monmouth Regional School District. In these letters, Lower Cape May Regional was listed as the "District of Residence," and Monmouth Regional School District was listed as the "Resource Home District." (Ibid.)

16. On or about January 2020, K.C. was transferred from Legacy Treatment to Bridgeton Intermediate;[3] however, K.C. signed herself out against medical advice. K.C. returned to Legacy Treatment. (PMSD, Exhibit 9.)

17. On or about July 2020, K.C. was discharged from Legacy Treatment and was a patient at the Monmouth Medical Center Adolescent Psychiatric Unit, where she remained until July 31, 2020. (Id.)

18. On July 31, 2020, K.C. was placed by DCF in East Mountain Youth Lodge at Carrier Clinic. (Respondent's Opposition to the Petitioner's MSD, Exhibit A at P020 and PMSD, Exhibit 12.)

19. On or about September 11, 2020, Ms. Ginnetti wrote in her summary that J.C. expressed a desire to terminate his parental rights. (PMSD, Exhibit 10.)

20. Mariah Berger noted in her summary dated September 17, 2020, that J.C. had been arrested on August 19, 2020, and remained incarcerated on new charges and for violating his parole. (Respondent's MSD, Exhibit E.)

21. In an email dated April 9, 2021, the OSE notified the petitioner that K.C. never resided with her father but remained in her out-of-district placement, and thus, K.C.'s grandmother was the last residence for K.C. prior to placement, making the petitioner responsible for K.C.'s educational costs. (Respondent's Opposition to Petitioner's MSD, P015-016.)

22. In an email dated May 20, 2021, the respondent stated that whether a child is registered in the family's school district is irrelevant in determining which school district is responsible for the child's educational costs. The controlling criteria for assigning financial responsibility for the child's education were where the child's parent/guardian resided on the date of the

[3] Inspira Behavioral Health Child Inpatient Center Bridgeton.

child's placement and whether the placement was authorized by a State agency. (Respondent's Opposition to Petitioner's MSD, P024.)

23. K.C. became a resident of East Mountain Youth Lodge on July 31, 2020, and attended classes from September 6, 2020, until April 19, 2021.

LEGAL ANALYSIS AND CONCLUSIONS

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact, and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact, which can only be determined in an evidentiary proceeding, to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must "consider whether 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 alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536. I **CONCLUDE** that this matter is ripe for summary decision and that the respondent is entitled to judgment as a matter of law.

The petitioner herein challenges the respondent's determination that the petitioner is the district of residence responsible for K.C.'s educational costs for the 2020-21 school year pursuant to N.J.S.A. 18A:7B-12; N.J.A.C. 6A:23A-19.2; and N.J.A.C. 6A:23A-19.3(a)6. The petitioner contends that there is no factual dispute that the DCF, a State agency, became K.C.'s legal guardian on or about February 11, 2019. In addition, the petitioner asserts that this tribunal should reconsider its earlier decision dated January 30, 2023, finding the petitioner financially responsible for K.C.'s educational costs for the

2019–20 school year in light of new evidence released by the DCF because of a protective order. The petitioner contends that the new evidence affirms that K.C. did not reside with her grandmother, L.T., on October 15, 2019, and thus, the petitioner was not financially responsible for K.C.'s educational costs for the 2019–20 school year.

Conversely, the respondent herein contends that there is no factual dispute that Lower Cape May was the district of residence for the 2020–21 school year because the last place K.C. resided prior to her placement in a residential placement by DCF was with her grandmother, who lived within the boundaries of the Lower Cape May school district. The new evidence released by DCF revealed that K.C. never resided with her father but remained in the State's physical custody despite the court order granting the father legal custody on October 21, 2019. Thus, the respondent contends that the petitioner is responsible for K.C.'s educational costs for the 2020–21 school year pursuant to N.J.A.C. 6A:23-19.2(a)1. In addition, the respondent asserts that it is improper for the petitioner to include a request for reconsideration of a prior Initial Decision within a summary decision motion. The respondent contends that the proper vehicle was to file for interlocutory review or a motion for reconsideration.

N.J.A.C. 6A:22-3.1(a)1 states that "a student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district." Students placed in State residential facilities, however, are governed by N.J.S.A. 18A:7B-12, which is at the heart of this controversy and provides:

> For school funding purposes, the Commissioner of Education shall determine district of residence as follows: . . .
>
> b. The district of residence for children who are in residential State facilities, or who have been placed by State agencies in group homes, skill development homes, private schools or out-of-State facilities, shall be the present district of residence of the parent or guardian with whom the child lived prior to his most recent admission to a State facility or most recent placement by a State agency.

Accordingly, the school district financially responsible for the educational costs of a child placed in a State facility is determined by the residence of the parent/guardian with whom the child last resided prior to the State placement. Corresponding regulations provide:

> The district of residence for school funding purposes shall be determined according to the following criteria:
>
> 1. The "present district of residence" of a child in a residential State facility, defined in N.J.S.A. 18A:7F-45 and referred to in the first paragraph of N.J.S.A. 18A:7B-12.b, means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.
>
> 2. The "present district of residence" of a child placed by a State agency in a group home, skill development home, approved private school for students with disabilities or out-of-State facility, also referred to in N.J.S.A. 18A:7B-12.b means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's most recent placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility as set forth in (a)1 above.
>
> [N.J.A.C. 6A:23A-19.2 (a)1 & 2.]

This regulation specifically identifies October 16 as the annual cutoff date because local school districts are required to file annual reports with the Commissioner of Education detailing pupil enrollment data, including, for example, the number of pupils enrolled by grade, the number of students receiving special education services, the number of pupils in state facilities, county vocational schools, and students receiving home instruction. N.J.S.A. 18A:7F-33. This data seeks "to correlate the 'district of residence' assignment of financial responsibility with an accurate determination of where a student is included, each academic year, for State-aid reporting purposes." Bd. of Ed. of the Borough of Highland Park, v. N.J. Dept. of Ed., et al., 2015 N.J. AGEN LEXIS 578, *13, (Nov. 30, 2015).

Thus, the critical question for this matter is where did K.C. reside on October 15, 2020? Based upon the factual record, it is undisputed that K.C. resided at East Mountain Youth Lodge, which is a residential treatment facility.[4] Accordingly, N.J.S.A. 18A:7B-12b mandates that the present district of residence of the parent or guardian with whom K.C. *lived* prior to her most recent admission to a State facility or most recent placement by a State agency is determinative.

The challenge here is that J.C. was given legal custody of K.C. on October 21, 2019, and subsequent court orders are silent regarding legal custody. Physical custody specifically continued with the State agency, the DCF. The plain reading of N.J.S.A. 18A:7B-12b mandates that the district of residence is where the student lived with the parent or guardian prior to admission to a State facility. The factual record affirms that K.C. never *lived* with her father but rather remained in various State facilities, and thus, the last place of domicile with a parent or guardian was with K.C.'s grandmother in Lower Cape May.

The petitioner contends, however, that not only did the DCF have physical custody, but the DCF was K.C.'s legal guardian because it is undisputed that the DCF had physical custody of K.C. since December 11, 2019. However, the petitioner failed to present evidence to support the claim that the DCF was indeed K.C.'s legal guardian. Guardianship is "established by the order of a court of competent jurisdiction," and parental rights must be terminated. N.J.S.A. 30:4C-2; N.J.S.A. 30:4C-15(c) and (f) (a petition to terminate parental rights must be filed "if it appears that the best interests of any child under the care or custody of the [DCF] require that [the child] be placed under guardianship.") The respondent correctly asserts that the petitioner failed to produce a court order awarding legal guardianship and/or a court order terminating parental rights.[5] Simply put, there are no indicia of legal guardianship by the DCF.

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[4] https://www.hackensackmeridianhealth.org/en/locations/east-mountain-youth-lodge

[5] Respondent submitted the certification of Mariah Eaves in support of its contention that no parental rights were terminated and thus the State never became K.C.'s legal guardian. However, this certification was not part of the original motion and therefore is rejected as evidence with probative value.

According to N.J.S.A. 18A:7B-12(d), the State will only assume financial responsibility for a child's educational costs if one of three situations exists, namely, if the district of residence cannot be determined, if the statutory criteria identifies a district of residence outside of the State, or if the child has resided in a domestic violence shelter, homeless shelter, or transitional living facility located outside of the district of residence for more than one year. None of these conditions apply in the present controversy. Moreover, following the petitioner's logic would result in the DCF being financially responsible for the educational costs of every student it placed in a State facility. There is no evidence to support such a far-reaching and potentially costly proposition. Accordingly, I **CONCLUDE** that there is insufficient proof that DCF assumed financial responsibility for K.C. for the 2020-21 school year. I further **CONCLUDE** that the petitioner was K.C.'s present district of residence for this school year because K.C. resided with her grandmother prior to placement by the DCF.

2019-20 School Year

The petitioner asked this tribunal to reverse the decision dated January 30, 2023, because the new evidence revealed that the respondent was always K.C.'s legal guardian. (PMSD, at 7.) This request is denied for two reasons. First, the petitioner failed to provide evidence to substantiate that the State was the legal guardian, which is the basis for the request. N.J.S.A. 30:4C-11 grants the DCF the discretion to "accept and provide care or custody as the circumstances of the child may require" when "the safety or welfare of the child will be endangered unless proper care or custody is provided. . ." However, guardianship requires court action, which is not present in this case.

Second, the request is procedurally flawed. The Uniform Administrative Procedure Rules prohibit motions to reconsider an initial decision. N.J.A.C. 1:1-18.5(a). The only avenue to seek a change to the January 30, 2023, decision is for the petitioner to file a motion with the agency head to reopen the hearing pursuant to N.J.A.C. 1:1-18.5(b) or seek interlocutory review pursuant to N.J.A.C. 1:1-14.10. Accordingly, I **CONCLUDE** the Initial Decision dated January 30, 2023, will not be disturbed.

CONCLUSION

The respondent's determination regarding "district of residence" is entitled to a presumption of correctness. Bd. of Educ. of South River v. Dept of Educ., 2002 NJ AGEN LEXIS 228 (April 12, 2000). When a local school board contests a district of residence determination made by the Department of Education, the local board bears the burden of proving that the determination was an error. Bd. of Educ. of Bradley Beach v. Dept of Educ., 2000 NJ AGEN LEXIS 938 (July 3, 2000). Having carefully reviewed the record, I **FIND** there are no material facts in dispute and that the respondent is entitled to prevail as a matter of law. The record reflects that there are no disputed issues of material fact remaining as to where K.C. resided after July 1, 2020, and who had custody of her after December 11, 2019. Viewing the facts of each motion as I must, in the light most favorable to the non-moving party, I **CONCLUDE** that there is no basis for the petitioner's claim that the respondent erred in determining that the petitioner was the district of residence for 2020-21; since there is no factual dispute sufficient to justify an evidentiary hearing, summary decision in favor of the respondent is appropriate.

ORDER

I hereby **ORDER** that the petitioner's motion for summary decision is **DENIED**, and respondent's motion for summary decision is **GRANTED**. No other proceedings are required.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

August 5, 2024
DATE

Kim C. Belin
KIM C. BELIN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KCB/am

APPENDIX

EXHIBITS

For petitioner

- Motion for Summary Decision with certification and exhibits, dated April 9, 2024
- Response Letter Brief in opposition to the respondent's Motion for Partial Summary Decision, dated May 13, 2024
- Reply Letter Brief in further support of the petitioner's Motion for Summary Decision, dated May 31, 2024

For respondent

- Motion for Summary Decision with certification and exhibits, dated April 9, 2024
- Response Letter Brief in opposition to the petitioner's Motion for Summary Decision, dated May 20, 2024
- Reply Letter Brief in further opposition to the petitioner's Motion for Summary Decision, dated May 20, 2024

344-24

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

State of New Jersey
DEPARTMENT OF EDUCATION
PO BOX 500
TRENTON, NJ 08625-0500

CHRISTOPHER HUBER
Acting Commissioner

September 17, 2024

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Re: ***K.M. v. Board of Education of the Township of Hainesport, Burlington County, Agency Dkt. No. 94-4/22, Commissioner Decision No. 260-24***

Dear Parties:

I have reviewed the materials filed in connection with petitioner's Motion for Reconsideration of the Commissioner's final decision issued July 11, 2023, dismissing the petition based on petitioner's failure to appear for a scheduled hearing.

Pursuant to *N.J.A.C.* 6A:3-1.15(b)(2), a motion for reconsideration shall be considered based upon the following:

i. Claim(s) of mistake, provided, however, that disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute "mistake" for purposes of this section;

ii. Newly discovered evidence likely to alter the outcome of a matter, where such evidence could not have been previously discovered by due diligence;

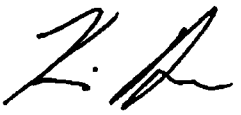
iii. Newly ascertained misrepresentation or other misconduct of an adverse party, where such misrepresentation could not have been previously known; or

iv. Reversal of a prior judgment on which the present matter is based.

Upon review and consideration, I find that petitioner has failed to satisfy any of the factors set forth in *N.J.A.C.* 6A:3-1.15(b)(2). Petitioner's submission indicates that she did not receive any notices to appear. However, the record reflects that the Office of Administrative Law (OAL) used the same email address to send petitioner the notice of appearance that the Department of Education used to send her the July 11, 2024 Commissioner decision. Petitioner clearly received a copy of that decision, and she used the same email address to file her motion for reconsideration. The record further reflects that the OAL used the same mailing address for petitioner that she provided in her motion for reconsideration. As such, petitioner's argument that she did not receive the notice of appearance is not credible.

Accordingly, the Motion for Reconsideration is hereby denied.

Sincerely,



Kevin Dehmer
Acting Commissioner

KD/JS
c: Clerk, Office of Administrative Law

344-24L

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345-24

IN THE MATER OF TENURE BETWEEN

Joyce Nicole DiGiso

-And-

MANALAPAN-ENGLISHT0WN REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION

Agency DKT. NO 125-5/24

Arbitrator: Kinard Lang

Hearing Dates: None

Parties: Manalapan-Englishtown Regional School District Board of Education – Bruce W. Padula, Esq.

Joyce Nicole DiGiso – Stephen B. Hunter, Esq.

ISSUE: Is the Settlement Agreement emanating from the parties' independent negotiations, and finally ratified by the Board of Education on August 20, 2024, in conformance with the standards established in the matter entitled *in re Cardonick,* State Board decision of April 6, 1983 (1990 School Law Decisions (S.L.D.) 842, 846) ??

The Settlement Agreement and the parties' documentary evidence and arguments in this matter have been appraised in light of the *Cardonick Standards.* I find no facial divergence from the cited *Standards* sufficient to withhold submission of the Settlement Agreement to the Commissioner of Education for review.

Kinard Lang, Arbitrator/Mediator - September 16, 2024

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This **SETTLEMENT AGREEMENT AND GENERAL RELEASE** (the "Agreement") is entered into this 20th day of August, 2024, by and between the MANALAPAN-ENGLISHTOWN REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION (the "Board") and JOYCE NICOLE DIGISO ("DiGiso") (collectively referred to as the "Parties").

WHEREAS, DiGiso is employed as a tenured teacher by the Board; and

WHEREAS, on May 1, 2024, the Board certified sworn tenure charges against DiGiso to the New Jersey Commissioner of Education; and

WHEREAS, the Parties desire to reach a full and final resolution of the tenure charges without the expense of additional litigation.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises of the Parties to this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **TERMS.**

a. The Board shall withdraw the tenure charges (New Jersey Department of Education Agency Dkt. No. 125-5/24) filed with the Commissioner of Education against DiGiso with prejudice and take all steps necessary to obtain Commissioner approval of such withdrawal.

b. The Board agrees not to withhold DiGiso's salary increment for the 2024-2025 school year. In lieu of said increment withholding, DiGiso agrees that the Board shall not provide compensation to her (unpaid suspension) for the time period between May 1, 2024 and June 30, 2024, although the Board agrees that all deductions, including TPAF contributions, healthcare insurance premium deductions, and the like shall be paid on DiGiso's behalf for said time period.

c. The Board shall provide DiGiso with Standards and/or Guidelines for Improvement and DiGiso hereby acknowledges and agrees that she shall conform her work conduct and performance to the standards and guidelines dictated by the Board. DiGiso further acknowledges and agrees that, should she fail to meet the legitimate standards and guidelines dictated by the Board, she shall be subject to disciplinary action, up to and including removal from employment.

d. DiGiso shall provide a certification from her healthcare provider to the Board, who shall certify to DiGiso's fitness to perform the duties of her role as a tenured teacher of the Board. DiGiso agrees and acknowledges that she shall bear all costs incurred in connection with any such examination and/or certification.

e. The Parties agree and acknowledge that this Agreement is entered into with the understanding that it is without precedent and shall not be referred to in any other case or matter between the Board and any other employee of the Board.

f. Neither party to this Agreement is entitled to any other relief not specifically provided for herein.

g. Except as may otherwise be explicitly provided herein, this Agreement shall not be construed as an admission by any party or representative, or as a violation of any federal or state law, provision of the parties' collective negotiations agreement, administrative code, Board policy or regulation, and/or violation of any public policy.

2. **COMPLETE RELEASE AND COVENANT NOT TO SUE.**

In consideration of the Agreement hereinabove, DiGiso, her heirs, assigns, and agents (hereinafter collectively referred to as "DiGiso") agrees to and hereby releases and gives up any and all claims and rights which she may have against the Board, including its former and current employees, elected officials, representatives, agents, and attorneys and covenants not to sue the Board for anything that has happened arising out of DiGiso's employment relationship with the Board. This releases all claims, including those of which DiGiso is currently unaware, and those not expressly mentioned herein, up until and through the effective date of this Agreement. DiGiso further covenants that she voluntarily enters into this Agreement, and certifies that she has not been threatened or coerced into signing this Agreement, on the terms which follow:

a. DiGiso hereby releases, waives, and discharges the Board, its affiliated departments, and its officers, members, administrators, participants, trustees, agents, attorneys, employees, successors and assigns (hereinafter collectively referred to as the "Releasees") from each and every claim, demand, cause of action, obligation, damage, complaint, or action or writ of any kind, nature, character, or description, known or unknown, that DiGiso had, now has, or may in the future have against the Releasees on account of or arising out of any matter or thing that has happened, developed, or occurred prior to the date of this Agreement, including, but not limited to, DiGiso's employment with the Board. This Complete Release includes, but is not limited to, any claim, demand, cause of action, obligation, claim for damages of any kind, complaint, expense, compensation, demand for arbitration, grievance, or action or writ of any kind, nature, character, or description arising out of or under Federal, State, or municipal statute or ordinance and any other law (whether such be common law, decisional law, or statutory law), rule, regulation, executive order or guideline, or any and all claims for attorney's fees and costs arising from the above acts, including, but not limited to:

i. Any claim, cause of action, demand or complaint arising out of or under the New Jersey Law Against Discrimination (NJLAD) which, among other things, prohibits discrimination in employment on the basis of an individual's race, creed, color, religion, sex, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, handicap, atypical hereditary cellular or blood trait or liability for service in the Armed Forces of the United States.

ii. Any federal claim, cause of action demand or complaint arising out of or under the Federal Title VII of the Civil Rights Act of 1964 (Title VII) or the Civil Rights Act of 1991, as amended, which, among other things, prohibit discrimination in employment on account of a person's race, color, religion, sex or national origin.

iii. Any claim, cause of action, demand or complaint arising out of or under the Federal Age Discrimination in Employment Act of 1967, as amended (ADEA), which among other things, prohibits discrimination in employment on account of a person's age.

iv. Any claim, cause of action, demand or complaint arising out of or under the Federal Americans with Disabilities Act (ADA), which, among other things, prohibits discrimination in employment on account of a person's disability or handicap.

v. Any claim, cause of action, demand or complaint arising out of or under the Federal Family and Medical Leave Act (FMLA) which, among other things, entitles an employee to take reasonable leave for medical reasons for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition and any claim, cause of action, demand or complaint arising out of under the New Jersey Family Leave Act (NJFLA).

vi. Any claim, cause of action demand or complaint arising out of or under the Federal Rehabilitation Act of 1973, as amended, which among other things, prohibits discrimination in employment by Federal contractors against individuals with disabilities.

vii. Any claim, cause of action, demand or complaint arising out of or under the Federal Employee Retirement Income Security Act of 1974, as amended (ERISA), which among other things, regulates pension and welfare plans and prohibits interference with individual rights protected under that statute.

viii. Any claim, cause of action, demand or complaint arising out of or under the Federal Older Workers Benefit Protection Act (OWBPA) which, among other things, amends provisions of ADEA and prohibits discrimination in employment and employment benefits on account of a person's age.

b. DiGiso represents and warrants that there are no pending lawsuits, charges, grievances or other claims of any nature whatsoever by her against the Board and/or the Releasees in any state or federal court, agency or other administrative body on account of or arising out of her employment with the Board. DiGiso understands that nothing in this Agreement shall be construed to prohibit her from filing a charge with, or participating in any investigation or proceeding conducted by, the New Jersey Division on Civil Rights, the U.S. Equal Employment Opportunity Commission (EEOC), or with any other Federal, State or local court or agency. Notwithstanding the foregoing, DiGiso hereby waives any and all rights to recover monetary damages in any charge, complaint, or lawsuit filed by her or by anyone else on her behalf based on events occurring which arose or existed on or before the date on which this Agreement is fully executed.

c. If either party violates any of the terms of this Settlement Agreement General Release, the violating party agrees to pay all costs and expenses of enforcement, including reasonable attorney's fees.

3. **NON-DISPARAGEMENT.** DiGiso agrees that she will not make any statement(s) that has, have, or can be expected to have the effect of disparaging the Board or any of its employees. Likewise, the Board and its administrators will not make any statement(s) that has, have, or can be expected to have the effect of disparaging DiGiso.

4. **CONFIDENTIALITY.** All parties shall not disclose, either directly or indirectly, in any manner whatsoever, any information regarding the existence of the terms or contents of this Settlement Agreement and General Release, to any third party, person or organization, including but not limited to, any governmental agency, members of the press and media, present and former officers, commissioners, employees and agents of the Board and other members of the public. This paragraph shall not preclude the parties from discussing the existence or terms of this Agreement to governmental authorities who require such information by subpoena duly issued by a court or agency within competent jurisdiction. Additionally, this paragraph shall not preclude the parties from providing copies of this Agreement pursuant to an order and/or request of the New Jersey Government Records Council (including but not limited to a valid request pursuant to the Open Public Records Act), New Jersey Division of Pensions and Benefits, or Supreme Court. It shall not be considered a breach of her obligation of confidentiality for DiGiso to make disclosure of the terms of the Agreement to her attorney(s), immediate family members (who shall be expressly advised of, and also be bound by, the same requirement of confidentiality), or accountants in order to obtain private and confidential legal, tax, or financial advice. DiGiso may reveal information concerning this Agreement as legally required to her tax accountants and financial advisors and to comply with State and Federal laws with respect to the reporting of income. Although the Parties agree to keep the Agreement and underlying facts confidential, this provision is unenforceable against the Board if DiGiso reveals settlement and claim details in such a way that the Board is reasonably identifiable

5. **CONSULTATION WITH ATTORNEY AND/OR UNION REPRESENTATIVE.** DiGiso affirms that she has had the opportunity to consult with her attorney and/or union representative with respect to this Agreement and has reviewed with her attorney and/or union representative all of the terms and conditions of this Agreement prior to executing this Agreement. Further, DiGiso hereby acknowledges that she is satisfied with the consultation and advice of her attorney and/or union representative.

6. **COMPLETE AGREEMENT.** This Agreement contains the entire agreement between DiGiso and the Board, and each of them, with respect to the subject matter, and supersedes all prior agreements, understandings and/or dealings whether written or otherwise with respect to the same subject matter. There is no agreement on the part of the Board to do anything other than what is expressly stated in this Agreement. It is understood between and among all parties hereto that the terms of this Agreement shall not have any precedential effect or constitute binding practice.

7. **EFFECTIVE DATE.** This Agreement shall become effective upon the date on which all parties to the Agreement have executed same.

8. **MODIFICATION.** No modification or amendment of this Agreement will be enforceable unless it is in writing and signed by the Board and DiGiso.

9. **SEVERABILITY.** Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term, or provision shall be deemed not part of this Agreement.

10. **ATTESTATION.** DiGiso represents and warrants that she has carefully read each and every provision of this Agreement and that she fully understands all of the terms and conditions contained in each provision of this Agreement. DiGiso represents and warrants that she enters into this Agreement voluntarily, of her own free will, without any pressure or coercion from any person or entity, including, but not limited to, the Board.

11. **REVOCATION.** DiGiso may revoke this Agreement within seven (7) days after the date this Agreement is signed by DiGiso. This revocation must take the form of written notice by DiGiso that she intends to revoke this Agreement. This revocation must be provided directly to the Board, c/o Bruce W. Padula, Esq., Cleary Giacobbe Alfieri Jacobs, LLC, 955 State Route 34, Suite 200, Matawan, New Jersey 07747. This seven (7) day revocation period may not be waived by DiGiso.

12. **REASONABLE TIME PERIOD.** DiGiso affirms and agrees that she has been given a reasonable period of time of at least twenty-one (21) days within which to review and consider this Agreement prior to executing same, but that she may waive this twenty-one (21) day period by signing this Agreement.

13. **GOVERNING LAW.** This Agreement shall in all respects be interpreted, enforced, and governed by the laws of the State of New Jersey.

14. **PRECATORY PHRASES.** The precatory phrases ("whereas clauses") are not mere recitals, but are specifically agreed to by the parties hereto and are incorporated by reference herein.

IN WITNESS WHEREOF, and intending to be legally bound hereby, I, Joyce Nicole DiGiso, executed the foregoing Settlement Agreement and General Release this 22nd day of August, 2024.

JOYCE NICOLE DIGISO

MANALAPAN-ENGLISHTOWN REGIONAL SCHOOL DISTRICT

Dr. Nicole Santora, Ed.D

Veronica Wolf

Superintendent

Dated: 9/6/24

School Business Administrator

Dated: 9/6/24

Signed settlement page

IN WITNESS WHEREOF, and intending to be legally bound hereby, I, Joyce Nicole DiGiso, executed the foregoing Settlement Agreement and General Release this 22 day of August, 2024.

JOYCE NICOLE DIGISO

MANALAPAN-ENGLISHTOWN REGIONAL SCHOOL DISTRICT

Dr. Nicole Santora, Ed.D

Superintendent

Dated: _____

Veronica Wolf

School Business Administrator

Dated: _____

Signed settlement page

IN WITNESS WHEREOF, and intending to be legally bound hereby, I, Joyce Nicole DiGiso, executed the foregoing Settlement Agreement and General Release this 22 day of August, 2024.

JOYCE NICOLE DIGISO

MANALAPAN-ENGLISHTOWN REGIONAL SCHOOL DISTRICT

Dr. Nicole Santora, Ed.D

Superintendent

Dated: _____

Veronica Wolf

School Business Administrator

Dated: _____

357-24
OAL Dkt. No. EDU 13639-23
Agency Dkt. No. 276-10/23

New Jersey Commissioner of Education

Final Decision

Robert Lawless,

Petitioner,

v.

Board of Education of the City of Bridgeton, Cumberland County,

Respondent.

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

Pursuant to *N.J.S.A.* 18A:16-6, petitioner seeks reimbursement of counsel fees and costs from the Board associated with the successful defense of an Order to Show Cause (OTSC) issued against him by the New Jersey State Board of Examiners (SBE). In September 2017, after the Board served him with tenure charges, petitioner agreed to resign from employment with the Board. The Board accepted petitioner's resignation and did not certify the tenure charges it had contemplated bringing against him. In January 2018, the Board notified SBE of petitioner's resignation. In September 2018, SBE issued an OTSC against petitioner seeking to revoke his teaching certificates due to allegations of unbecoming conduct. Petitioner retained counsel to

defend against the OTSC. Ultimately, SBE vacated the OTSC on June 29, 2023, and took no action against petitioner's certificates. Petitioner was notified of same via letter dated July 5, 2023.

On October 13, 2023, petitioner initiated the instant matter via the filing of a petition of appeal with the Office of Controversies and Disputes. The Board filed a motion to dismiss the petition, which was appropriately treated as a motion for summary decision by the Administrative Law Judge (ALJ) at the OAL. *K.L. v. Bd. of Educ. of Borough of Kinnelon*, Commissioner Decision No. 315-08, at 4 (July 23, 2008). Petitioner filed a cross-motion for summary decision. Upon review, the ALJ concluded that the matter was ripe for summary decision.

The ALJ found as fact that the filing of the petition on October 13, 2023, was the first time that petitioner put the Board on notice that he was seeking indemnification for counsel fees and costs associated with the OTSC pursuant to *N.J.S.A.* 18A:16-6, and that said notice did not occur "until five years of legal bills had accumulated." Initial Decision, at 13. Applying the Appellate Division's recent holding in *Azzaro v. Board of Education of the City of Trenton*, 477 *N.J. Super.* 427 (App. Div. 2023), the ALJ concluded that petitioner's delay in notifying the Board was "not reasonable in that [he] should have put respondent on notice at the inception of the administrative charges brought against him by the SBE in September, 2018." Initial Decision, at 13. Thus, the ALJ granted the Board's motion for summary decision, denied petitioner's cross-motion for summary decision, and dismissed the petition.

In his exceptions, although he neither contests the ALJ's factual findings nor distinguishes *Azzaro*, petitioner takes issue with the ALJ's conclusion that waiting five years to put the Board on notice of his indemnification request was unreasonable. He asserts that the plain language of

N.J.S.A. 18A:16-6 does not require notice to be given to the Board at the outset of the administrative proceedings. He argues that other statutes, such as *N.J.S.A.* 59:10A-1 pertaining to the Attorney General's duty to defend State employees, expressly require persons seeking a defense to make a "request" for same. In other words, had the Legislature intended to include a notice provision within *N.J.S.A.* 18A:16-6, it would have done so via the statute's plain language. Finally, petitioner claims that the Board does not have a policy concerning when notice must be given regarding indemnification requests.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter for the reasons stated therein. The Commissioner agrees with the ALJ that *Azzaro* is directly applicable to the present matter. In *Azzaro*, the Appellate Division expressly rejected the argument raised in petitioner's exceptions that because *N.J.S.A.* 18A:16-6 does not contain a notice requirement, petitioners were under no obligation to demand a defense and indemnification from the Board at the inception of the OTSC proceedings. *Azzaro*, 477 *N.J. Super.* at 434. The court reasoned that "although *N.J.S.A.* 18A:16-6 does not specifically address when a party must request defense costs and indemnification from a school board, the statute suggests a board's obligation arises when the action is instituted," stating in relevant part, *"[w]henever any civil or administrative action . . . has been or shall be brought* . . . the board shall defray all costs of defending such action . . . ." *Id.* at 437. Ultimately, the court held that petitioners had "an obligation to advise the Board they sought defense costs within a reasonable period of time after the OSC was filed" and that "[w]hat constitutes a reasonable time may be a fact-specific inquiry." *Id.* at 440.

In this case, the Commissioner concurs with the ALJ that waiting five years after the OTSC was issued to advise the Board of petitioner's request for indemnification was unreasonable under the circumstances. The SBE issued the OTSC against petitioner in September 2018 and vacated the OTSC on June 29, 2023. Still, petitioner failed to notify the Board of his indemnification request until the instant petition was filed in October 2023. Petitioner fails to provide any explanation as to why he declined to notify the Board at the inception of the OTSC proceedings or when he retained counsel, other than arguing that neither the controlling statute nor Board policy required him to do so. Given the court's holding in *Azzaro*, petitioner's exceptions are unavailing.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 30, 2024
Date of Mailing: September 30, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 13639-23
AGENCY DKT. NO. 276-10/23

ROBERT LAWLESS,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF BRIDGETON, CUMBERLAND COUNTY,
Respondent.

Dean R. Wittman, Esq., for petitioner (Zeller & Wieliczko, LLP, attorneys)

Albert K. Marmero, Esq., for respondent (Marmero Law LLC, attorneys)

Record Closed: July 8, 2024 Decided: August 16, 2024

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

STATEMENT OF THE CASE

Petitioner, Robert Lawless, seeks reimbursement of counsel fees and costs against respondent, City of Bridgeton Board of Education (Board) associated with the successful defense of an Order to Show Cause (OTSC) issued to Lawless by the New Jersey State Board of Examiners (SBE) pursuant to N.J.S.A. 18A:16-6.

PROCEDURAL HISTORY

On October 13, 2023, petitioner filed a Verified Petition dated September 27, 2023, seeking an order directing Respondent to pay petitioner's reasonable counsel fees in the amount of $133,422.50 and costs in the amount of $3,263.58 incurred in the successful defense of an OTSC issued by the SBE on September 21, 2018, in which it directed Lawless to show cause why his teaching certificates should not be suspended or revoked as a result of tenure charges filed against him by the respondent board.

By letter, dated July 5, 2023, the SBE advised that at its meeting of June 29, 2023, it voted to vacate the OTSC and that therefore, there was no pending action against petitioner and his certificates were valid and in good standing. On October 13, 2023, petitioner filed his petition seeking reimbursement for counsel fees and costs against respondent. On November 30, 2023, respondent filed a Notice of Motion to Dismiss in Lieu of an Answer to Petition and Brief in Support of Motion to Dismiss with attached Exhibits A, B and C.

The matter was transmitted from the Department of Education Office of Controversies and Disputes to the OAL as a contested matter, where it was filed on December 1, 2023.

On April 29, 2024, petitioner filed a Notice of Cross-Motion for Summary Decision, Certification of Counsel, Statement of Material Facts and Brief in support of Petitioner's Cross-Motion, with attached Exhibits A through M.

On May 24, 2024, respondent filed a Brief in Opposition to Petitioner's Cross-Motion and in further Reply to its Motion to Dismiss.

Oral argument was conducted on July 8, 2024, and the motion record closed at that time.

FACTUAL DISCUSSIONS AND FINDINGS

Respondent's Arguments

Petitioner's legal costs and expenses were incurred in defending an OTSC brought by the SBE and not the respondent. Petitioner no longer worked for respondent and indemnification can only be sought by employees of the Board. Petitioner had not been an employee of respondent for more than a year when the OTSC was filed by the SBE. On August 30, 2017, respondent served sworn tenure charges on petitioner for allegations of violations of various district policies including inappropriate conduct, inappropriate restraints, and improper reporting of restraints that were used. Although petitioner will argue that a subsequent investigation by the State found that the allegations were unfounded, that has no bearing on whether district policies were violated. The state has different standards and what might not be considered institutional abuse by the state standards, could still be a violation of respondent's policies which could result in disciplinary action. Just because the state did not find that institutional abuse occurred does not mean the conduct did not rise to a violation of district policy. Also, there can be no indemnification when a disciplinary proceeding has been brought against the employee by the board. The tenure charges were never heard and no certification or vote by the board occurred as petitioner resigned his position to work elsewhere. There was no formal determination of the merits of the charges and petitioner opted to resign. Petitioner had every right to challenge the tenure charges, but he decided to resign.

Respondent did not certify the tenure charges against petitioner, as he found employment elsewhere and there was an agreement reached between the parties that petitioner would resign, and respondent would waive the sixty-day notice provision to allow him to resign and take the new position. The Board never voted on the tenure charges and accepted petitioner's resignation at its September 29, 2017, meeting.

Pursuant to the notification provisions set forth in N.J.A.C. 6A:9B-4.3, respondent's superintendent did send a letter to the SBE dated January 24, 2018,

advising them that petitioner submitted his letter of resignation on September 29, 2017, effective September 30, 2017, while he was on administrative leave with pay, while the respondent conducted an investigation into his conduct which lead to the filing and serving of Sworn Tenure Charges against him. (Exhibit B, Respondent's motion to Dismiss.) Although the tenure charges against petitioner were outlined in the letter, they were not attached. The parties agreed that sometime later, the SBE requested a copy from the respondent, and a copy was provided to the SBE by respondent.

Respondent argues that its involvement ended at that point and that the SBE on its own initiative filed an OTSC a year later, on September 21, 2018, seeking to revoke petitioner's teaching certificates. Respondent was not a party to that action.

By letter, dated July 5, 2023, the SBE advised petitioner that at its meeting of June 29, 2023, it voted to vacate the OTSC and that therefore, there was no pending action against petitioner and his certificates were valid and in good standing. There never was never any adjudication of the allegations raised in the tenure charges.

Petitioner would argue that the charges brought by respondent were false and defamatory and he is therefore owed indemnification for having to defend the OTSC brought by the SBE.

Indemnification is only required for conduct falling within the employment duties of the school board employee and the allegations of inappropriate conduct do not fall within the employment duties of the petitioner.

Typically, what happens in these cases is the employee would request indemnification from the district; the district usually has insurance coverage, and the matter would be forwarded to the insurance carrier; the employee would select an attorney of their choosing; the attorney would submit a fee schedule to the insurance company, who would approve, deny or modify the fee schedule. Invoices would then be submitted to the district on a regular basis for approval; and then the insurer would have a maximum level they would contribute towards the indemnification. Once the maximum level was reached, the district would then kick in and pay for the rest of the

indemnification. None of that occurred in this case. Instead, the district is faced with a six-figure invoice in a matter it was not involved in and had no notice of and that arose from disciplinary charges which the district had brought in the past. The district had no opportunity to vet the attorney or approve the fee structure or run it through insurance.

Furthermore, the fees and costs sought were not paid out of pocket by petitioner and therefore he is not entitled to reimbursement for same.

There also was no proof of the reasonableness of the fees submitted.

Petitioner did not make a claim for indemnification for attorney's fees and costs until he filed this petition on October 13, 2023. The OTSC was filed in 2018 a year after his 2017 resignation.

Therefore, respondent argues the petition should be dismissed.

Petitioner's Argument

The only issue to be determined when a school board employee seeks civil indemnification under N.J.S.A. 18A-16-6 is whether the employee was acting within the scope of his employment duties. Mr. Lawless was a special education teacher with respondent when all of these allegations occurred. He was acting in the scope of his employment as a special education teacher. The allegations against Mr. Lawless were unfounded by the state institutional abuse unit. Mr. Lawless was never disciplined for anything. After four institutional abuse investigations had been brought against Mr. Lawless that were unfounded, the superintendent decided that he must be some bad actor and therefore brought sworn charges against him. The superintendent goes to great length and certifies to facts that did not occur but were allegations that the district's own internal investigation uncovered were false and that the children were lying and making up stories. Mr. Lawless knew the charges to be false, but it was not until after the OTSC was filed and discovery produced that petitioner obtained all of the interviews of various people confirming that the incidents did not occur and that the children were lying to get Mr. Lawless fired. The district knew this because their own

employees were saying this. The superintendent knew it was false yet swore to the charges.

Mr. Lawless had been accused four times of doing things he did not do, and then when served with tenure charges, he decided he no longer wanted to work for respondent because of the things he was being accused of. He did not feel that he was being properly supported by the district, so he started applying for other positions. When the tenure charges came in, he found out another district wanted him. He decided he did not want to work any longer for respondent with their constant accusations and lack of support and decided to accept employment with another district. Mr. Lawless did not admit to any wrongdoing or that any of the allegations were true. Mr. Lawless said that the allegations were all false. But rather than going through the process, knowing the respondent did not support him, he resigned and moved on.

Petitioner is not seeking any indemnification for the tenure charges being filed. The time Mr. Wittman's firm is billing as set forth in Exhibit "M" is time spent following the SBE's filing of the OTSC against petitioner. The SBE only knows what they were told. They were told Mr. Lawless resigned, and tenure charges were pending against him and the substance of those charges. Eventually they were provided with the actual charges themselves. Respondent knew what was going on. They were getting subpoenas from Mr. Wittman's office for records and witnesses' testimony. The procedure referenced by respondent's counsel for indemnification is not in writing or set forth in any Board policy. Mr. Lawless went to his union and asked for an attorney, and they gave him one. Mr. Wittman's firm has been paid, but Mr. Lawless still has the right of indemnification against the responsible party, which is respondent.

As set forth in exhibit "M" there is a breakdown as to what has been paid at the NJEA rate and what is owed, based on Mr. Wittman's firm's billing. He has been paid $74,840.45 and what he is claiming is $133,422.50 in counsel fees and $3,263.58 in costs, based on Greene v. Board of Education of the Township of Irvington, Essex County, 2014 WL 12844631 (OAL Docket No. EDU 4-04772-12), citing Salaam v. Board pf Education of the Township of Irvington, Essex County, 2014 WL 503950 (App. Div. 2014). Mr. Lawless had to have an attorney represent him and is entitled to

indemnification. Petitioner is not seeking indemnification for the defense of disciplinary charges brought against him by the respondent. He is seeking indemnification for the defense of the OTSC brought against him by the SBE occasioned by the wrongdoing of respondent who knew the charges were unfounded.

N.J.S.A. 18A-6 states that no one can be held harmless in a disciplinary proceeding instituted against him by the Board. That is not what happened here. The OTSC was brought by the SBE and not the Board. That is what the statute is supposed to protect. The fact that petitioner no longer was an employee of respondent does not matter. He was an employee of respondent when the allegations arose.

Dr. Thomasina Jones Superintendent signed the charges and put the wheels in motion. The statute does not state that there must be an adjudication of the charges. What happened was that the SBE could not prove their case and that is why the OTSC was vacated, which should not prejudice Mr. Lawless who had to defend himself and this went on for five years. The withdrawal of the OTSC is a determination in Mr. Lawless's favor. Respondent created the monster by saying all these things happened when they did not, but this is not a claim for malicious prosecution.

The only issue is whether Mr. Lawless was acting in the scope of his employment when these things occurred.

The Azzaro case is distinguishable from this case in that there was a finding that twelve years was too long. This case only took five years. The Board had no notice in that case which is different from this case. Also, the Board instituted the charges in this case by the superintendent signing the charges and not in that case. It would be unreasonable to require Mr. Lawless to go to respondent and ask for a defense when they were the cause of his problems.

Although the parties raised various factual issues concerning the circumstances surrounding the underlying tenure charges, both stipulated that this matter was ripe for summary disposition.

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

Petitioner is a certified teacher by the N.J. Department of Education and commenced employment with the respondent in the fall of 2008 as a special education teacher and later attained tenure in that position.

On August 30, 2017, respondent issued sworn tenure charges against petitioner for conduct unbecoming and other just cause.

Respondent did not certify the tenure charges against petitioner, as he found employment elsewhere and there was an agreement reached between the parties that petitioner would resign, and respondent would waive the sixty-day notice provision to allow him to resign and take the new position.

The Board never voted on the tenure charges and accepted petitioner's resignation at its September 29, 2017, meeting.

Pursuant to the notification provisions set forth in N.J.A.C. 6A:9B-4.3, respondent's superintendent did send a letter to the SBE dated January 24, 2018, advising them that petitioner submitted his letter of resignation on September 29, 2017, effective September 30, 2017, while he was on administrative leave with pay, while the respondent conducted an investigation into his conduct which lead to the filing and serving of Sworn Tenure Charges against him. (Exhibit B, Respondent's motion to Dismiss.) Although the tenure charges against petitioner were outlined in the letter, they were not attached. The parties agreed that sometime later, the SBE requested a copy of the tenure charges from the respondent, which respondent did provide.

On September 21, 2018, the SBE, on its own initiative, issued an OTSC to petitioner seeking to revoke petitioner's teaching certificates, based on the previous tenure charges.

Respondent was not a party to that action.

Petitioner did not request respondent to provide him with a defense or indemnification as to the SBE's charges when they were filed against him on September 21, 2018.

Petitioner retained counsel and incurred legal fees in the amount of $133,422.50 and costs in the amount of $3,263.58 from October 1, 2018, to June 30, 2023. (Certification of petitioner's counsel, Exhibit M.)

By letter, dated July 5, 2023, the SBE advised that at its meeting of June 29, 2023, it voted to vacate the OTSC and that therefore, there was no pending action against petitioner and his certificates were valid and in good standing.

On October 13, 2023, petitioner filed his Verified Petition dated September 27, 2023, seeking reimbursement for counsel fees and costs against respondent incurred in defense of the SBE's OTSC to suspend or revoke his teaching certificates.

The filing of this petition on October 13, 2023, was the first time petitioner put respondent on notice that he was seeking indemnification for his legal fees and costs associated with his defense of the SBE's OTSC against him filed on September 21, 2018.

LEGAL ANALYSIS AND CONCLUSION

Both parties seek relief pursuant to N.J.A.C. 1:1-12.5, which 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.

N.J.S.A. 18A:16-6 is in contrast to N.J.S.A. 18A:16-6.1, the statute that provides for indemnification of education employees charged with criminal or quasi-criminal actions. It provides:

> Should any criminal or quasi-criminal action be instituted against any such person for any such act or omission and should such proceeding be dismissed or result in a final disposition in favor of such person, the board of education shall reimburse him for the cost of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial and all appeals. No employee shall be entitled to be held harmless or have his defense costs defrayed as a result of a criminal or quasi-

> criminal complaint filed against the employee by or on behalf of the board of education.
>
> Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.
>
> [N.J.S.A. 18A:16-6.1(emphasis added).]

In Edison v. Mezzacca, 147 N.J. Super. 9 (App. Div. 1977), the Appellate Division held that an employee seeking indemnification "does not have the absolute right to counsel of his own choosing at municipal expense." Id. at 14. The Appellate Division specifically noted that a right to absolute reimbursement was provided for only when the municipality's obligation was conditional on the outcome of the litigation. Ibid. However, there was no right of reimbursement when "the obligation to provide for the defense arose at the inception of the proceeding and was independent of the outcome of the proceeding." Id. at 15.

In this case, petitioner's right to indemnification is governed by N.J.S.A. 18A:16-6, which contains no requirement that the employee be successful in the litigation to be indemnified. The relevant language in N.J.S.A. 18:16-6 can be contrasted with N.J.S.A. 18A16-6.1, which provides for indemnification in criminal actions only when the proceedings are dismissed or result in a final disposition favorable to the employee. Here, there is no dispute that SBE proceedings are an administrative action, not a criminal action. Therefore, although petitioner's claim arises out of a different indemnification statute than the one at issue in Edison, it nonetheless bears the same characteristics, in that it arose at the inception of the proceedings and was independent of the outcome of the proceedings.

In Azzaro v. Bd. of Educ. of Trenton, 477 N.J. Super. 427 (App. Div. 2023) the Court concluded that N.J.S.A. 18A:16-6 does not allow school board employees to wait until the final disposition of a civil or administrative action filed against them before seeking defense costs and indemnification from a school board. The employee must provide the school board with reasonable notice after the initiation of the proceeding, unlike the procedure set forth in N.J.S.A. 18A16-6.1, which provides that an employee

cannot seek reimbursement of defense costs and indemnification until the conclusion of a criminal or quasi criminal action.

In this case, petitioner failed to notify the respondent of his request for indemnification until five years of legal bills had accumulated. Those bills were generated by a law firm which the respondent had no input in choosing. Although in Azzaro petitioner waited twelve years before seeking indemnification which the court found was not reasonable, likewise, I **CONCLUDE** that petitioner's waiting five years in this case to put respondent on notice it was seeking indemnification pursuant to N.J.S.A. 18A:16-6 was also not reasonable in that petitioner should have put respondent on notice at the inception of the administrative charges brought against him by the SBE in September, 2018.

ORDER

For the reasons stated above, it is hereby **ORDERED** that respondents motion for summary decision is hereby **GRANTED**. Petitioner's motion for summary decision is **DENIED** and petitioner's appeal is **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

August 16, 2024
DATE

CATHERINE A TUOHY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

CAT/gd

APPENDIX

BRIEFS

For petitioner

- Petitioner's Notice of Cross-Motion for Summary Decision, Certification of Counsel, Statement of Material Facts and Brief in support of petitioner's cross-motion, with attached Exhibits A through M, dated April 29, 2024

For respondent

- Respondent Bridgeton BOE's November 30, 2023, Notice of Motion to Dismiss in Lieu of an Answer to Petition and Brief in Support of Motion to Dismiss with attached Exhibits A, B and C
- Respondent's May 24, 2024, Brief in Opposition to Petitioner's Cross-Motion for Summary Decision and Reply in further Support of its Motion to Dismiss

358-24

New Jersey Commissioner of Education

Final Decision

C.T. and P.T., on behalf of minor child, E.T.,

Petitioner,

v.

Board of Education of the Lenape Valley Regional High School District, Sussex County,

Respondent.

Synopsis

Petitioners challenged a decision to deny their daughter, E.T., admission into the respondent Board's chapter of the National Honor Society (NHS) and sought to reverse the denial decision such that E.T. could be inducted into the NHS. E.T. subsequently graduated from respondent's high school in June 2024. The Board filed a motion to dismiss the petition.

The ALJ found, *inter alia*, that: E.T. applied for admission to Lenape Regional High School's NHS chapter in her junior year; membership in the NHS is conferred upon students who meet "four pillars of membership": scholarship, leadership, service, and character; to meet the admission criteria, students must maintain a minimum GPA of 3.75, must perform community service without compensation, must show leadership through resourcefulness and problem solving, and must establish good character through honesty, reliability, and working cooperatively with others; an applicant must meet the applicable standards for entry into the NHS; admission to NHS is not automatic and cannot be considered a right; in a February 2023 letter to E.T. from the NHS applications committee chair, E.T. was denied admission to NHS because the committee had found that she needed to demonstrate further development in the area of character; the letter encouraged E.T. to reapply for NHS membership in her senior year; E.T. did not reapply and graduated in June 2024; the Commissioner has previously recognized that NHS admissions criteria are matters to be determined locally by each school district; and the Commissioner will not substitute his judgment for that of the school district unless there is a showing that the district's actions were arbitrary, unreasonable or capricious. The ALJ concluded that the Board's actions were not arbitrary, capricious, or unreasonable; further, the petition fails to state a claim upon which relief may be granted. Accordingly, the Board's motion to dismiss was granted.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, noting that E.T. is no longer eligible for induction into the National Honor Society since she has already graduated from high school. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, for the reasons stated therein. The petition was dismissed.

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.

358-24
OAL Dkt. No. EDU 04131-23
Agency Dkt. No. 103-4/23

New Jersey Commissioner of Education

Final Decision

C.T. and P.T., on behalf of minor child, E.T.,

Petitioners,

v.

Board of Education of the Lenape Valley Regional High School District, Sussex County,

Respondent.

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.

In this matter, petitioners challenge the denial of E.T.'s admission to respondent Board of Education's (Board) local chapter of the National Honor Society (NHS). They seek reversal of that decision and request that E.T. be inducted into the NHS. The Board filed a motion to dismiss in lieu of an answer, which was granted by the Administrative Law Judge (ALJ).

Student admission to the local chapter of the NHS is a matter of "local determination for each school district, and the Commissioner will not substitute his judgment for that of the school district except where the District's actions are arbitrary, capricious, or unreasonable." *P.V. v. Bd. of Educ. of Twp. of Verona*, OAL Dkt. No. EDU 03920-22, Initial Decision at 6 (May 23, 2022), *adopted*, Commissioner Decision No. 168-22 (July 8, 2022). *See J.B.A. v. Bd. of Educ. of Borough*

of Bernardsville, 1981 S.L.D. 330 (discussing the Commissioner's jurisdiction to adjudicate disputes concerning admission to the NHS), *adopted*, Comm'r., 1981 S.L.D. 338.

Upon review, the Commissioner concurs with the ALJ that the petition of appeal must be dismissed. Even assuming petitioners could establish that the Board's decision not to induct E.T. into the NHS was arbitrary, capricious, or unreasonable, the relief sought—E.T.'s induction into the NHS—cannot be granted by the Commissioner given the present circumstances. Article II, Section 3 of the NHS Constitution of Lenape Valley Regional High School states that "[t]o be eligible for selection to this chapter, students must be members of the junior or senior class." The record reflects that E.T. graduated from high school in June 2024. Consequently, she is no longer eligible for induction into the NHS.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 30, 2024
Date of Mailing: October 2, 2024

[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 GRANTING MOTION TO DISMISS
OAL DKT. NO. EDU 04131-23
AGENCY DKT. NO. 103-4/23

C.T. AND P.T. ON BEHALF OF MINOR CHILD, E.T.,
Petitioners,
v.
BOARD OF EDUCATION OF THE LENAPE VALLEY REGIONAL HIGH SCHOOL DISTRICT, SUSSEX COUNTY,
Respondent.

Damiano Fracasso, Esq., for petitioners

Jacob K. Mintun Esq., Senior Attorney (Comegno Law Group, attorneys.) for respondent

BEFORE **ERNEST M. BONGIOVANNI,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner's parents (C.T. and P.T./petitioners) challenge the denial of their child E.T.'s admission to the National Honor Society (NHS). The Department of Education transmitted the matter to the Office of Administrative Law, on May 10, 2023. Respondent (Lenape High School/BOE) filed a Motion to Dismiss in lieu of an Answer.

Briefs and Certifications in support of same and in opposition thereto were received and on argument before me was heard on January 31, 2024, and the record closed. I now grant the Motion to Dismiss the petition.

MOTION UNDER CONSIDERATION

Petitioners claim that E.T. was wrongfully denied admission to the National Honor Society. Respondent moves for dismissal claiming several reasons why petitioners are barred from its claim. First, it claims the BOE has no authority to overrule a final decision concerning membership in the NHS. Second, it claims that although there is a BOE policy (Policy # 133) and Regulation (Regulation # 540) which mention appeals to the National Honor Society, neither grants the right of a student or parent to appeal a final decision by the NHS or its appeals committee. Finally, the controversy does not involve school disciplinary processes nor a statutory or constitutional right of a student to become a member in the NHS.

FACTUAL DISCUSSION

The respondent is a comprehensive high school serving three municipalities located in one of two counties in Morris and Sussex, (Certification provided by Michael A. Rossi, Jr, PHD, Superintendent of Lenape Valley Regional High School, hereinafter "Rossi Cert.") It "established and actively maintains a chapter of the National Honor Society (NHS)." (Rossi Cert. para. 3.) Applicant students must meet four "pillars of membership"-scholarship, service, leadership and character. Academically students must maintain a minimum GPA of 3.75 and are further evaluated on academic credentials. For service, students have to make contributions without compensation, such as by community service. Leadership is established by the student being "resourceful, good problem solvers and idea contributors." The character standard is met by students who "work cooperatively and demonstrate high standards of honesty and reliability." (Rossi Cert. Paras 4 and 5).

E.T. applied for admission to the NHS in her junior year at the high school. On February 13, 2023, the NHS through its applications committee leader, Colby Bird,

wrote to E.T. and informed her that she was not accepted to the Lenape Valley Regional High School Chapter of the NHS. The letter said the NHS Faculty Council made this decision and had found, during its review process. that E.T. needed "further development in the area of character." The letter encouraged E.T. to reapply in her senior year. (Attachment to Petition to the NJ State BOE, page P007). Soon thereafter, P.T. wrote to Colby Bird and asked for further explanation, specifically about the character criterion. Ms. Bird explained the NHS decision and how it concluded E.T. met just three of the four pillars. Regarding the fourth, the character criterion, she advised the Faculty Council in assessing E.T., relied on a survey of teachers and staff. Of the eleven who responded to the survey, six of them advised they found E.T.'s character to be below average or average among other students at the high school. She noted concerns of E.T.'s lack of independence in completing tasks, and her lack of sociability with teachers and students. Ms. Bird's reply dated February 17, 2023, welcomed an appeal of the Faculty's Council's decision.

E.T.'s parents appealed the decision to the appeals Committee of the NHS Lenape Valley Regional High School Chapter. On February 24, 2023, Committee members met with P.T., C.T. and E.T. to allow both parents and the student to advocate for her admission. The Superintendent Dr. Rossi certified, per his March 9, 2023, letter to the parents, that during this appeals process E.T. "engaged in very little self-advocacy." (P 0011) The process, stated Dr. Rossi, seemed driven by the parents' frustration, rather than E.T.'s desire to be admitted." Further during the process, the Committee attempted to explore E.T.' leadership capacities, noting there were "multiple pathways to NHS membership." However, E.T.'s parents decided that the Committee's inquiries were "inappropriate" and made E.T. leave the room.

The parents then brought the present action against the High School. I find that the above stated facts were either not refuted or not reasonably refuted. Further, I find they are the only germane material facts.

.

ANALYSIS AND CONCLUSIONS OF LAW

The OAL has addressed a student's claims of rights involving membership to the NHS once before, although in the context of an application for emergent relief. In that case, P.V. o/b/o T.S. v Township of Verona, OAL No. 03920-22 (decided May 22, 2022), the Honorable Julio C. Morejon determined the petitioner had failed to site any precedent for holding that there exists an "underlying legal right to admission to the [NHS]. To the contrary, the Commissioner of Education has recognized admissions criteria to the [NHS] are matters of local determination for each school district...[.] " Thus except upon a showing the District's actions are arbitrary, unreasonable or capricious, the Commissioner will not substitute its judgement for the District's. Consequently, "an applicant must meet the applicable standards for entry into the [NHS] and that admission is not so 'automatic' as to be considered a 'right'" P.V.,supra at page 6, citing J.B.A. and A.M.A. v. Bernardsville Board of Education, 4 N.J.A.R. at 152.

Although a Motion to dismiss often is narrowly focused on such threshold issues of lack of subject matter jurisdiction, lack of personal jurisdiction or improper venue, in practice the OAL regularly applies the Motion for Summary Decision standard to Motions to Dismiss. In turn, the motion for summary decision is based on the rules and practice regarding New Jersey Superior Court Rules governing summary judgement. It is particularly appropriate to note that under summary judgment standards, a Petition should be dismissed when it states no basis for relief and discovery would not yield one. R. 4:6-2 (c), *See* Energy Rec. v. Dept. of Environmental Protection, 320 N.J. Super 59, 64 (App. Div. 1999), aff'd 170 426 (2001) (emphasis supplied.) Further, dismissal is mandated when "the factual allegations are palpably insufficient to support a claim upon which relief can be granted." Rieder v. State of NJ Dept. of Transportation, 221 N.J. Super 547, 552 (App. Div. 1987). As noted by Judge Morejon, a board of education's actions are entitled to a presumption of lawfulness and good faith. Thus, in challenges to a Board's actions, the challenger bears the burden to prove such acts were unlawful, arbitrary capricious or unreasonable. P.V. supra at page 6 citing Schuster v Bd. of Educ. Montgomery Twp, 96 N.J.A.R. 2D (edu) 670, 676, citing Schnick v Westwood Bd. Of Educ. 60 N.J. Super 448 (App. Div. 1960) and Quinlan v Bd. Of Educ of North Bergen Twp., 73 N.J. Super 40 (App. Div. 1962)

If there is no genuine issue as to any material fact, a moving party is entitled to prevail on a motion for summary disposition as a matter of law. R. 4:46-2. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The judge weighs the evidence as though a motion for directed verdict were before him, and "apply the same evidentiary standard of proof -by a preponderance of the evidence or clear and convincing evidence -that would apply on a trial on the merits. Brill, at 533. The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a fact-finding hearing should be avoided "when the evidence is so one-sided that one party must prevail as a matter of law." Id.

In the present matter, the respondent seeks a Dismissal because it is unrefuted, or not reasonably refuted, that a) the only "right" to appeal a NHS membership decision is if the local chapter creates an appeal process b) in this case, the local chapter followed the appeals process per its charter c) the local chapter appeals process by the District's NHS appeals committee is intended to be unappealable and thus final and such a provision violates no law.

Petitioners argue that the NHS standards, even the three pillars which petitioner met, are "arbitrary" (Petitioners Responding Statement of Material facts, Pargrapsh 6, 7 and 8.) Regarding the one pillar she did not meet, according to the NHS local chapter and the Appeals Committee, petitioner simply denies the allegation that E.T. did not meet the character pillar standard and says, "Petitioner cannot prove a negative."

Petitioners' argument is contradictory and impossible to grant relief upon. . First, petitioners argue that the standards are arbitrary, then says she did meet the standard, but that she shouldn't have to prove it. First, if the NHS standards are "arbitrary," why does anyone, including the petitioners wish to join it?. Consequently, what is being denied to petitioners or any other applicant for membership if the membership's standards are completely arbitrary? Further, even if the NHS was not a separate entity from the District of Lenape BOE and not entitled to freely set its own standards of admission, independent from the Lenape BOE, a school District has its own broad authority to set academic standards as well as standards for extracurricular activities,

which include grading or rewarding good conduct or behavior,, i.e. "character." Thus, in subjects ranging from selection for "making" the Senior football team, to competing in the Chess Club, the Districts have the broad discretion to set their own standards. Thus the only issue here is whether E.T. met the NHS standards. Regarding those standards, the only specific dispute regards the character pillar of the student applicant, at least as compared to other applicants for membership. But petitioner, instead of providing proofs in this motion that E.T. indeed met or exceeded the character standard, petitioner instead argues, apparently, that she doesn't have to prove that; rather, it is claimed E.T. was treated unfairly because the character standards should not be imposed on her owing to her having a recognized disability.

E.T. argues that she has the disabling conditions of Anxiety and ADHD, according to Section 504/ADA Accommodations. (Exhibit B Petitioners' Opposition). As precious little has been offered to show what that has to do with the issue of membership in the NHS or the local chapter's actions, I shall try to address what I think the petitioner is trying to get at

Even if the standards of character, as determined by the Appeals Committee or the local Chapter disproportionately weigh on a student's "immutable characteristics" (Petitioners also argued, without any proof, that the NHS decision was motivated by Anti-Catholicism-although Catholicism or any other religious membership is not an "immutable characteristic,") if we were to follow the petitioners' line of reasoning all school programs designed to recognize achievement would be subject to innumerable hypothetical attacks by parents that the standards are unfair as applied to their child, e.g. their height was considered in determining whether he or she wouldn't be a good candidate for the basketball team, or an asthmatic condition inhibited the child from long distance running or making the swimming team. That does not make those standards, i.e. ability to play basketball better because of being tall, or greater lung capacity being a factor making one a better swimmer or long-distance runner arbitrary, capricious or unreasonable nor is it evidential of invidious discrimination. Nor would it implicate an arbitrary unreasonable or capricious course of conduct by the BOE, if the BOE, as the local chapter and appeals committee clearly did so here, provided they follow their own policy or policies. Besides that, there was no proof submitted that the committee's

determination or the appeals determination evidenced bias or a disproportionate burden to E.T. because of E.T.'s Anxiety of ADHD.

Although petitioners' proofs were not presented as they should be by certification or affidavit, and although nothing further was submitted as to her disability other than the 504, that plan shows the recommended accommodations by the school for E.T. such as "If grades are not posting in Genesis within 24 hours, teachers are to email parent and student," the 504 does not even suggest that the school, much less the NHS local chapter has to accommodate "lower than average or average" character achievement. Indeed, there is no claim in the petition that there is any violation of the 504 plan or of any IEP, if there even is one (no proof was offered). Thus, the District's accommodations for E.T. is not properly before me. No evidence suggests that a student suffering from Anxiety of ADHD cannot possibly meet the character pillar of membership. Further, the Court will not indulge in speculating further as to whether the appeals Committee's decision was correct where the complaining party argues petitioner need prove nothing. Rather the complete opposite is true; the burden is entirely on the petitioners.

If judges were permitted to engraft their own beliefs by making determinations to second guess the decision making of committees to establish standards for membership into honorary societies, there would be no end to judicial meddling into what is entirely beyond their scope and permitted areas of their function. There would be no end to litigation by parents whose children by those who have strong credentials for membership in the NHS, if their "standards" were permitted to supplant the Committee or the Committee of appeals, with their own less informed, and more likely to be biased opinions of their child's abilities and qualities.

I agree also with that the petition fails to state a claim upon which relief may be granted. For all the above reasons, therefore, I **CONCLUDE** that the motion to dismiss of respondent should be and is **GRANTED** and the matter **DISMISSED.**

ORDER

For the reasons set forth above, the motion to Dismiss filed by the respondent, is hereby **GRANTED** and that the petitioners' demand for relief be **DISMISSED.**

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

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August 23, 2024
DATE

Ernest M. Bongiovanni
ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency: 8/23/24

Mailed to Parties: 8/23/24

id

359-24

New Jersey Commissioner of Education

Final Decision

Magdoulen A. Sawires,

Petitioner,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

Synopsis

On June 4, 2024, petitioner appealed the determination of the respondent Elizabeth Board of Education (Board) denying the renewal of her employment contract for the 2022-2023 school year. Petitioner had been employed as a non-tenured teacher by the Board for six months, from January 3, 2022 to June 30, 2022. The Board filed a motion to dismiss for failure to timely file the petition pursuant to *N.J.A.C.* 6A:3-1.3(i).

The ALJ found, *inter alia*, that: it is undisputed that petitioner received a notice of non-renewal on or about May 13, 2022; more than two years later, the petitioner filed the within appeal seeking the reversal of the Board's decision not to renew her contract, as well as compensation and reinstatement to employment; in her opposition to the Board's motion to dismiss, petitioner conceded that she did not appeal the Board's non-renewal action but instead filed an action in Superior Court which was dismissed; only after her appeal of that dismissal was denied did petitioner file this appeal; pursuant to *N.J.A.C.* 6A:3-1.3(i) and existing caselaw, the 90-day rule began to run when petitioner received notice of her non-renewal on or about May 13, 2022; and neither the filing of her complaint with the Superior Court nor her appeal with the Appellate Division tolls the ninety-day timeline imposed by *N.J.A.C.* 6A:3-1.3(i). Accordingly, the ALJ granted the Board's motion to dismiss the petition.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ's findings and conclusion and adopted the Initial Decision of the Office of Administrative Law as the final decision in this matter. In so doing, the Commissioner determined that there was no compelling constitutional reason in this case to warrant the relaxation of the 90-day rule. The Board's motion was granted, and the petition was dismissed.

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.

359-24
OAL Dkt. No. EDU 08315-24
Agency Dkt. No. 176-6/24

New Jersey Commissioner of Education

Final Decision

Magdoulen A. Sawires,

Petitioner,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

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 respondent's reply thereto, have been reviewed and considered.

The threshold procedural issue in this case is whether the petition should be dismissed pursuant to the 90-day rule, *N.J.A.C.* 6A:3-1.3(i). *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 *N.J.* 572, 582 (1993). Petitioner challenges respondent's decision not to renew her employment contract for the 2022-2023 school year. She received a notice of nonrenewal from respondent on May 13, 2022, and last worked for respondent as a nontenured teacher in late June 2022. She filed her petition of appeal on June 4, 2024, more than two years after having received the notice of nonrenewal.

The Administrative Law Judge (ALJ) concluded that, pursuant to *N.J.A.C.* 6A:3-1.3(i) and existing case law, her petition was untimely filed because the time to appeal began to run when

petitioner received notice of the nonrenewal on May 13, 2022. The ALJ further concluded that neither the filing of a lawsuit in the Superior Court nor an appeal to the Appellate Division tolls the 90-day time period to file a petition. The ALJ also concluded that even assuming petitioner did not fully understand that she was no longer employed by respondent until September 2022 (although this new contention is contradicted by the allegations contained in her petition) and that was the date from which the filing period began, the petition she filed in June 2024 is nonetheless untimely.

In her exceptions, petitioner does not challenge the ALJ's factual findings. Rather, she reiterates the arguments she made before the ALJ and appears to assert that because she filed her petition within sixty days of having received an Appellate Division decision directing her to do so,[1] the merits of her case should be considered. However, she does not cite any legal authority to support her position.

In its reply, respondent asserts that petitioner's exceptions are procedurally defective as they do not specify what facts or legal conclusions that petitioner takes exception to. Respondent claims that petitioner's exceptions merely reiterate the arguments that were already considered by the ALJ.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter. The Commissioner concurs with the ALJ's factual findings and conclusion that the petition was untimely filed. *N.J.A.C.* 6A:3-1.3(i) mandates that petitions shall be filed "no later

[1] While the Appellate Division's decision indicated that petitioner failed to exhaust her administrative remedies through the Department of Education, it did not direct petitioner to file a petition with the Commissioner or suggest in any way that such a petition would be timely. *Sawires v. Elizabeth Bd. of Educ.*, 2024 N.J. Super. Unpub. LEXIS 1006 (App. Div. June 3, 2024).

than the 90th day from the date of receipt of the notice of a final . . . action by the district board of education." 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. It "provides a measure of repose" and "gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days." *Ibid.*

Here, the ALJ correctly concluded that the 90-day limitation period began when petitioner received the May 13, 2022, nonrenewal letter. *Salazar-Linden v. Bd. of Educ. of Twp. of Holmdel, Monmouth Cnty.*, Commissioner Decision No. 99-08 at 5-6 (March 3, 2008), *aff'd*, 2009 *N.J. Super. Unpub.* LEXIS 2713 * (App. Div. Oct. 28, 2009); *Jordan v. Bd. of Educ. of N. Hunterdon-Voorhees Reg'l High Sch. Dist.*, OAL Dkt. No. EDU 11825-14, Initial Decision at 8-9 (March 2, 2015), *adopted*, Commissioner Decision No. 162-15 (May 20, 2015), *aff'd*, 2017 *N.J. Super. Unpub.* LEXIS 1865 * (App. Div. July 21, 2017). It is undisputed that petitioner received the nonrenewal letter on May 13, 2022. Therefore, she had a meaningful opportunity to file her petition within the mandatory 90-day timeframe. The filing deadline is not subject to change based upon a petitioner's legal strategy or a decision to pursue lawsuits in a different forum; that would defeat the measure of repose to which school districts are entitled. *See, generally, Nissman v. Bd. of Educ. of Twp. of Long Beach Island, Ocean Cnty.*, 272 *N.J. Super.* 373, 382 (App. Div. 1994) (affirming State Board decision to dismiss petition as time barred and explaining that while petitioner may have opted not to file a petition sooner for tactical reasons, the board "was entitled to know within 90 days of its action whether its [decision] was going to be challenged").

"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). Here, petitioner's claims are specific to her personal employment relationship with respondent. Thus, the Commissioner holds that a relaxation of the ninety-day rule is unwarranted in this case.

Accordingly, respondent's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 30, 2024
Date of Mailing: October 2, 2024

[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
DISMISSING THE PETITION
OAL DKT. NO. EDU 08315-24
AGENCY DKT. NO. 176-6/24

MAGDOULEN A. SAWIRES,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF ELIZABETH, UNION COUNTY,
Respondent.

Magdoulen A. Sawires, petitioner, pro se

Brian J. Kane, Esq., for respondent (LaCorte, Bundy, Varady & Kinsella, attorneys)

Record Closed: July 23, 2024 Decided: August 28, 2024

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Petitioner Magdoulen Sawires (Petitioner or Sawires) appealed the determination by respondent Elizabeth Board of Education (Board) denying the renewal of her

employment contract. The Board moves to dismiss the Petition because it was untimely filed.

PROCEDURAL HISTORY

Petitioner filed a Petition of Appeal with the Commissioner of Education, and the Commissioner transmitted the matter to the Office of Administrative Law, where it was filed as a contested case on June 14, 2024 pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

An initial prehearing conference was held on July 10, 2024, at which time the Board requested, and was granted, leave to file a Motion to Dismiss. On July 17, 2024, the Board filed its motion.[1] On July 18, 2024, the petitioner opposed the motion, and the Board filed a reply to the opposition on or around July 23, 2024. On July 23, 2024, the petitioner submitted a sur-reply which was unauthorized, and not considered.

FINDINGS OF FACT

Upon reviewing Sawires's Petition, and the parties' submissions, I **FIND** the following as **FACT**:

Sawires was a non-tenured employee of the Board from approximately January 3, 2022 until approximately June 30, 2022.

On May 13, 2022, Sawires received from the Board a Notice of Non-Renewal, informing her that her employment contract with the Board would not be renewed for the 2022–2023 school year. She last worked for the Board in late June 2022.

Sawires filed this Petition with the Department of Education on June 4, 2024. In her Petition, Sawires suggests that despite receiving the Notice of Non-Renewal, she

[1] While the Board technically filed a "Motion for Summary Decision," I considered this application a Motion to Dismiss since that is what was discussed at the prehearing conference, and because I only considered the pleadings in deciding this Motion.

sought to resign from the position but was told by at least one District representative not to resign, to file for unemployment, and that if the District did not find an alternative placement for her for the following school year, she would be terminated due to a reduction in force. She also seems to allege in her Petition that the District improperly failed to have her sign any document relating to her separation from the District in late June 2022. All the claims raised in the Petition relate directly to the Board's decision not to renew Sawires' employment contract for the 2022-2023 school year.

The Petition seeks: the reversal of the Board's decision not to renew her contract; compensation; and reinstatement of her work for "wrongful discharge due to inadequate training and failure to communicate expectations." Sawires asserts in the Petition that the District violated "labor and education laws by failing to provide a rationale for her discharge."

LEGAL ANALYSIS AND CONCLUSION

The Board filed a motion seeking the dismissal of the Petition because Sawires filed this Petition well beyond the ninety-day limitation period provided by N.J.A.C. 6A:3-1.3(i). The Board asserts that Sawires received a notice of non-renewal on May 13, 2022, as she states in her Petition, and that since she failed to file this appeal within ninety days of her receipt of the Board's notice, her Petition must be dismissed.

In her opposition to the Board's motion, Sawires asserts that she did not know that she "got discharged" until September 2022, although she also asserts that she was informed by the school's vice principal in June 2022 that she was being laid off. She also asserts that she was wrongfully terminated on June 26, 2022, and that the Board wrongfully denied her mentorship and a hearing relating to the non-renewal. In her opposition to the motion, Sawires concedes that she did not appeal the Board's action in 2022, but that in 2023 she filed an action in Superior Court, which was dismissed. She appealed the dismissal, and, in early June 2024, the Appellate Division denied her appeal.

Under N.J.A.C. 6A:3-1.3(i), a "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, which is the subject of the requested contested case hearing." The ninety-day period for filing a petition is to be strictly construed and those claims that are not filed in a timely manner are precluded from review. Raymond v. Bd. of Educ. of the Borough of River Edge, 94 N.J.A.R. 2d (EDU) 203, aff'd, 94 N.J.A.R. 2d (EDU) 431.

Here, it is undisputed that Sawires received a notice of non-renewal on or about May 13, 2022. This is reflected in the Petition. Although her Petition and opposition to the Board's motion suggests that Sawires may have been confused whether she was non-renewed, laid-off or terminated, and while she asserts that she was wrongfully terminated or laid-off without having had the benefit of mentorship support or a formal hearing at the District, it is clear and undisputed that she was made aware in May 2022 that she would no longer be employed by the Board, and that the last time she worked for the Board was in late June 2022. I **CONCLUDE** that, pursuant to N.J.A.C. 6A:3-1.3(i) and existing caselaw, the ninety-day rule began to run when Sawires received notice of the non-renewal on or about May 13, 2022. Neither the filing of Sawires's complaint with the Superior Court of New Jersey nor her appeal with the Appellate Division tolls the ninety-day timeline imposed by N.J.A.C. 6A:3-1.3(i). Sawires filed her Petition about two years after she received notice of non-renewal, well beyond the ninety-day limitation period.

Moreover, while Sawires's opposition to the motion seems to also, confusingly, assert that she did not become aware that she was "discharged" by the Board until September 2022 (an assertion that is inconsistent with her Petition), any potential claim that she could have asserted concerning Board action that she became aware of in September 2022, would also be time-barred pursuant to N.J.A.C. 6A:1.3-1.3(i).

Consequently, I **CONCLUDE** that petitioner's claims, as set forth in her Petition, are time-barred pursuant to N.J.A.C. 6A:3-1.3(i), and that the Petition should be dismissed in its entirety.

ORDER

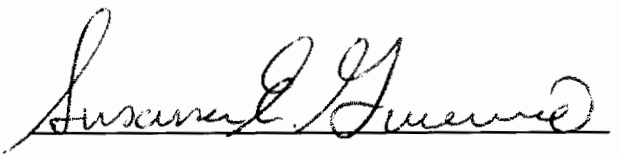
It is hereby **ORDERED** that the respondent's Motion to Dismiss is **GRANTED**, and that the Petition of Appeal is hereby **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

August 28, 2024
DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

360-24
OAL Dkt. No. 11093-24
Agency Dkt. No. 254-8/24

New Jersey Commissioner of Education

Final Decision

D.D. and J.D., on behalf of minor child, D.D.,

Petitioners,

v.

Board of Education of the Township of Deptford, Gloucester County,

Respondent.

The record of this emergent matter, the sound recording of the hearing at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. As the parties represented to the ALJ that no issues remain to be resolved, the petition of appeal is hereby dismissed.

IT IS SO ORDERED. [1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 30, 2024
Date of Mailing: October 2, 2024

[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

ORDER DENYING
EMERGENT RELIEF
OAL DKT. NO. EDU 11093-24
AGENCY DKT. NO. 254-8/24

D.D. AND J.D., ON BEHALF OF MINOR CHILD D.D.,

Petitioners,

v.

BOARD OF EDUCATION OF TOWNSHIP OF DEPTFORD,

Respondent.

D.D. and J.D. on behalf of D.D., petitioners, pro se

John Carleton, Esq., for respondent (Marmero Law, LLC, attorneys)

BEFORE **MICHAEL R. STANZIONE**, ALJ:

STATEMENT OF THE CASE

Petitioners are challenging an expulsion of D.D. from a before- and after-school care program. The petitioners must satisfy the well-established standard for injunctive relief established by Crowe v. DeGioia, 90 N.J. 126 (1982). The criteria for the granting of emergency relief has not been met for me to reinstate the minor child D.D. to the Spartan Care before- and after-school program.

PROCEDURAL HISTORY

Petitioners filed a verified petition and request for emergent relief with the Commissioner of the Department of Education, Office of Controversies and Disputes (DOE). On August 8, 2024, the DOE transmitted this matter to the Office of Administrative Law (OAL), where it was filed on August 13, 2024, as a contested case seeking emergent relief. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing was scheduled to be conducted on August 16, 2024. During a pre-hearing teleconference on August 15, 2024, both parties requested that the case be adjourned until August 19, 2024. The hearing took place on August 19, 2024, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed. I therefore **FIND** as **FACT**:

1. D.D. is a rising fourth-grade student at Lake Track Elementary School within the Township of Deptford School District (District).

2. D.D. was enrolled in the school's before- and after-care program (Spartan Care) for approximately three years.

3. Spartan Care is a tuition-based before- and after-care program that is offered through the District's website.

4. During his third-grade school year, while in Spartan Care on April 29, 2024, D.D. bit and scratched one of the staff members.

5. On April 30, 2024, D.D. was told by Spartan Care director Danielle Mills he could not come back to Spartan Care for the rest of the week.

6. On May 1, 2024, Spartan Care advised petitioner, Mr. D.,[1] that D.D. could not come back to Spartan Care for the remainder of the school year.

7. On July 25, 2024, Spartan Care advised Mr. D. that D.D. could not come back to Spartan Care for the upcoming school year and that he was permanently expelled.

8. D.D.'s parents are separated and do not reside in the same home, and they share custody of D.D.

9. The Spartan Care parent handbook has an expulsion policy that lists excessive biting as a basis for expulsion. R-A.

10. The handbook also cites as immediate cause for expulsion, "The child is at risk of causing serious injury to other children or himself/herself." Ibid.

Testimony

For petitioners

J.D., D.D.'s mother, was afraid that, should her child not be allowed back into the Spartan Care program, her job security would be jeopardized, and she may become unemployed. Her job will not allow her to work from home or adjust her schedule to provide childcare. There are no family members who can watch D.D., and there are no private programs that provide transportation to and from Deptford schools. Transportation would be needed, as both parents work, and neither is able to drop off and pick up D.D. at school on time. The Spartan Care program is the only option that works for the family.

D.D., the child's father, is an educator. Once the school year begins, he cannot transport D.D., his child, to and from school. His school schedule is too close to when his

[1] Because petitioner and D.D. have the same initials, petitioner is referred to here as Mr. D. (or Ms. D).

son must be at school, and it is impossible to make it work. He needs the before care so he can drop his son off and go to his job. The after care allows him to finish his work and pick his son up.

Both parents stated that full-time private childcare is not an option as they are not able to afford it. They also believe that D.D.'s previous discipline record shows that this is a one-time incident that would never happen again.

Additional Findings

J.D. provided testimony that was mostly uncorroborated. She did not provide any evidence or exhibits to corroborate any of her assertions. I am unable to credit her account.

D.D. also provided uncorroborated testimony. For that reason, I am unable to credit his account.

Based upon the testimonial and documentary evidence, and having considered the credibility of the witnesses, I **FIND** as **FACT** that the expulsion will affect the work schedules of petitioner's parents. I **FIND** as **FACT** that there is no way of knowing if D.D. will repeat the behavior that led to his expulsion.

LEGAL ANALYSIS AND CONCLUSIONS

The regulations governing controversies and disputes before the Commissioner of Education provide that "[w]here the subject matter of the controversy is a particular course of action by a district board of education . . . [,] the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may "[t]ransmit the motion to the OAL for immediate hearing on the motion." N.J.A.C. 6A:3-1.6(c)(3).

At a hearing for emergent relief, petitioners must show that they satisfy the following four standards:

> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
>
> 2. The legal right underlying petitioner's claim is settled;
>
> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
>
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.
>
> [N.J.A.C. 6A:3-1.6(b) (citing Crowe v. DeGioia, 90 N.J. 126 (1982)).]

The petitioners must prove each of these standards by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). The standard is a high threshold to meet, and I will address each prong separately.

1. Irreparable harm

As the New Jersey Supreme Court explained in Crowe, "[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Indeed, the purpose of emergent relief is to "prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case." Ibid. (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854).)

"Irreparable harm is shown when money damages cannot adequately compensate plaintiff's injuries." Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "More than a risk of irreparable harm must be demonstrated." Cont'l Grp., Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). "The requisite for injunctive relief has been characterized as a 'clear

showing of immediate irreparable injury' . . . or a 'presently existing actual threat; [an injunction] may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by the common law.'" Ibid. (citations omitted).

Here, with respect to the first prong, D.D. will not suffer irreparable harm if the requested relief is not granted. The harm to the petitioners in this case is not immediate. Petitioners argued that it is possible their employment would be threatened by D.D.'s expulsion from Spartan Care. There is no showing of immediate irreparable injury or a presently existing actual threat.

Accordingly, I **CONCLUDE** that petitioners have not met their burden of proof with respect to this prong.

2. Settled Legal Right

Emergent relief "should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. at 304–05). The petitioners have not provided any testimony or evidence that they have a legal right to their requested relief. Therefore, **I CONCLUDE** that petitioners have not shown a settled legal right underlying this claim.

3. Likelihood of Success on the Merits

Petitioners have not demonstrated that they are likely to succeed on the merits of the underlying claim. Under this emergent relief prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)). This typically "'involves a prediction of the probable outcome of the case' based on each party's initial proofs, usually limited to documents." Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)).

Because I have found that petitioners have not shown a legal right underlying this claim, it logically follows that there is not a likelihood of success on the merits. The underlying incident that resulted in the expulsion of D.D. is serious in nature. Although petitioners claim that this is a one-time incident that will never happen again, they have not provided any clear and convincing evidence or legal authority showing that they have a reasonable probability of ultimate success on the merits. I therefore **CONCLUDE** that petitioners have not shown a reasonable probability of ultimate success on the merits.

4. Balancing the Equities

The fourth and final emergent relief standard involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

The only evidence presented here regarding relative hardship to the parties pertains to the fact that petitioner's parents may lose their employment. While dealt with in the above analysis, it is important to note that it is speculation. D.D. was removed from the Spartan Care program on April 29, 2024, and finished the school year on June 14, 2024. In that time, petitioners maintained their employment and continue working in their current positions. In comparison, the Spartan Care program has an interest in enforcing their student behavioral policies, especially in cases where they deem that the child is at risk of causing serious injury or exhibits excessive biting.

I **CONCLUDE** that the Board will suffer greater harm should emergent relief be granted than the student if the requested relief is not granted.

Based upon the foregoing, I **CONCLUDE** that petitioners failed to meet the requirements set forth in N.J.A.C. 6A:3-1.6(b), warranting an order for emergent relief in this matter.

ORDER

Accordingly, it is hereby **ORDERED** that the emergent application for relief of the petitioners is hereby **DENIED**, and this resolves the case, as the parties have advised me that no further issues remain once the emergent relief matter is resolved.

This order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If **COMMISSIONER OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

August 20, 2024 _____ Michael R. Stanzione

DATE **MICHAEL STANZIONE**, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

MS/mg

APPENDIX

WITNESSES

For petitioner

J.D.

D.D.

For respondent

None

EXHIBITS

For petitioner

P-1 Request for emergent relief dated August 5, 2024

For respondent

R-A Spartan Care Parent Handbook

361-24

New Jersey Commissioner of Education

Final Decision

A.J., on behalf of minor child, A.J.,

Petitioner,

v.

Board of Education of the Township of Springfield, Union County,

Respondent.

Synopsis

Pro se petitioner challenged the action of the respondent Board removing her daughter, A.J., from the Springfield Public School District (Board or District). The District contended that A.J. became ineligible for a free education in Springfield beginning May 1, 2023 through the end of the 2023-2024 school year, subsequent to the family's relocation to an address in Plainfield. Petitioner asserted that her last permanent residence was an apartment in Springfield and that she had intended to live with her husband in a multi-unit Plainfield house that they had purchased, but never did because she discovered her husband had been unfaithful. In the aftermath of the marital breakup, petitioner claimed she was living house to house without a permanent residence and was therefore homeless. The Board sought tuition reimbursement for the period of A.J.'s alleged ineligible attendance in the Springfield school.

The ALJ found, *inter alia*, that: the petitioner bears the burden of proof that A.J. is eligible for a free education in Springfield; although petitioner argues that she is homeless, more than a year passed prior to the District's residency investigation and petitioner never notified the District that A.J. was "homeless"; per *N.J.A.C.* 6A:17-2.2(a)(3), a child is homeless if she resides in the residency of relatives or friends "out of necessity because the child's family lacks a regular or permanent residence of its own", which is not the case in this matter as A.J.'s family did not and does not lack a residence; A.J.'s eligibility to attend school in Springfield is attached to petitioner's domicile. The ALJ concluded that petitioner failed to sustain her burden of establishing that she and her minor child, A.J., were domiciled in Springfield for the remainder of the 2022-2023 school year, and for the 2023-2024 school year. Accordingly, the ALJ further concluded that petitioner owes the Board tuition reimbursement in the amount of $17,594.64 for the period of A.J.'s ineligible attendance in the District.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter with modification to the total amount of tuition owed to the Board. Petitioner was ordered to reimburse the Board in the amount of $17,422.08, which reflects the correct number of days A.J. attended school in the District during the period of her ineligibility. Accordingly, the petition of appeal was dismissed.

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.

361-24
OAL Dkt. No. 06840-24
Agency Dkt. No. 106-4/24

New Jersey Commissioner of Education

Final Decision

A.J., on behalf of minor child, A.J.,

Petitioner,

v.

Board of Education of the Township of Springfield, Union County,

Respondent.

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.

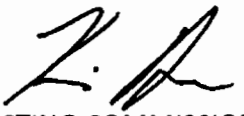
Upon review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain her burden of establishing that she and her minor child, A.J.,[1] were domiciled in Springfield (the District) for the portion of the 2022-2023 school year beginning on May 1, 2023, and for the 2023-2024 school year. The Commissioner further concurs with the ALJ that A.J. was not homeless during this period, for the reasons outlined in the Initial Decision. Accordingly, the Commissioner agrees that A.J. was not eligible to receive a free education in the District during that time.

[1] Because petitioner and her child share the same initials, petitioner will be referred to herein as "petitioner," and her child will be referred to herein as "A.J."

Pursuant to *N.J.S.A.* 18A:38-1(b), the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in the District. Upon review, the Commissioner agrees with the ALJ that the Board is entitled to tuition reimbursement for the 2022-2023 school year commencing on May 1, 2023, and for the 2023-2024 school year. However, the Commissioner finds that the tuition calculation for that period is $17,422.08. The Attendance Detail for A.J. for 2022-2023 shows 31 days of ineligible attendance ($83.79 per day for 31 days, totaling $2,597.49). The Attendance Detail for A.J. for 2023-2024 shows 167 days of ineligible attendance ($88.77 per day 167 days, totaling $14,824.59).

Accordingly, the Initial Decision is adopted as modified with respect to the final tuition calculation. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]



ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 4, 2024
Date of Mailing: October 7, 2024

[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
OAL DKT. NO. EDU 06840-24
AGENCY DKT. NO. 106-4/24

A.J. ON BEHALF OF MINOR CHILD, A.J.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF SPRINGFIELD, UNION COUNTY,
Respondent.

A.J., petitioner, pro se

Athina Lekas Cornell, Esq., for respondent (Methfessel & Werbel, P.C., attorneys)

Record Closed: August 14, 2024 Decided: August 23, 2024

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

Petitioner A.J. (Mom) challenges the action of the Board of Education of the Township of Springfield (Board) removing her daughter, A.J., from the Springfield Public Schools District (Springfield District). A.J. was not eligible for a free education in Springfield District because she was neither domiciled in nor homeless from Springfield.

PROCEDURAL HISTORY

By notice of initial determination of ineligibility, dated February 12, 2024, Springfield District notified Mom and A.J. (Dad) that it had come to the Board's attention that A.J. was not domiciled in Springfield, New Jersey and no longer entitled to a free education within the Springfield District. (R-1B.) By letter dated March 8, 2024, Springfield District notified Mom and Dad that after the Board conducted a hearing, it appeared that A.J. is domiciled in Plainfield, New Jersey, and that the Board would take a formal vote seeking the removal of A.J. from Springfield District at its March 18, 2024, meeting. (R-1G.) By letter dated March 28, 2024, the Board's attorney notified Mom and Dad that the Board found that A.J. was not domiciled in Springfield and should be immediately withdrawn and that Mom and Dad owed tuition in the amount of $14,201.70 for the period of May 2023–March 2024. (R-1H.)

On April 18, 2024, Mom filed a Pro Se Petition of Appeal, dated April 17, 2024, with the Department of Education.[1] On May 7, 2024, the Board filed a motion to dismiss in lieu of answer.[2] On May 10, 2024, the Department transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. Jurisdiction is conferred under N.J.S.A. 18A:6-9.

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[1] Dad did not file an appeal.

[2] Due to applicable case law and the proximity of the dates, it was determined during the prehearing conference that the matter would proceed to a hearing rather than proceed on the motion to dismiss.

The hearing was held on July 10, 2024. The Board submitted its post-hearing brief and certification on July 19, 2024; petitioner submitted her post-hearing letter and documents on July 26, 2024; and the Board submitted a supplemental certification on August 14, 2024, on which date the record closed.

FACTUAL DISCUSSION AND FINDINGS

Mom testified on behalf of petitioner. Rachel Goldberg (Superintendent), Michelle Calas (School Business Administrator/Board Secretary) and James Post (Investigator) testified on behalf of the respondent.

Preliminary Facts

After due consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following preliminary facts:

Mom and Dad have a daughter, A.J., born in July 2019. Per a lease dated October 9, 2021, Mom and Dad leased an apartment at 46 First Street,[3] Springfield, New Jersey, for a term of one year, from November 1, 2021, through October 31, 2022 (Springfield Lease). (P-7.)

On April 8, 2022, Mom purchased 766 Second Street,[4] Plainfield, New Jersey. A mortgage, dated April 8, 2022, reflects that borrower "[Mom], Unmarried" owes the lender $588,318, plus interest, for 766 Second Street, Plainfield. (R-1D.) Apartment leases for 766 Second Street, Plainfield, all reflect Mom as landlord and further reflect that Unit 1 was rented from December 1, 2022, through November 30, 2023, for $2,700 per month, that Unit 2 was rented from December 1, 2022, through November 30, 2023, for $1,800 per month, and that Unit 3 was rented from January 1, 2023, through

[3] A fictitious address is used for privacy.
[4] A fictitious address is used for privacy.

December 31, 2023, for $1,400 per month. (P-3; P-4; P-5.) Total rent is $5,900 per month.

An addendum to the Springfield Lease, dated September 23, 2022 (Springfield Lease Addendum), reflects that the landlord agreed to extend the term of occupancy for "6 months" from October 1, 2022,[5] through April 30, 2023. (P-8.)

On November 15, 2022, Dad and M.P., as tenants in common, purchased 667 Third Street, Plainfield, New Jersey[6] from a limited liability company. (R-1D.)

For the 2022–2023 and 2023–2024 school years, A.J. attended a full-day preschool program at the Edward V. Walton School in Springfield. (R-2.) A Student Information Sheet completed by Mom reflects A.J.'s address as 12 Fourth Street, Plainfield, New Jersey.[7] (R-1C.) 12 Fourth Street, Plainfield, was the address of Mom's mother and stepfather. Mom's mother passed away in March 2023. An expired driver's license for Mom reflects an issue date of March 2019, an expiration date of April 2023, and an address of 12 Fourth Street, Plainfield. A current driver's license for Mom reflects an issue date of March 2023, an expiration date of April 2027, and an address of 12 Fourth Street, Plainfield.

Mom and Dad were married in January 2023. (R-4.)

A deed dated July 11, 2023, reflects that the grantors, "[Dad], whose address is 667 Third Street, Plainfield, New Jersey 07060 and [M.P.], whose address is . . . Newark, New Jersey" conveyed ownership of 667 Third Street, Plainfield, to "[Dad] and [Mom], married to each other, whose address is [667 Third Street], Plainfield, New Jersey 07060," for consideration of $1. (R-1E.) The "record and return to" address on the July 11, 2023, deed is as follows: [Dad], 667 Third Street, Plainfield, New Jersey 07060. (R-1D.) A mortgage, dated July 11, 2023, reflects the borrower as "[Dad] and [Mom], Husband and Wife, currently residing at [667 Third Street], Plainfield, New

[5] It is observed that the Springfield Lease term was November 1, 2021, through October 31, 2022, and that October 1, 2022, through April 30, 2023, would be seven months.
[6] A fictitious address is used for privacy.
[7] A fictitious address is used for privacy.

Jersey" and that each borrower who signed the note owes the lender $530,387, plus interest, for 667 Third Street, Plainfield. (R-1F.) The note, dated July 11, 2023, is initialed by Mom and Dad but signed only by Dad. (P-9.)

On January 24, 2024, Mom signed a Marriage Settlement Agreement, which reflects Mom's address, beneath her signature, as 667 Third Street, Plainfield. The Marriage Settlement Agreement also reflects Dad's address as 667 Third Street, Plainfield. Additionally, the Marriage Settlement Agreement reflects, inter alia, the following: that Mom and Dad separated on October 1, 2023; that Mom and Dad maintain joint legal custody of A.J.; and that Mom has sole physical custody of A.J. (R-4; R-4A.) With respect to the division of assets, the Settlement Agreement reflects, in pertinent part, the following:

> a. Marital Home. The parties agree the marital home will be sold and proceeds will be divided in the following percentages after payment of any mortgage and sales costs:
>
> 50% to [Mom] 50% to [Dad]
>
> b. Additional Real Property.
>
> [Mom] will receive the following real property:
>
> [766 Second Street] which is legally described as Investment Property
>
> [Mom] agrees to buy out [Dad] interest in the investment property once the primary residence is sold. The buyout will be determined by appraising the house, and [Mom] will pay 50% of the equity, minus commission, taxes and fees.
>
> c. Other Assets. After the sale of the principal residence, both parties shall collaborate to settle the outstanding loan on the car, and upon full payment, the title shall be transferred to [Mom].
>
> [R-4A.]

The Marriage Settlement Agreement was filed in Superior Court on January 25, 2024.

It was discovered that paperwork submitted to the school reflected A.J.'s address as Plainfield. On January 25, 2024, Springfield District residency investigator James Post commenced a residency investigation. Dad's vehicle is a gray sport utility vehicle (SUV). (R-2.) Mom's vehicle is a white Range Rover. (R-2.) Post's investigation report, dated February 3, 2024, concluded that the family did not reside in Springfield. (R-2.)

By notice of initial determination of ineligibility, dated February 12, 2024, Rachel Goldberg, Springfield District Superintendent, notified Mom and Dad via certified mail, at 667 Third Street, Plainfield, that it had come to the Board's attention that A.J. was not domiciled in Springfield and was no longer entitled to a free education within the Springfield District. (R-1B.)

By letter dated March 8, 2024, Michelle Calas, Springfield District School Business Administrator/Board Secretary, notified Mom and Dad at 667 Third Street, Plainfield, that after the Board conducted a hearing, it appeared that A.J. is domiciled in Plainfield and that the Board would take a formal vote seeking removal of A.J. from Springfield District at its March 18, 2024, meeting. (R-1G.) A resolution reflects that the Board found that A.J. was not domiciled in Springfield and should be immediately withdrawn and that Mom and Dad owed tuition in the amount of $14,201.70 for the period of May 2023–March 2024. (R-1H.) By letter dated March 28, 2024, the Board's attorney notified Mom and Dad, at 667 Third Street, Plainfield, of the foregoing Board resolution.

On April 8, 2024, Post commenced a follow-up residency investigation because Mom had advised Springfield District that she and A.J. would be residing at 11 Fifth Street, Springfield, New Jersey[8] during the school week. Post's follow-up investigation

[8] A fictitious address is used for privacy.

report, dated May 27, 2024, concluded that the family did not reside in Springfield and were not staying at 11 Fifth Street, Springfield. (R-3.)

On April 18, 2024, petitioner filed a Pro Se Petition of Appeal, dated April 17, 2024 (Petition), with attachments, with the Department of Education. The Petition reflects petitioner's address as 11 Fifth Street, Springfield. Included with the Petition was a notarized letter from S.D., stating as follows:

> [Mom] and [A.J.] resided with myself, [S.D.] and my wife at 11 Fifth Street, Springfield, NJ 07081 for the months of May 1, 2023, until July 31, 2023.
>
> After July 31, 2023, [A.J.] and [Mom] stayed with us 4 days a week (the exact day of the week switched throughout this time period) while [A.J.] attended school up until the end of February 2024.
>
> My wife and I agreed to let [A.J.] and [Mom] to stay with us permanently beginning March 12, 2024 until [Mom] is able to find a new residence.

Also included with the Petition was a letter from Mom, dated April 9, 2024, as follows:

> I resided in Springfield at [46 First Street] and my lease was up April 30, 2023.
>
> I resided on [11 Fifth Street], Springfield, NJ with my godmother and godfather ([S.D.]).
>
> In July I was anticipating on moving, [Dad] took a mortgage on the house in Plainfield, [667 Third Street], Plainfield, NJ. Since we were currently married, I had to sign the mortgage documents as well. My name is not currently on the mortgage but my name is on the deed.
>
> I anticipated on moving in with [Dad] until I discovered he committed adultery. At this point [Dad] moved into the home by himself. In my divorce paperwork it actually notated the date he committed adultery but I didn't find out until the end of July. As [Dad] proceeded to move to [667 Third Street] we began doing therapy sessions and made several attempts to try and reconcile while I was out of the house. When I filled out my divorce paperwork and it asked for

physical separation I notated October 2023 since this is when we decided to give up. I also noted this date to make sure if the house was sold I would be able to receive proceeds from the sale of the house.

At this time I also owned a multi-family, [766 Second Street], which I've owned since April 8, 2022. My lease started in Springfield at [46 First Street] November 2022. I was residing in Springfield while owning this house. My tenants signed a lease which didn't expire until November 2023, December 2023 and January 2024. I never renewed their lease because my husband, [Dad] and I are going through a divorce and trying to decide what we will do with the house. The units are still currently occupied and rented out.

The school board also mentioned when I filled out contact information I provided my mother's address, [12 Fourth Street], Plainfield NJ. This address has always been my mailing address which I explained to the school when I filled it out. When my daughter [A.J.] first attended the school, I provided them with my license which shows this same address and at the time my current address was [46 First Street]. I have attached a copy of my old license and new to show you I've never changed my address on license or as my mailing address.

When the RI did the investigation, unfortunately they chose the days her father picks [A.J.] up to follow him. [Dad] and I have an arrangement, he picks [A.J.] up from school Mondays and Wednesday's if he doesn't have to work overtime and drops her off to me by 8PM on those days. He also keeps her every other weekend. Due to [Dad's] work schedule, he is unable to have residential custody of [A.J.]. He works late and sometimes works weekends. He has to be to work at 6:00am in Secaucus, NJ and most days during the week he doesn't get off until 7:30pm. Before care and after care isn't available at those times, hence we agreed I will have residential custody of [A.J.]. The 2 days he was followed was on his days to pick her up, one which he returned her to me that evening and the other date was a Friday which it was his weekend to keep her.

The board asked me to send my divorce paperwork to show the anticipation of the sale of [667 Third Street], Plainfield, NJ and I offered to show them I had residential custody. I agreed to show them all the information that was relevant to this case and they tried to dissect the information they were able to see and made a determination but their conclusion was incorrect.

> They pointed out [Dad] and I have joint legal custody, this is because in the state of NJ it is almost impossible to have sole custody but we have joint custody in regards to making decisions. I will provide the copy of the settlement agreement which is in regards to this case.
>
> They also stated my agreement stated the document indicated that residence of the child shall not be changed but that wasn't the complete statement. It stated the residence couldn't be changed without notifying [Dad]. [Dad] is fully aware I have been staying in a few places with [A.J.]. I can have him write a letter if needed.
>
> After the investigation and the hearing, my godparents agreed to allow me to reside in Springfield fully until I am able to find a place for [A.J.] and I. I submitted a notarized letter to the school.
>
> The school agreed to allow [A.J.] to stay until June 21, 2024 but they are trying to charge me tuition because they are saying I wasn't domiciled in Springfield. I would like to appeal the decision for them charging me past tuition when my last permanent residence was in Springfield, NJ and for the entire school year I was staying from place to place because I didn't have a permanent residence. I stayed in Springfield, Edison, Piscataway and Plainfield since July. During the school year (September–February) I stayed in Springfield mostly during the week but I also spent a few nights in Edison, NJ, Piscataway, NJ, and Plainfield, NJ.

Finally, also included with the Petition was a letter from Mom, dated April 18, 2024, as follows:

> I just wanted to address, I haven't been able to find an apartment yet because now I am no longer a two parent household. I am unable to afford a two bedroom apartment in areas with a good school district. [A.J.] came into Edward Walton School with special needs. She had a speech delay and was receiving services to assist with her delay. Education is very important to me so the school district where I will reside makes a difference. When I anticipated on moving into my marital home, we were going to be able to afford private school because we had both our incomes. Since I never went forward with moving in the house it caused me to go from place to place with my child. I am currently in a lottery for an apartment in Springfield, NJ and I

> am actively looking. I expressed to Springfield Board of Education I didn't have a permanent residence and was living in different towns they didn't offer any resources or services.

The 2022–2023 per pupil cost for preschool was $15,082, and the 2023–2024 per pupil cost for preschool was $15,979.

Testimony

Rachel Goldberg

Mom left Springfield in April 2023, and there was no claim of or communication about displacement prior to the start of the residency investigation. Typically, in the event of a displacement, the families immediately make the Springfield District aware, and there is a very clear protocol that is followed in Springfield District. Mom's conversation with her about displacement was not until May 13, 2024. It is incumbent on a family to communicate a displacement to the Springfield District with some level of immediacy. There was no evidence that Mom was displaced from Springfield—rather it appears she was displaced from Plainfield. There was no claim of homelessness as of February 26, 2024, and it is the position of the Springfield District that even if Mom is homeless, she is homeless from Plainfield.

Michelle Calas

The Board allowed Mom additional time to submit documentation of domicile in Springfield. Mom provided a redacted portion of a marriage settlement agreement, but it does not reflect her domicile or residence in Springfield. She is not aware of any conversation between Mom and a Board member. She went back and forth with Mom about the marriage settlement agreement because there was no evidence of domicile in Springfield and the Board needed evidence linking A.J. to Springfield. Mom's last known permanent residence was her marital residence.

James Post

On Thursday, January 25, 2024, at 12:00 p.m., he went to 667 Third Street, Plainfield, but did not see Mom's Range Rover. He then went to 46 First Street, Springfield, where the apartment complex leasing manager advised him that the family had moved out in April 2023. Mom picked A.J. up from school at 4:20 p.m. He followed but lost sight of them. He returned to 667 Third Street, Plainfield and remained until 6:00 p.m. but never saw them, and there were no vehicles in the driveway. On Friday, January 26, 2024, A.J.'s grandmother and a male driver picked A.J. up from school at 4:55 p.m. in a Dodge Ram pickup. He followed them to a restaurant and then to 667 Third Street, Plainfield, where they entered the residence. On January 29, 2024, at 6:30 a.m., he went to 667 Third Street, Plainfield. Dad's SUV was in the driveway. He left shortly after 9:00 a.m. because school staff advised that A.J. had arrived on time, so it appeared she had slept elsewhere. That afternoon, Dad picked A.J. up in the SUV. He followed them to McDonald's and then to 667 Third Street, Plainfield. He went to 667 Third Street, Plainfield, on Wednesday, January 31, 2024,[9] and Dad's SUV was in the driveway, but he did not see anyone. School staff advised that A.J. had arrived on time, so it appeared she had slept elsewhere. A.J.'s aunt picked her up from school. He followed them to 11 Fifth Street, Springfield, where they pulled into the driveway for a few minutes, then went to McDonald's and then to 12 Fourth Street, Plainfield. Thereafter, he went to 667 Third Street, Plainfield, but did not see A.J. get dropped off there. On Friday, February 2, 2024, and on the morning of Saturday, February 3, 2024, he went to 12 Fourth Street, Plainfield, and 667 Third Street, Plainfield, but did not see Mom's Range Rover at either address. Dad's SUV was parked in the driveway on both occasions.

On Monday, April 8, 2024, Dad picked A.J. up from school in the SUV at 4:45 p.m. He followed them but lost sight of them in Piscataway, near Stelton Road. On Thursday, April 11, 2024, Dad picked A.J. up from school at 3:50 p.m. and dropped her off at 12 Fourth Street, Plainfield, to Mom, whose Range Rover was parked at the curb. A.J. and Mom entered the home and then left a few minutes later in Mom's Range

[9] His report reflects that he returned "the next day," so it is not clear if the date is accurate.

Rover. He followed them through Plainfield but lost sight of them. On Thursday, April 11, 2024, he monitored 11 Fifth Street, Springfield, from 8:00 p.m. until 10:00 p.m. but never saw Mom's Range Rover. On Wednesday, April 17, 2024, he monitored 11 Fifth Street, Springfield, from 6:30 a.m. until 8:45 a.m. The aunt's vehicle was parked in the driveway, but he never saw Mom's Range Rover. He left 11 Fifth Street, Springfield, and drove to the school, where he was advised that Mom had just dropped A.J. off, so they could not have slept at 11 Fifth Street, Springfield, the night before. He returned to 11 Fifth Street, Springfield, after leaving the school, but he did not see Mom's Range Rover. On Wednesday, April 24, 2024, he monitored 11 Fifth Street, Springfield, from 6:30 a.m. until 8:45 a.m., but there was no sign of Mom or A.J. He went to the school and observed Mom dropping A.J. off, so they could not have stayed at 11 Fifth Street, Springfield, the night before. He monitored 11 Fifth Street, Springfield, on Thursday, May 2, 2024, and Thursday, May 9, 2024, from 7:30 p.m. until 10:00 p.m. Both times the aunt's car was parked in the driveway, but there was no sign of A.J., Mom or the Range Rover. He observed 11 Fifth Street, Springfield, on Tuesday, May 14, 2024, from 6:30 a.m. until 8:45 a.m. The aunt's vehicle was parked in the driveway, but there was no sign of A.J. or Mom. He went to the school and observed Mom dropping A.J. off, so they could not have stayed at 11 Fifth Street, Springfield, the night before. He followed Mom to 11 Fifth Street, Springfield, where she parked behind the aunt's vehicle in the driveway and then entered the residence. He went to 11 Fifth Street, Springfield, on Wednesday, May 22, 2024, at 6:30 a.m. and observed the aunt's vehicle in the driveway. Mom's Range Rover was not there, but at approximately 8:25 a.m., A.J. and the aunt emerged from the home and drove to the school.

Mom

12 Fourth Street, Plainfield, was her childhood home and was owned by her mother and stepfather. Her stepfather and maternal grandfather presently live at that address. She keeps that address on her driver's license, and it is her mailing address. She put that address on the Student Information Sheet because it says, "How may I reach you"—for how the school could get in touch with A.J., not for where A.J. lives. She is a realtor and does a lot of business in Plainfield. Her business address is in Plainfield. The investment property apartments were and still are rented, so she could

not have resided there. She stayed with her godparents at 11 Fifth Street, Springfield from May 1, 2023, until the end of the school year. Dad did not stay there—he stayed at 667 Third Street, Plainfield. When she signed the 667 Third Street, Plainfield mortgage, she was planning to move into the marital home that she helped build and create, but she did not move in because, in July 2023, she was informed that Dad was cheating on her.

She told the Board that she was waiting to sell until spring or summer because she could get more money for the marital home in warmer weather and that she was living from house to house without a permanent residence. She still has no permanent residence. She is looking for low-income apartments but has not been accepted yet. She will probably have to wait until the divorce is finalized because she is not sure what is going to happen with the investment property and marital residence. She hired a lawyer a few weeks ago because she and Dad cannot come to an agreement. At the February 26, 2024, meeting and via email, she asked the Springfield District to provide her with information regarding being homeless. She asked for assistance and emailed Calas because she had no fixed, adequate residence. Nobody reached out to her, and Calas said it depends on the outcome of this case. She emailed the District in March 2024 about being displaced, and she went to the office and said she was displaced from 46 First Street, Springfield, and did not have a permanent residence.

She and Dad have an agreement that Dad picks A.J. up from school on Mondays and Wednesdays if he does not have to work overtime. Dad resides at 667 Third Street, Plainfield. She submitted screenshots of her gym entries. A.J. has swim lessons every Thursday at 6:20 p.m. Sometimes she picks A.J. up early for gymnastics at 5:00 p.m. and then swim lessons at 6:20 p.m. at Life Time gym in Bridgewater, New Jersey. After swim lessons, A.J. does the open swim, showers, and gets dressed at the gym, and then they get something to eat, so they do not get home until 10:30 p.m. on Thursdays. On Mondays and Wednesdays, Dad takes A.J. to Kumon on Shelton Road in Piscataway, New Jersey, for tutoring, and then drops A.J. off to her at 8:00 p.m. She could have left the house with A.J. prior to 6:45 a.m. and then dropped her off at school. On January 30, 2024, she rushed her stepfather, who has cancer, to the hospital. She goes to 12 Fourth Street, Plainfield almost every day because she helps cook for her

stepfather and grandfather. She might leave before 6:45 a.m. because some mornings she takes her stepfather to the doctor for treatment. She has had a lot of responsibilities since her mother passed away. Her godmother ("aunt") and godfather reside at 11 Fifth Street, Springfield. She is allowed to stay there every day during the week during the school year. Post did not stay long enough to see her at 11 Fifth Street, Springfield.

She looked up her rights and what works in her favor, and there is no clear answer for what she is going through. She has never stated that her current residence is in Springfield. The Springfield apartment was her last permanent residence—her domicile—from which she was displaced. Since then, she has moved from place to place, staying with friends and family until she figures out her divorce. She submitted shipping confirmations for other places she has stayed and shipped things to. She is not on house arrest. She does not have to stay at her godfather's house every single day of the week. She can stay out on her birthday. She is allowed to stay there every day during the week during the school year. There is no way she would enroll A.J. in a Plainfield public school. She would only reside in Plainfield if she was in a two-parent home and could afford private school. When living in Plainfield, they had a two-income household, so A.J. was going to be put into private school. Wherever she resides now, it must be in a good school district because she cannot afford private school anymore.

The Marriage Settlement Agreement does not specify who resides where or reflect where she would be staying with A.J. because she does not have a permanent address. She and A.J. are displaced, and Dad is in the marital home. She has no right to go into the marital home. Recently, Dad called the police on her at the marital home and said she was not allowed in because she does not live there. She created the Marriage Settlement Agreement document, and some things are not correct, like October 1, 2023. She entered the wrong dates. It does not make sense that the Marriage Settlement Agreement reflects the 667 Third Street, Plainfield address in January 2024, but also that she physically separated in October 2023. She is not an attorney and answered to the best of her knowledge. The Marriage Settlement Agreement has been amended and filed with the court. They are waiting to see the mediator and judge, but there are no dates yet. The marital residence cannot be sold

because she and Dad cannot settle, and now they have hired attorneys to determine what will happen with both properties. Neither property has been listed for sale.

LEGAL ANALYSIS AND CONCLUSION

Public schools are free to persons over five[10] and under twenty years of age who are domiciled within the school district or whose parent moves from one school district to another school district as a result of being homeless and whose district of residence is determined pursuant to N.J.S.A. 18A:7B-12. N.J.S.A. 18A:38-1(a) and (f). No child under the age of five years shall be admitted to any public school, except as may be provided pursuant to law for children of such age. N.J.S.A. 18A:38-5. See N.J.S.A. 18A:44-1. The rules in N.J.A.C. 6A:22 were adopted to implement N.J.S.A. 18A:38-1(a) through (e). N.J.A.C. 6A:22-1.1(a).

If the school district finds that the parent of a child who is attending the schools of the district is not domiciled within the district, the superintendent or administrative principal may apply to the board of education for the removal of the child. N.J.S.A. 18A:38-1(b)(2). The parent is entitled to a hearing before the board, and, if in the judgment of the board, the parent is not domiciled within the district, the board may order the transfer or removal of the child from school. Ibid. The parent may contest the board's decision before the Commissioner of Education within twenty-one days of the date of the decision and is entitled to an expedited hearing. Ibid. The parent has the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in the statute. Ibid. Where the evidence does not support the claims of the parent, the Commissioner is authorized to assess tuition prorated to the time of the student's ineligible attendance in the schools of the district, and tuition is computed on the basis of 1/180 of the total annual per-pupil cost to the local district multiplied by the number of days of ineligible attendance. Ibid.

[10] The board of education of any district may establish a preschool school or department in any school under its control and shall admit to such preschool school or department any child who is under the age at which children are admitted to other schools or classes in such district. N.J.S.A. 18A:44-1.

Pursuant to N.J.A.C. 6A:22-3.1(a)(1), a student is eligible to attend a school district if he or she is domiciled within the school district, and a student is domiciled in the school district when he or she is the child of a parent whose domicile is located within the school district. When a student's parents are domiciled within different school districts and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the school district of the parent with whom the student lives for the majority of the school year—regardless of which parent has legal custody. N.J.A.C. 6A:22-3.1(a)(1)(i). When a student's physical custody is shared on an equal-time, alternating week/month or other similar basis so the student is not living with one parent for a majority of the school year and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the present domicile of the parent with whom the student resided on the last school day prior to the October 16 preceding the application date. N.J.A.C. 6A:22-3.1(a)(1)(ii). When a student resided with both parents, or with neither parent, on the last school day prior to the preceding October 16, the student's domicile is that of the parent with whom the parents indicate the student will be residing on the last school day prior to the ensuing October 16. N.J.A.C. 6A:22-3.1(a)(1)(ii)(1). When the parents do not designate or cannot agree upon the student's likely residence as of that date, or if on that date the student is not residing with the parent previously indicated, the student shall attend school in the school district of domicile of the parent with whom the student actually lives as of the last school day prior to October 16. Ibid. A student is domiciled in the school district when his or her parent resides within the school district on an all-year-round basis for one year or more, notwithstanding the existence of a domicile elsewhere. N.J.A.C. 6A:22-3.1(a)(4).

> "Domicile" is defined as "the place where [a person] has his [or her] true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has an intention of returning." T.B.W. ex rel. A.W. v. Bd. of Ed. of the Twp. of Belleville, Essex Cnty., 1998 N.J. AGEN LEXIS 122, Agency Dkt. No. 159-5/96, 1998 WL 668678 (N.J. Adm. June 18, 1998). As the court noted in Collins v. Yancey, 55 N.J. Super. 514, 520–21, 151 A.2d 68 (Law Div. 1959), a person may have several residences or places of abode, but only one domicile at a time. Id.

[D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist., 366 N.J. Super. 269, 273–74 (App. Div. 2004).]

A student is eligible to attend the school district pursuant to N.J.S.A. 18A:38-1(d)[11] if the student's parent temporarily resides within the school district and elects to have the student attend the school district of temporary residence, notwithstanding the existence of a domicile elsewhere. N.J.A.C. 6A:22-3.2(c). When required by the district board of education, the parent shall demonstrate that the temporary residence is not solely for the purposes of the student attending the school district of temporary residence. N.J.A.C. 6A:22-3.2(c)(1). When one of a student's parents temporarily resides in a school district while the other is domiciled or temporarily resides elsewhere, eligibility to attend school shall be determined in accordance with N.J.A.C. 6A:22-3.1(a)(1)(i). N.J.A.C. 6A:22-3.2(c)(2). However, no student shall be eligible to attend school based upon a parent's temporary residence in a school district unless the parent demonstrates, if required by the district board of education, that the temporary residence is not solely for purposes of a student's attending the school district. Ibid.

Notwithstanding the foregoing, a student over five[12] and under 20 years of age, pursuant to N.J.S.A. 18A:38-1, is eligible to attend school in the school district if the student's parent moves to another district as a result of being homeless, subject to the provisions of N.J.A.C. 6A:17-2 (Education of Homeless Children). N.J.A.C. 6A:22-3.2(d). Other than by reference to the applicable statutes and rules, N.J.A.C. 6A:22 does not address attendance at school by persons qualifying under N.J.S.A. 18A:38-1(f), which provides for attendance by homeless students and is implemented through N.J.A.C. 6A:17, Education of Homeless Children. Ibid. N.J.A.C. 6A:17 ensures that homeless children are provided a thorough and efficient education. N.J.A.C. 6A:17-1.1. "Homeless child" means a child who lacks a fixed, regular, and adequate

[11] Any person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district for the purposes of this section. N.J.S.A. 18A:38-1(d).

[12] See footnote 10.

residence, pursuant to N.J.S.A. 18A:7B-12[13] and N.J.A.C. 6A:17-2.2. N.J.A.C. 6A:17-1.1.2. "School district of residence" for a homeless child means the school district in which the parent of a homeless child resided prior to becoming homeless. Ibid. It may not be the school district in which the student currently resides. Ibid. This term is synonymous with "school district of origin" referenced in the McKinney-Vento Homeless Education Assistance Act. Ibid. N.J.A.C. 6A:17-2 applies to district boards of education providing general education services to students in preschool through grade 12 and special education services to students ages three through 21. N.J.A.C. 6A:17-2.1. Nothing in N.J.A.C. 6A:17-2 limits the educational rights of homeless children or school district responsibilities under Subtitle VII-B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §§ 11431 et seq.). Ibid.

The district board of education for the school district of residence shall determine that a child is homeless for purposes of N.J.A.C. 6A:17 when the child resides in any of the following:

1. A publicly or privately operated shelter designed to provide temporary living accommodations, including:

    i. Hotels or motels;
    ii. Congregate shelters, including domestic violence and runaway shelters;
    iii. Transitional housing; and
    iv. Homes for adolescent mothers;

2. A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation, including:

    i. Cars or other vehicles, including mobile homes;
    ii. Tents or other temporary shelters;
    iii. Parks;
    iv. Abandoned buildings;
    iv. Bus or train stations; or

[13] The district of residence for children whose parent or guardian temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless. N.J.S.A. 18A:7B-12(c). For the purpose of this amendatory and supplementary act, "homeless" shall mean an individual who temporarily lacks a fixed, regular and adequate residence. Ibid.

v. Temporary shelters provided to migrant workers and their children on farm sites;

3. The residence of relatives or friends where the homeless child or youth resides out of necessity because the child's or youth's family lacks a regular or permanent residence of its own; or

4. Substandard housing.

[N.J.A.C. 6A:17-2.2(a).]

The school district of residence for a homeless child shall be responsible for the education of the child and shall: (1) determine the school district in which the child shall be enrolled after consulting with the parent pursuant to N.J.A.C. 6A:17-2.5; (2) pay the cost of tuition pursuant to N.J.S.A. 18A:38-19 when the child attends school in another school district; and (3) provide for transportation for the child pursuant to N.J.A.C. 6A:27-6.2. N.J.A.C. 6A:17-2.3(a). The determination of a homeless child's school district of residence shall be made by the chief school administrator of the school district of residence, or the chief school administrator's designee, pursuant to N.J.A.C. 6A:17-2.4, based upon information received from the parent, a shelter provider, another school district, or an involved agency. N.J.A.C. 6A:17-2.3(b). The district identified in accordance with N.J.S.A. 18A:7B-12 as the school district of residence for a homeless child shall be the school district of residence until the parent establishes a permanent residence. N.J.A.C. 6A:17-2.3(c). Financial responsibility will remain with the homeless child's school district of residence until the family is deemed domiciled in another jurisdiction, pursuant to N.J.S.A. 18A:38-1(d). Ibid.

Mom argues that during the period in question she "experienced severe emotional and psychosocial stressors, including homelessness," and that her "defense wasn't that [she] was currently domiciled in Springfield rather [she] was last domiciled in Springfield." Mom further argues that she was going through a divorce and was homeless, and because she did not have a permanent home, she has been residing with relatives or friends since May 1, 2023.

Petitioner has the burden of proof by a preponderance of the evidence that A.J. is eligible for a free education in Springfield. Although Mom now argues she is homeless, more than a year had passed prior to the residency investigation, and neither parent ever notified the Springfield District that A.J. was "homeless." Per N.J.A.C. 6A:17-2.2(a)(3), a child is homeless if the child resides in the residence of relatives or friends "out of necessity because the child's family lacks a regular or permanent residence of its own." That is not the case here. A.J.'s family did not and does not lack a residence. Mom owns the three-family investment property[14] at 766 Second Street, Plainfield, and Mom and Dad own the "marital home"[15] at 667 Third Street, Plainfield. The leases on Mom's investment property in Plainfield expired in November 2023 and December 2023, and there is no evidence that there was any attempt by Mom to owner-occupy a unit; Mom testified that neither the investment property nor the marital home has been listed for sale. Mom's testimony that she and Dad entered into a marriage settlement agreement whereby only Dad may remain in the marital residence, is extremely troubling as it purposefully renders their child homeless—and this is not a situation where Dad is absent, as he has repeatedly been observed picking A.J. up from school, and she has been observed entering the marital residence. Further, there is no evidence of any emergent relief application in connection with the divorce because of the alleged homelessness of Mom and A.J. Under the circumstances, I **CONCLUDE** that A.J. is not homeless for McKinney-Vento or residency purposes. Therefore, A.J.'s eligibility to attend school in Springfield turns upon domicile.

Mom has presented no credible documentation of domicile in Springfield beyond April 30, 2023, when the Springfield Lease expired. It is observed that the Springfield apartment was leased by both Mom and Dad in October 2021, and the September 2022 addendum extending the lease was also signed by both Mom and Dad. Thus, it appears that Mom and A.J. had been living with Dad since at least November 2021; Mom and Dad were married in January 2023; and Mom testified that she was not aware of Dad's infidelity until July 2023—the end of July 2023, according to Mom's April 9, 2024, letter. There is no explanation for why Mom and A.J. would have been living with Mom's godparents in Springfield in May, June and July 2023, as stated in the letter from

[14] Referred to as such in the Marriage Settlement Agreement.
[15] Referred to as such in the Marriage Settlement Agreement.

Mom's godfather, or until the end of the 2022-2023 school year as testified to by Mom, rather than with Dad in Plainfield—especially after ownership was transferred to Mom on July 11, 2023—except for the purpose of making A.J. eligible for a free education in Springfield. Mom has made it clear that she would never enroll A.J. in Plainfield public schools and that it had been her intention to enroll A.J. in private school while living in Plainfield as a two-parent household. However, the fact that her current divorce may have resulted in an inability to afford private school does not negate her domicile in Plainfield. Further, the Marriage Settlement Agreement—drafted by Mom—reflects that Mom resided at 667 Third Street, Plainfield until October 2023, as that was the date of separation, and under Mom's signature it reflects her address as 667 Third Street, Plainfield—despite Mom's claims that she always uses 12 Fourth Street, Plainfield as her address. Mom also received—whether in person or from Dad—the letters from the Springfield District addressed to 667 Third Street, Plainfield.

Mom's investment property is in Plainfield, and the marital home is also in Plainfield. Mom's driver's license and the Student Information Sheet reflect a Plainfield address. Although Mom argues that she has always used her childhood address of 12 Fourth Street, Plainfield as her address, she did not use that address on her Marriage Settlement Agreement—even after claiming she had no permanent address. Mom's testimony and documents are in conflict, improbable under the circumstances, and do not support domicile in Springfield. Further, as already noted, Mom argues that her "defense wasn't that [she] was currently domiciled in Springfield rather [she] was last domiciled in Springfield." As noted above, Mom's argument that she and A.J. are homeless is unpersuasive, and the record reflects that A.J. has not been domiciled in Springfield since May 1, 2023. Thus, even if Mom and A.J. were homeless, they would be homeless from the marital residence in Plainfield. I therefore **CONCLUDE** that petitioner has not satisfied her burden to prove by a preponderance of the credible evidence that she was domiciled in Springfield after April 30, 2023.

In sum, **CONCLUDE** that A.J. was ineligible for a free education in the Springfield District for the remainder of the 2022-2023 school year, commencing on May 1, 2023, and was ineligible for a free education in the Springfield District for the 2023-2024 school year. As such, I further **CONCLUDE** that the parents owe tuition to

the Springfield Board in the total amount of $17,594.64 for A.J.'s period of ineligible attendance[16] during the 2022-2023 school year and 2023-2024 school year, calculated as follows: the per pupil tuition for preschool for 2022-2023 was $15,082, which is $83.79 per diem, times 32 days of ineligible attendance (per the Supplemental Certification), for a total of $2,681.28; and the per pupil tuition for preschool for 2023-2024 was $15,979, which is $88.77 per diem, times 168[17] days of ineligible attendance (per the Supplemental Certification), for a total of $14,913.36. Finally, I **CONCLUDE** that A.J. should be disenrolled from the Springfield District.

ORDER

It is **ORDERED** that petitioner's Pro Se Petition of Appeal be and hereby is **DISMISSED**. It is further **ORDERED** that the parents pay to the Board tuition in the amount of **$17,594.64** for the period of ineligible attendance of A.J. in the Springfield District during the 2022-2023 school year and 2023-2024 school year and that A.J. is hereby disenrolled from the Springfield District.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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.

[16] The Supplemental Certification appears to only have utilized days on which A.J. was present in school rather than school days during the period of ineligible attendance.

[17] Since the student was ineligible for the 2023-2024 school year, the total tuition would be $15,979, but the Supplemental Certification alleges only 168 days of ineligible attendance, and therefore that is the number utilized in the calculation of tuition owed.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **ACTING 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.

Kelly J Kirk

August 23, 2024

DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:

am

APPENDIX

Witnesses

For Petitioner:

A.J. (Mom)

For Respondent:

Rachel Goldberg

Michelle Calas

James Post

Exhibits

For Petitioner:

P-1 April 9, 2024, Letter

P-2 April 17, 2024, Notarized Letter

P-3 Unit 1 Lease

P-4 Unit 2 Lease

P-5 Unit 3 Lease

P-6 Mailings/Time Stamp Documents

P-7 Lease Agreement, 46 First Street, Springfield

P-8 Addendum to Lease Agreement, 46 First Street, Springfield

P-9 Note, dated July 11, 2023

For Respondent:

R-1A (Not in Evidence)

R-1B February 12, 2024, Letter (Notice of Initial Determination of Ineligibility)

R-1C Student Information Sheet

R-1D Mortgage (Partial), 766 Second Street, Plainfield

R-1E Deed (Partial), 667 Third Street, Plainfield

R-1F Mortgage (Partial), 667 Third Street, Plainfield

R-1G March 8, 2024, Letter

R-1H Board Resolution

R-1I (Not in Evidence)

R-2 Residency Investigation, dated February 3, 2024

R-3 Residency Investigation, dated May 27, 2024

R-4 Marriage Settlement Agreement (Redacted, Pages 1-10)

R-4A Marriage Settlement Agreement (Pages 2, 3, and 4 of 10)

R-5 Certification of Michelle Calas, dated July 18, 2024

R-5A Supplemental Certification of Michelle Calas, dated August 13, 2024

362-24
OAL Dkt. No. EDU 07830-24
Agency Dkt. No. 162-7/20

New Jersey Commissioner of Education

Final Decision

D.S., on behalf of minor child, M.S.,

Petitioner,

v.

Board of Education of the Township of Hamilton, Mercer County,

Respondent.

The record of this matter, which was transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-14.4 and includes an advisement of petitioner's failure to appear at a scheduled conference on June 3, 2024, has been reviewed. Petitioner did not file an explanation for the failure to appear. Accordingly, this matter is no longer deemed to be a contested case before the Commissioner and is hereby dismissed with prejudice.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2024
Date of Mailing: October 9, 2024

[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.

363-24

New Jersey Commissioner of Education

Final Decision

Board of Education of the Borough of Bound Brook, Somerset County,

Petitioner,

v.

Board of Education of the Township of Piscataway, Middlesex County, and A.S., on behalf of minor children, J.D.O. and A.D.O.,

Respondents.

Synopsis

Petitioning Board challenged a homelessness determination made by the Somerset County Executive Superintendent of Schools on November 26, 2021, regarding respondent parent, A.S. Bound Brook alleged that the respondent Board is responsible for the education costs of A.S.'s minor children J.D.O. and A.D.O., and that the children cannot continue to attend school in Piscataway at Bound Brooks's expense. The petitioner alleges that A.S. was never homeless; has had a permanent and fixed residence in Bound Brook; and that her children should be attending school within the Bound Brook school district. Piscataway contended that the children were and remain homeless such that Bound Brook is responsible for the cost of their education in Piscataway. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue and the matter is ripe for summary decision; in 2018, A.S. rented a room in a private home in Piscataway and established domicile there; thereafter, the children attended Piscataway schools as resident students; in October 2019 the family was forced to leave Piscataway suddenly after A.D.O. was physically abused by an unrelated adult in the home; A.S. then rented an unheated attic space in a shared house in Bound Brook where she and the children slept on a mattress on the floor; the children continued to attend school in Piscataway; the family lived in the attic until March 2021 when they moved in with A.S.'s mother, who had rented a three bedroom single family home in Bound Brook; A.S. and A.D.O. have continually lived with A.S.'s mother in Bound Brook since March 2021 (J.D.O. graduated from high school in 2021 and has since moved out). The ALJ concluded that A.S. and her children were homeless as of October 31, 2019 when they moved to a temporary, substandard living situation in Bound Brook out of necessity; A.S.'s move in March 2021 to a shared house with her mother became her fixed and regular residence as of March 2022; and, beginning with the 2022-2023 school year, the children should have been enrolled in the Bound Brook school district.

Upon review, the Commissioner adopted the factual findings of the ALJ, but rejected her conclusion regarding when the family established a fixed, permanent residence in Bound Brook and the time period for which Bound Brook was responsible for the children's tuition and transportation costs. Bound Brook was directed to assume financial responsibility for the children's education in Piscataway from November 1, 2020, to February 28 2021; and A.S. must immediately enroll A.D.O. in the Bound Brook school district.

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.

363-24
OAL Dkt. No. EDU 02006-22
Agency Dkt. No. 23-2/22

New Jersey Commissioner of Education

Final Decision

Board of Education of the Borough of Bound Brook, Somerset County,

Petitioner,

v.

Board of Education of the Township of Piscataway, Middlesex County, and A.S., on behalf of minor children, J.D.O. and A.D.O.,

Respondents.

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

Bound Brook challenges a homelessness and school district fiscal responsibility determination regarding J.D.O. and A.D.O., the children of respondent A.S., rendered by the Somerset County Executive County Superintendent (ECS) on November 26, 2021. The relevant facts are uncontested. In 2018, A.S. and her children moved to Piscataway. A.S. rented a room within a single-family home for $500 per month. The children attended school in Piscataway. On or about October 31, 2019, for A.D.O.'s protection, the family relocated suddenly after A.D.O. disclosed that she was physically abused by an unrelated adult in the home. A.S. began renting

an attic in a home in Bound Brook for $500 per month. The attic lacked heat and internet access, and the family slept on a mattress for several months until a social worker provided them with two beds. A.S. fell behind on her rent payments. The children continued to attend school in Piscataway.

In March 2021, A.S.'s mother, who had been living alone in a single room in Bound Brook, leased a three-bedroom, one-bathroom, two-floor single-family home in Bound Brook for $1600 per month. Although only A.S.'s mother signed the lease, which ran from March 1, 2021, to February 28, 2022, A.S. and her children are listed as tenants on the lease. A.S. reported that they all moved into the new residence together. The home has heat, electricity, and running water. A.S. shares a bedroom and a queen-sized bed with A.D.O., while A.S.'s son had his own bedroom until he moved out of the home upon graduation from Piscataway High School in June 2021. A.S. gives her mother $400 per month toward the rent and pays $79 monthly for internet service.

While A.S. expressed that she would prefer to live in Piscataway, she acknowledges that rental rates exceed what she can afford, and she has not applied for housing there. Between 2018 and August 2022, she worked at various taverns and restaurants earning minimal income, and she lacked employment for several months in 2020 during the COVID-19 pandemic. In August 2022, she began working as a housekeeper at a senior living facility in Somerset earning $16 per hour. A.S. and A.D.O. have continuously resided in the Bound Brook home with A.S.'s mother, even after the initial lease expired.

Bound Brook sought a determination from the ECS regarding homelessness and school district fiscal responsibility for J.D.O. and A.D.O. Upon consideration of information then

available about the family, the ECS determined that: (1) the family became homeless on October 31, 2019, and has continued to live in a "doubled-up" arrangement with a family member in Bound Brook; (2) Piscataway, the school district of origin, is responsible for the children's tuition and transportation costs for the period of October 31, 2019, to October 31, 2020 pursuant to *N.J.A.C.* 6A:17-2.4(c); (3) Bound Brook is responsible for the children's tuition and transportation costs for the period of October 31, 2020, to present, per *N.J.S.A.* 18A:38-1(d), as the family's temporary domicile is now in Bound Brook and the family remains homeless; and (4) A.D.O. may remain enrolled in the Piscataway School District pursuant to *N.J.A.C.* 6A:17-2.5 per A.S.'s wishes until such time as the family finds fixed, permanent housing in another school district.[1]

Bound Brook appealed the ECS's determination to the Commissioner of Education via the Office of Controversies and Disputes, which transmitted the matter to the OAL. Bound Brook and Piscataway filed cross-motions for summary decision. Bound Brook contended that A.S. is not and was never homeless as defined by law, and that when she moved to Bound Brook in 2019, the children were not entitled to continue attending school in Piscataway indefinitely and should have instead enrolled in Bound Brook schools. Bound Brook further contended that it is not financially responsible for transporting or educating the children in Piscataway. Piscataway contended that A.S. was and remains homeless and that Bound Brook has been and remains financially responsible for the children's education in Piscataway since October 31, 2020.

[1] Because J.D.O. graduated from Piscataway High School in June 2021, any financial responsibility for his tuition and transportation ended at that time.

The ALJ concluded that A.S. and the children were homeless as of October 31, 2019, when they moved to Bound Brook out of necessity, as the living conditions were substandard at best and the housing arrangement was clearly not a permanent situation. The ALJ reasoned that living in an attic, with less than adequate bedding and utilities, cannot be considered a fixed and permanent residence. Regarding the move in March 2021, the ALJ concluded that while A.S. may have intended for this living arrangement with her mother to be temporary until her finances improved, it became A.S.'s fixed, regular and adequate residence as of March 2022. The ALJ further concluded that, "[a]ccordingly, A.S. can be considered to have established a fixed residence at the New Hampshire Lane address no later than the end of the school year in June 2022 and should no longer be considered homeless." Initial Decision, at 14. The ALJ also concluded that, beginning with the 2022-2023 school year, the children should be enrolled in the Bound Brook school district.

Regarding the parties' financial responsibility for the children's education, the ALJ concluded that Bound Brook was responsible for tuition and transportation expenses for the children while they attended Piscataway schools "from October 2019 to June 2021 as they remained homeless without a fixed and permanent residence." *Ibid.* The ALJ further concluded that "Bound Brook BOE was responsible for the younger child's education in Piscataway schools from September 2021 until June 2022 (school year 2021-2022) when A.S.'s residence had become her fixed and permanent abode." *Ibid.* The ALJ reasoned that "[i]t seems appropriate to conclude that the residence had become permanent for A.S. by the end of the school term as she did not seek to relocate during the summer of 2022." *Ibid.*, n. 9. Finally, the ALJ concluded that

"[e]ffective September 2022 . . . A.D.O. should have been enrolled in the Bound Brook school district and attended school in Bound Brook at Bound Brook's expense." *Ibid.*

In their exceptions, Bound Brook argues that the ALJ erred in finding that the family remained homeless for one year even after they moved in with A.S.'s mother in March 2021 until March 2022. They contend that *N.J.S.A.* 18A:38-1(d) should not have factored into the homelessness determination regarding the family's status in March 2021, and that the record supports the conclusion that the family had a fixed, regular and adequate residence beginning in March 2021 at the latest. As such, they request that the Initial Decision be modified to reflect that A.S. and her children ceased being homeless in March 2021, and that Bound Brook's financial responsibility for the children's tuition and transportation in Piscataway ended during the 2020-2021 school year.

In response, Piscataway argues that the ALJ correctly found that A.S. and her children remained homeless after March 2021, and at least through June 2022. They emphasize that the totality of the circumstances must be considered, including that A.S. moved in with her mother in March 2021 out of necessity, as she could not afford to move back to Piscataway, and that A.S. and her daughter share a bedroom and sleep in the same bed. They also note that A.S. was not a signatory to the lease and thus did not have a legally enforceable right to remain in the home. Moreover, they assert that A.S.'s contribution toward the rent and expenses is not dispositive.

Upon review, and as explained fully herein, the Commissioner adopts the ALJ's factual findings but rejects the ALJ's legal conclusions regarding: (1) when the family's homelessness status ended, *i.e.*, when they established a fixed and permanent residence in Bound Brook; and

(2) the time period for which Bound Brook was financially responsible for the children's tuition and transportation costs.

Under the McKinney-Vento Homeless Assistance Act, homeless children are defined as "individuals who lack a fixed, regular and adequate nighttime residence," which includes "children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason." 42 *U.S.C.A.* § 11434a(2). Similarly, under state law, homeless children are defined as "child[ren] or youth who lack[] a fixed, regular and adequate residence pursuant to *N.J.S.A.* 18A:7B-12 and *N.J.A.C.* 6A:17-2.2," which includes children living in the "residence of relatives or friends where the homeless child resides out of necessity because the child's or youth's family lacks a regular or permanent residence of its own." *N.J.A.C.* 6A:17-1.2, *N.J.A.C.* 6A:17-2.2(a)(3). "[D]omicile attaches immediately if a student's dwelling is found to be fixed, regular and adequate." *Bd. of Educ. of Twp. of Egg Harbor v. Bd. of Educ. of Mainland Reg'l Sch. Dist.*, Commissioner Decision No. 555-10 (Dec. 30, 2010), at 4 (citing *N.J.S.A.* 18A:17B-12(c)).

The Commissioner has previously held that homelessness "is best viewed in a continuum." *St.-Op. Sch. Dist. of Camden v. C. Ann Volk*, Commissioner Decision No. 172-17R (June 20, 2017), at 11. Conducting a homelessness evaluation to determine whether a child's home is considered fixed, regular and adequate requires a fact-specific analysis and "cannot rest upon a simple calculation of the amount of time that children have spent in a particular location or municipality." *M. O'K. v. Bd. of Educ. of Borough of Cresskill,* Commissioner Decision No. 325-14 at 3 (August 12, 2014), *aff'd*, No. A-0828-14T4 (App. Div. Sept. 8, 2016). In conducting such a fact-specific inquiry, the Commissioner must consider the totality of the circumstances, as "[t]he

reasons for the children's homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant." *Ibid.*

The Commissioner agrees with Bound Brook that the ALJ erred when she concluded that the New Hampshire Lane home did not become A.S.'s fixed, adequate and permanent residence until at least March 2022, or the end of the school year in June 2022 at the latest. "[W]hile a homeless child may be deemed domiciled in a district after residing in that school district temporarily for one year or longer, the family may establish domicile prior to one year. As such, the 'one year rule' [expressed in *N.J.S.A.* 18A:38-1(d)] will only deem a homeless child to be domiciled within a school district if he or she has not already established a domicile." *Bd. of Educ. of Borough of Wood-Ridge v. Bd. of Educ. of Borough of Bogota*, Commissioner Decision No. 290-20 (Dec. 21, 2020), at 12-13.

Here, A.S. and her children were no longer homeless as of March 1, 2021, when they moved to New Hampshire Lane—a fixed, regular, and adequate residence—with A.S.'s mother. Thus, the family was domiciled in Bound Brook as of March 1, 2021, and the children should have been attending school in Bound Brook. *Egg Harbor*, at 4. A.S. testified at her deposition that she went with her mother to lease the three-bedroom residence at New Hampshire Lane, and she and the children moved in at the same time her mother did. A.S. and her children are listed as tenants on the lease. The record reflects that A.S. and her mother intended to live together with A.S.'s children as a family unit. Moreover, there is no indication that the residence is inadequate; the fact that A.S. and A.D.O. share a queen-sized bed in their bedroom does not make it so. The three-bedroom home has heat, electricity, running water, and A.S. and A.D.O. have access to the

kitchen, bathroom, and living areas. A.S. regularly contributes to the rent and internet expenses monthly.

The Commissioner does not find Piscataway's exceptions to be persuasive. The fact that A.S. was falling behind on her rent payments for the attic space does not require the Commissioner to conclude that she moved in with her mother out of necessity. Nothing in the record establishes that the attic space landlord evicted A.S. and her children. Furthermore, the fact that A.S. did not sign the lease for the New Hampshire Lane home and is not directly financially responsible for rent payments to the landlord does not require the Commissioner to conclude that A.S. and the children remain homeless. A.S. and A.D.O. have remained in the New Hampshire Lane home since March 2021 without interruption. They have resided there for an extended period, without any imminent or foreseeable risk of losing their place in the home, and they share the home with A.S.'s mother as a cohesive family unit. Even after A.S. obtained steady employment in August 2022 earning $16 per hour, she and A.D.O. continued living at New Hampshire Lane. While A.S. would prefer to move back to Piscataway, she has not applied for housing there. A.S.'s "intention is insufficient to support a finding of homelessness" when considered in light of the totality of the circumstances. *Bd. of Educ. of Twp. of Pennsauken v. Pugh-Bassett*, Commissioner Decision No. 122-22 (June 16, 2022), at 7.

Once it is determined whether a child is homeless, the question becomes which district is financially responsible for the child's education. Ordinarily, a student is eligible for a free public education in a school district if he or she is domiciled within the school district. *N.J.S.A.* 18A:38-1(a); *N.J.A.C.* 6A:22-3.1(a). A student's domicile is determined by the domicile of his or her parents. *N.J.A.C.* 6A:22-3.1(a)(1). When a child becomes homeless, the school district of

residence – i.e., the school district in which the child resided before becoming homeless – remains responsible for the cost of the child's education, including when the child is temporarily living and attending school in another school district. *N.J.A.C.* 6A:17-2.3; *N.J.S.A.* 18A:7B-12. However, when a homeless child lives in a school district for one year or longer – and a new domicile has not been established – the child is "deemed domiciled" in that district for the purposes of determining which district is responsible for the cost of the child's education. *N.J.S.A.* 18A:38-1(d); *N.J.A.C.* 6A:17-2.3(c).

The Commissioner's assessment of financial responsibility in this case differs from that of the ALJ. Piscataway was the financially responsible party from October 31, 2019—when the family became homeless—to October 31, 2020, because Piscataway remained the school district of residence at that time per *N.J.S.A.* 18A:7B-12(c), as it was the district in which the family last resided prior to becoming homeless. *See N.J.A.C.* 6A:17-2.3(c) ("Financial responsibility will remain with the homeless child's school district of residence until the family is deemed domiciled in another jurisdiction, pursuant to *N.J.S.A.* 18A:38-1(d)."). Although the ALJ erroneously found that Bound Brook was the financially responsible party from October 31, 2019 to October 31, 2020, Piscataway conceded in its summary decision motion that it was the financially responsible party for the children's tuition and transportation during this time period.

In any event, as of November 1, 2020, the family had resided temporarily in Bound Brook for a period of one year and, although they remained homeless, they shall be "deemed domiciled" within the Bound Brook district pursuant to *N.J.S.A.* 18A:38-1(d) for purposes of allocating financial responsibility for their education. The children were still entitled to attend school in Piscataway because of the family's homeless status under *N.J.A.C.* 6A:17-2.3(a), as

Piscataway remained the school district of residence responsible for their education. However, financial responsibility for the children's tuition and transportation in Piscataway shifted to Bound Brook beginning on November 1, 2021, and ending on February 28, 2021. Thus, the Commissioner agrees with the ALJ that Bound Brook was the financially responsible party for the children's education in Piscataway during this time period.

However, on March 1, 2021, the family moved into a fixed, regular, and adequate residence in Bound Brook and were no longer homeless. Since "domicile attaches immediately if a student's dwelling is found to be fixed, regular and adequate," *Egg Harbor,* at 4, the children were now eligible for a free public education in the Bound Brook school district pursuant to *N.J.S.A.* 18A:38-1(a) and *N.J.A.C.* 6A:22-3.1(a) and should have enrolled in the Bound Brook schools at that time. Nevertheless, they continued to attend school in Piscataway despite the fact that they were no longer eligible to do so based upon A.S.'s established domicile in Bound Brook. Consequently, the Commissioner holds that Bound Brook cannot be held financially responsible for payment of the children's out-of-district tuition and transportation expenses to Piscataway from March 1, 2021, forward because the family was no longer homeless and had established domicile in Bound Brook. For these reasons, the Commissioner rejects the ALJ's determination that Bound Book remained financially responsible for the children's education in Piscataway until the school year ended in June 2022.

Accordingly, the Initial Decision is adopted in part and rejected in part. Piscataway's motion for summary decision is denied. Bound Brook's motion for summary decision is granted. Bound Brook is directed to assume financial responsibility for the children's education in Piscataway from November 1, 2020, to February 28, 2021. A.S. was no longer homeless as of

March 1, 2021. If she has not already, A.S. must immediately enroll A.D.O. in the Bound Brook school district.[2]

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2024
Date of Mailing: October 9, 2024

[2] An ECS's determination that a child is homeless can be reasonable in light of the evidence available at the time; however, such determination can be overturned based on evidence received during the course of the OAL proceedings. *See Bd. of Educ. of Borough of Hawthorne v. Bd. of Educ. of Borough of Prospect Park,* Commissioner Decision No. 196-14 (May 12, 2014). Here, the Commissioner finds that the ECS's determination that A.S. was homeless was reasonable based on the information available at the time, but that decision must nonetheless be overturned based on the evidence presented at the hearing.

[3] 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
MOTION FOR SUMMARY DECISION
OAL DKT. NO. EDU 02006-22
AGENCY DKT. NO. 23-2/22

BOARD OF EDUCATION OF THE BOROUGH OF BOUND BROOK, SOMERSET COUNTY,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF PISCATAWAY, MIDDLESEX COUNTY, AND A.S. ON BEHALF OF MINOR CHILDREN, J.D.O. AND A.D.O.,
Respondents.

Kyle J. Trent, Esq., appearing for petitioner (Apruzzese, McDermott, Mastro & Murphy, PC, attorneys)

David B. Rubin, Esq., appearing for respondent, Piscataway Board of Education

A.S., on behalf of J.D.O and A.D.O., respondents, pro se[1]

[1] A.S. is the mother of the minor children J.D.O. and A.D.O.

Record Closed: May 31, 2024 Decided: July 15, 2024

BEFORE **SUSAN M. SCAROLA**, ALJ (Ret., on recall):

STATEMENT OF THE CASE

Petitioner, Board of Education of the Borough of Bound Brook (Bound Brook BOE), challenges the homelessness determination made by the Somerset County Executive Superintendent of Schools (Executive Superintendent) on November 26, 2021, regarding respondent parent, A.S., and alleges that it is the respondent Board of Education of the Township of Piscataway (Piscataway BOE) which is responsible for the education costs of the minor children J.D.O. and A.D.O., and that the children cannot continue to attend school in Piscataway at Bound Brook BOE's expense.[2] The petitioner alleges that A.S. was never homeless, and has had a permanent and fixed abode in Bound Brook and that her children should attend school within its district.[3]

Piscataway BOE contends that the children were and remain homeless such that Bound Brook BOE is responsible for the cost of their education in Piscataway.

PROCEDURAL HISTORY

By letter dated November 26, 2021, the Somerset County Executive Superintendent of Schools rendered a determination regarding the residence status of A.S. and assessing fiscal responsibility to Bound Brook BOE for the education of J.D.O. and A.D.O. in Piscataway. An appeal was timely filed and on March 16, 2022, and the contested matter was transmitted to the Office of Administrative Law. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

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[2] J.D.O. graduated from Piscataway High School in June 2021 and is no longer being educated in Piscataway. A.D.O. is in the eighth grade and continues to attend school in Piscataway.

[3] The Executive Superintendent concluded that: A.S. has been homeless since October 31, 2019, and remains homeless because her residence is not fixed and permanent; Bound Brook is financially responsible for the education of both children for the period since October 31, 2020; and A.D.O. may continue to attend school in the Piscataway School District until the family finds fixed and permanent housing.

On April 3, 2023, an Order was entered compelling the deposition of A.S. because the parties were unable to complete discovery without information that could only be obtained from A.S., who had provided some, but not all, of the requested information regarding her residential status.

On September 28, 2023, Bound Brook BOE filed a motion for summary decision contending that "A.S. is not and was never homeless as defined by the law, and that when she moved to Bound Brook in 2019, the children were not entitled to continue attending school in Piscataway indefinitely and should have instead enrolled in Bound Brook schools."

On October 7, 2023, the respondent Piscataway BOE filed a cross-motion for summary decision seeking "to affirm the Commissioner's determination that Bound Brook has been and remains financially responsible for the students' education in Piscataway since October 31, 2020, and [to dismiss] Bound Brook's appeal."

A response to Piscataway BOE's cross-motion was received from Bound Brook BOE on October 23, 2023 and a reply was received from Piscataway BOE on November 3, 2023. A response to Bound Brook BOE's motion for summary decision was received from Piscataway BOE on October 24, 2023; a reply was received from Bound Brook BOE on November 17, 2023. A.S. filed exhibits on November 30, 2023. A telephone conference was held on February 28, 2024, and the record remained open for any additional information until May 31, 2024.

FACTUAL DISCUSSION

Statement of Undisputed Material Facts[4]:

[4] This statement of undisputed facts is taken from the petitioner's and respondents' briefs and the testimony of A.S. provided at the deposition. The facts are noted for the years in dispute.

2018

1. In 2018, A.S. moved to Piscataway with her son, J.D.O, nineteen years old, and daughter A.D.O., twelve years old.[5] (T:10-11) Her domicile was established there.
2. At that time, A.S. paid $500 per month to live with her two children in one room of a single-family home in Piscataway while also having access to a shared kitchen.
3. While residing in Piscataway, J.D.O. and A.D.O. were enrolled in the Piscataway School District. (T:12)

October 2019

4. In December 2018, while living in Piscataway, A.S. found work as a bartender at The Imperial, a tavern in Bound Brook. (T:15)
5. She earned $6/hour plus tips, making approximately $500/week—sometimes more, sometimes less. (T:16-17).
6. On or about October 31, 2019, A.S. was forced to leave her Piscataway home and relocate to Bound Brook after her daughter was victimized in a serious incident. (T:57-58)
7. After leaving Piscataway, A.S. and her children moved to and lived in the attic of a seven-bedroom, two-bathroom residence at XX West Maple Avenue, Bound Brook, for which she paid $500/month.[6] (T:46-47)
8. A.S. explained to Piscataway school officials that the "emergency" compelled her to leave Piscataway for Bound Brook, and her children were permitted to remain enrolled in Piscataway under the circumstances. (T:56)
9. The attic was "triangular" and "long," and A.S.'s son would "always" bump his head. (T:48)
10. At first, they had no beds and slept on a mattress until several months later when a social worker and the police gave them two beds for the three of them to use. (T:57-58)
11. The attic had electricity but no heat or internet access. (T:50)

[5] The ages are those provided by A.S. at the time of the deposition taken on June 14, 2023.
[6] The exact address is not indicated to protect A.S.'s privacy.

12. After the COVID-19 pandemic shutdown in March 2020, A.S. was no longer able to work at The Imperial, and could not find employment elsewhere because "we couldn't go out." As she testified, "the school in Piscataway would help me a bit with food, my children, ...". I did not have work. We didn't have anything to eat practically. There were many difficult months." (T:18)
13. To survive, A.S. and some friends made and sold empanadas "but it wasn't enough. I couldn't pay rent. I owed a lot of money on rent. The lady was putting me out the home because I wasn't paying rent." (T:18)
14. A.S. received no government assistance during that time. "I applied but I never received a response. Mostly for food." (T:21-22) She also did not apply for unemployment compensation because "I didn't have any social. I didn't have a work permit. I couldn't apply. There wasn't anything." (T:22)
15. Starting in November 2020, A.S. worked at a restaurant in Plainfield for approximately six months.

March 2021

16. In March 2021, A.S.'s mother, who had been living in a single room elsewhere in Bound Brook, leased a three-bedroom, one-bathroom, two-floor single-family home at XX New Hampshire Lane, Bound Brook for $1,600 per month. (T:35, 49) A.S. said that "they all went together to the new residence." (T:37, 7) A.S. and the children appear on the lease as "tenants," but the lease was signed solely by A.S.'s mother.
17. The house has heat, electricity and running water, which are included in the base rent paid by A.S.'s mother. (T:42)
18. A.S. and her children moved into the New Hampshire Lane home leased by her mother. A.S.'s son had a bedroom of his own, and A.S. initially shared a bedroom with her mother and daughter. (T:38)
19. The lease ran from March 1, 2021, to February 28, 2022. Tenancy appears to continue on a month-to-month basis as no new lease was provided. A.S. continues to reside at the residence with her daughter. (T:37, 59)
20. A.S. gives her mother $400/month toward the rent and pays for internet service of $79 per month. (T:37)

June 2021

21. A.S.'s son, J.D.O., graduated from Piscataway High School in June 2021 and later moved out. His room is now occupied by A.S.'s brother, who moved into the home after A.D.O. left. He has lived there for a year and several months. (T:34)
22. A.S. and her daughter presently share a bedroom, sleeping together on a queen-size bed. (T:38)
21. A.S. buys her own food for herself and her daughter. (T:42)
23. At some point, A.S. started working at Tradiciones De Mi Pueblo, a Peruvian restaurant in Plainfield, where she was employed for "about six months" making $9/hour, working eight-hour days, 4-5 days/week. with very little tips. (T:22-23)
24. A.S. left that restaurant because "they were [sic] not a lot of people. I was afraid of taking the train late at night. I was paying a lot for a ride. The money hardly lasted." (T:24)
25. A.S. later began working at Guatelinda, another restaurant in Plainfield, where she was employed for "approximately like a year and two months. A year, three months," making $7/hour plus tips, working six hours a day, sometimes Wednesday to Sunday, sometimes Thursday to Sunday. (T:25-26)
26. In August 2022, A.S. found work as a housekeeper at CareOne, a senior living facility in Somerset, where she remains employed today. (T:27. 29)
27. At CareOne, A.S. earns $16/hour working eight hours/day. Sometimes she works five days/week, sometimes four days, but on average five. (T:28) The precise dates when A.S. moved from one job to the next were unclear from her testimony.
28. A.S. has a bank account and credit card associated with the New Hampshire Lane address.
29. A.S. would prefer to move to a home in Piscataway and has continued to look but believes the prevailing rents are too high for her income and more than she could afford, she has not submitted any applications.[7] (T:43) A.S.'s boyfriend also resides in Bound Brook and has provided her with a phone. (T:53-54)

[7] Piscataway BOE has presented census data indicating that the median gross rent in Bound Brook for 2017-2021 was $1,554 per month and $1,767 for Piscataway. Both are clearly not affordable solely on A.S.'s income.

30. J.D.O. has not lived with A.S. for about a year. A.D.O. is presently in sixth grade [at the time of her deposition in June 2023] at Schor Middle School in the Piscataway School District and has lived with A.S. consistently throughout.[8] (T:13-14)

LEGAL ANALYSIS

Summary Decision

It is well-established that if there is no genuine issue as to any material fact, a moving party is entitled to prevail as a matter of law. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a fact-finding hearing should be avoided "when the evidence is so one-sided that one party must prevail as a matter of law." Brill guides us thusly:

> [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.
>
> [Id. at 540.]

In explaining the standard to be applied in summary motion practice, the Brill Court explained:

> The same standard applies to determine whether a prima facie case has been established by the party bearing the burden of proof in a trial. . . . If a case involves no material factual disputes, the court disposes of it as a matter of law by rendering judgment in favor of the moving or non-moving party.

[8] Presumably, A.D.O. has now completed seventh grade and would be going into eighth grade in school year 2024-2025.

[Id. at 536-3.7.]

As the facts here are not in dispute, this matter is ripe for summary decision.

Whether A.S. is homeless

Piscataway BOE argues that it is entitled to summary decision that A.S. and her children were and are homeless and have never established a fixed domicile and remain with A.S.'s mother in Bound Brook out of necessity. It seeks a decision that Bound Brook BOE has been and remains financially responsible for the students' education in Piscataway since October 20, 2020, and seeks the dismissal of Bound Brook BOE's petition of appeal.

Bound Brook BOE argues that it is entitled to summary decision because A.S. is not presently homeless and has never been homeless at any time relevant to this matter; that Bound Brook BOE is not and was not financially responsible for the transportation cost or educational expenses in Piscataway at any time; that the children cannot continue attending school in Piscataway at Bound Brook BOE's expense; that A.S. has established a fixed and permanent abode in Bound Brook; and that the children (now child) should be enrolled in Bound Brook schools.

The issue presented here is whether A.S. was, is, and remains homeless such that the children may continue to attend schools in Piscataway at Bound Brook BOE's expense. An analysis of each relevant period of time is necessary to reach a conclusion. Simply stated, do the undisputed facts support the conclusion that the children are no longer homeless because they reside in a "fixed, regular and adequate" home in Bound Brook, and if they are not homeless, who is or was obligated to pay school tuition and transportation costs for the relevant school periods?

New Jersey statutes provide for the determination of homelessness and responsibility for school tuition:

> Pursuant to N.J.S.A. 18A:7B-12, "[t]he district of residence for children whose parent or guardian temporarily moves . . . as the result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless."
>
> Pursuant to N.J.A.C. 6A:17-2.8. "[w]hen [a] homeless child or youth is enrolled in a school district other than the school district of residence, the school district of residence shall pay to the school district of enrollment the tuition costs pursuant to N.J.S.A. 18A:38-19 until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d. At that time, the school district of residence or the school district in which the parent has been deemed domiciled shall pay tuition to the school district of enrollment."
>
> Pursuant to N.J.S.A. 18A:38-1, public school is free for "[a]ny person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district for the purposes of this section."

The regulations provide additional guidance for the determination of homeless status and responsibility for tuition:

N.J.A.C. 6A:17-2.2 provides for the determination of homeless status:

> **(a)** The district board of education for the school district of residence shall determine that a child or youth is homeless for purposes of this subchapter when the child or youth resides in any of the following:
>
> **1.** A publicly or privately operated shelter designed to provide temporary living accommodations, including:
> **i.** Hotels or motels;
> **ii.** Congregate shelters, including domestic violence and runaway shelters;
> **iii.** Transitional housing; and
> **iv.** Homes for adolescent mothers;
> **2.** A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation, including:
> **i.** Cars or other vehicles, including mobile homes;
> **ii.** Tents or other temporary shelters;
> **iii.** Parks;

> **iv.** Abandoned buildings;
> **v.** Bus or train stations; or
> **vi.** Temporary shelters provided to migrant workers and their children on farm sites;
> **3.** The residence of relatives or friends where the homeless child or youth resides out of necessity because the child's or youth's family lacks a regular or permanent residence of its own; or
> **4.** Substandard housing.

N.J.A.C. 6A:17-2.3 provides for the responsibilities of the school district of residence:

> **(a)** The school district of residence for a homeless child or youth shall be responsible for the education of the child and shall:
> **1.** Determine the school district in which the child shall be enrolled after consulting with the parent pursuant to N.J.A.C. 6A:17-2.5;
> **2.** Pay the cost of tuition pursuant to N.J.S.A. 18A:38-19 when the child attends school in another school district; and
> **3.** Provide for transportation for the child pursuant to N.J.A.C. 6A:27-6.2.
> **(b)** The determination of a homeless child's or youth's school district of residence shall be made by the chief school administrator of the school district of residence, or the chief school administrator's designee, pursuant to N.J.A.C. 6A:17-2.4 based upon information received from the parent, a shelter provider, another school district, or an involved agency.
> **(c)** The district identified in accordance with N.J.S.A. 18A:7B-12 as the school district of residence for a homeless child or youth shall be the school district of residence until the parent establishes a permanent residence. Financial responsibility will remain with the homeless child's school district of residence until the family is deemed domiciled in another jurisdiction, pursuant to N.J.S.A. 18A:38-1.d.

Children are homeless when they stay in the home of relatives or friends temporarily because the family lacks a regular or permanent residence of its own. N.J.A.C. 6A:17-2.2(a)(3). The McKinney-Vento Act describes homeless children as those "who lack a fixed, regular, and adequate nighttime residence . . ." including, "children and youths who are sharing the housing of other persons due to loss of housing, economic

hardship, or a similar reason[.]" 42 U.S.C. 11434a(2)(A), (B)(i). "Thus, an evaluation of 'homelessness' cannot rest upon a simple calculation of the amount of time that children have spent in a particular location or municipality. The reasons for the children's homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant." M.O'K. and S.O'K. o/b/o K.O'K., A.O'K., and C.O'K. v. Bd. of Educ. of Borough of Cresskill, Bergen Cty. and Bd. of Educ. of Little Ferry, Bergen Cty., OAL Docket No. EDU 14830-13, Comm'r (Final Decision, Aug 12, 2014).

Here, it is clear that in **May 2018**, A.S. had established a valid residence in Piscataway entitling the children to be educated there at Piscataway's expense. While the living situation was not the best, it was where A.S. and the children had their permanent abode.

However, in **October 2019**, an emergency compelled A.S. to remove herself and the children from that domicile in Piscataway. Her next domicile was a seven-bedroom, two-bathroom residence at XX West Maple Avenue in Bound Brook, in which numerous other unrelated people resided. A.S. and the children lived in the attic; they had no beds and slept on a mattress for several months until they were provided with two beds for the three of them to use.

When A.S. was forced, out of necessity, to leave her Piscataway residence and move into this West Maple Avenue, Bound Brook, residence, the children were homeless as defined by the regulations. The living conditions for the family unit were substandard at best, and clearly did not represent a permanent situation. See, N.J.A.C. 6A:17-2.2(a)(3). Bound Brook BOE's contention that the children were not homeless during this period cannot be sustained: living in an attic with less than adequate bedding or utilities cannot be considered a fixed and permanent residence. Accordingly, the district of residence of the children remained in Piscataway, the district in which their mother resided prior to their becoming homeless, and Bound Brook BOE was obligated to pay for their education in Piscataway. N.J.S.A. 18A:7B-12(c).

This designation that Piscataway remained the district of residence could not be changed until the family was "deemed domiciled in another jurisdiction, pursuant to

N.J.S.A. 18A:38-1.d," and had found a fixed and permanent residence there. N.J.A.C. 6A:17-2.3(c). Accordingly, the homeless situation continued, and the children were entitled to continue to attend school in Piscataway at Bound Brook BOE's expense.

Circumstances changed in the **spring of 2021** when A.S.'s mother, moving from a one-room residence, leased a three-bedroom house in Bound Brook, clearly anticipating that A.S. and her two children would be residing with her. Their names (mother, A.S., and the two children) appear on the lease as permitted tenants of the home. A.S. and her mother went together to the landlord. A.S., her mother and her daughter have resided continuously in this Bound Brook residence since March 2021, a period now exceeding three years. The issue then becomes whether this residence has become A.S.'s permanent and fixed domicile, or whether she continues to be homeless.

In Board of Education, Township of Pennsauken, Camden County v. Lovell Pugh-Bassett, EDU 00744-21, initial decision, (March 24, 2022), modified on other grounds, (June 16, 2022), https://njlaw.rutgers.edu/collections/oal/html/initial/edu00744-21_1.html, the ALJ reasoned that "[t]o determine which district is responsible to pay the tuition for a homeless student, they follow the domicile rule. The domicile rule is that the district where the child has been living for a year becomes the district of domicile and responsible for the education and transportation of the child." Although not explicitly cited, this "domicile rule" is a reference to N.J.S.A. 18A:38-1, which provides that for legal purposes, a family is domiciled if their "all-year-round dwelling place [is] within the district for one year or longer," even if they are still "homeless" under N.J.S.A. 18A:7B-12.

The same rule was followed in Board of Education of Egg Harbor, Atlantic County v. Board of Education of Mainland Regional, Atlantic County, EDU 6680-09, final decision, (Dec. 30, 2010), https://njlaw.rutgers.edu/collections/oal/final/edu06680-09.pdf. There, the Commissioner reasoned that:

> N.J.S.A. 18A:38-1(d) instructs that any student whose parent or guardian is not domiciled in a district (e.g. because he or she is homeless), but has had his or her all-year round dwelling place in the district for at least one year, shall be deemed domiciled in the district for the purpose of N.J.S.A.

> 18A:38-1, which entitles a student to a free public education in the district of domicile. N.J.S.A. 18A:38-1(a). Thus, although a family may fall under the rubric of "homeless," it nonetheless achieves domicile for school law purposes after a year of residence in one district. With that designation of domicile in the district, comes the provision by the district of a public education to the minor children. [Id. at 3.]

In M.O'K v. Bd. of Educ. of Cresskill, 2016 N.J. Super. Unpub. LEXIS 2046 (App. Div. 2016), the court reasoned that "[u]nder the applicable statutes, if a child becomes homeless, the 'district of residence' is responsible for providing the child's education. N.J.S.A. 18A:7B-12(c). If homeless children reside in another district for more than one-year, financial responsibility for the children's education shifts to that school district. N.J.S.A. 18A:38-1(d)." The court does not mention the establishment of a domicile as the trigger for the shift of financial responsibility. Rather, it is the time limit of "residing" in a different district for one year.

The facts that could point toward a finding of homelessness are that A.S. and her daughter share a room and a bed, her mother's name is on the lease, and that the family is living with A.S.'s mother and brother. With respect to sharing a room, the Commissioner has noted that "although . . . sleeping arrangements may be less than ideal, it is not uncommon for siblings to share the same room," and thus, siblings sharing a room does not lead to a homeless finding. State-Operated School District of the City of Camden v. Volk, EDU 4521-16, final decision, (June 20, 2017), https://njlaw.rutgers.edu/collections/oal/final/edu04521-16_1_1.pdf. Further, in Board of Education of the Bordentown Regional School District v. Marini, et al., EDU 09659-22, final decision, (July 6, 2023), https://www.nj.gov/education/legal/commissioner/2023/202-23.pdf, the fact that an adult child was sharing a room with a parent was not enough to establish a finding of homelessness.

Although here A.S. and her daughter are sharing a room and a bed may be a "less than ideal" situation, the rest of the living situation appears adequate and not one borne of "necessity." The family intended to move in together after the mother left a single room residence and obtained housing that could accommodate the entire family. A shared

room can be considered appropriate housing particularly where the family unit has continued to reside in this manner for an extended period.

While A.S. may have originally intended that the family's move to New Hampshire Lane in Bound Brook would be temporary until her finances improved and she was able to move back to Piscataway, by March 2022 her home in Bound Brook with her mother had become established as a "sufficiently fixed, regular and adequate" residence. Accordingly, A.S. can be considered to have established a fixed residence at the New Hampshire Lane address no later than the end of the school year in June 2022 and should no longer be considered homeless.[9] Effective with school year 2022-23, Bound Brook BOE would be responsible for the expense of educating the children at Bound Brook, not Piscataway, schools, and the children (now child) should be enrolled in the Bound Brook district and attend school there.

Accordingly, Piscataway BOE was responsible for the costs of educating the children from 2018 through October 2019 while they resided in Piscataway.

Bound Brook BOE was responsible for the tuition and transportation expenses for both children in Piscataway schools from October 2019 to June 2021 as they remained homeless without a fixed and permanent residence.[10] Bound Brook BOE was responsible for the younger child's education in Piscataway schools from September 2021 until June 2022 (school year 2021-2022) when A.S.'s residence had become her fixed and permanent abode.

Effective September 2022, after A.S.'s residence became permanent and fixed in Bound Brook, the younger child, A.D.O., should have been enrolled in the Bound Brook school district and attended school in Bound Brook at Bound Brook BOE's expense.

[9] It seems appropriate to conclude that the residence had become permanent for A.S. by the end of the school term as she did not seek to relocate during the summer of 2022.
[10] The older child graduated from high school in June 2021; any tuition responsibility for him ended upon his graduation.

ORDER

I hereby **ORDER** that the motions for summary decision are **GRANTED** in part and **DENIED** in part.

I **ORDER** that the Piscataway Board of Education was responsible for the costs of educating the children, J.D.O. and A.D.O. until October 2019.

I **ORDER** that the Piscataway Board of Education is entitled to summary decision that A.S. and her children were homeless and without a fixed and permanent abode from October 2019 to June 2022.

I **ORDER** that Bound Brook Board of Education was responsible for the costs of educating the children A.D.O. and J.D.O. in Piscataway from October 2019 to June 2022.

I **ORDER** that effective with school year 2022-2023, that A.S. and A.D.O. had established a fixed and permanent residence in Bound Brook requiring A.D.O. to be enrolled in the Bound Brook School District and to be educated there at Bound Brook's expense.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

July 15, 2024
DATE

SUSAN M. SCAROLA, ALJ
(Ret., on recall)

Date Received at Agency: _____

Date Mailed to Parties: _____

SMS/kl

APPENDIX

Exhibits:

For Petitioner:

Brief and responses

For Respondent:

Brief and responses

For A.S.:

Response with documents

364-24

New Jersey Commissioner of Education

Final Decision

K.P., on behalf of minor child, I.M.,

Petitioner,

v.

Board of Education of the Pascack Valley Regional School District, Bergen County,

Respondent.

Synopsis

Pro se petitioner challenged the respondent Board's decision to deny her daughter I.M.'s enrollment as a student at Pascack Valley Regional High School (PVRHS) for the 2023-2024 school year. I.M. had attended PVRHS since January 2021 pursuant to a discretionary non-resident Special Education Tuition Contract Agreement (agreement) between the respondent and the Board of Education of Saddle Brook (Saddle Brook) where petitioner and her daughter had lived for many years. The respondent Board denied Saddle Brook's agreement for the 2023-2024 school year, citing numerous reasons, including petitioner's lack of civility and repeated belligerent behavior toward the school dance coach, guidance counselor, and other staff members, which created a substantial disruption at PVRHS. Petitioner subsequently sought enrollment for I.M. at PVRHS.

The ALJ found, *inter alia*, that: petitioner and I.M. are not domiciled in Montvale and remain domiciled in Saddle Brook; because the Board declined to renew the tuition agreement with Saddle Brook for the 2023-2024 school year, petitioner applied for enrollment for I.M. at PVRHS as a resident of Montvale; and petitioner used a friend's Montvale address for the sole purpose of receiving a free education at PVRHS for I.M., in violation of law. The ALJ concluded that petitioner failed to meet her burden, by a preponderance of credible evidence, to demonstrate that she was domiciled in Montvale during the 2023-2024 school year. Accordingly, the ALJ determined that petitioner owes the Board tuition payments for I.M. for the 2023-2024 school year in the amount of $24,322.78.

Upon review, and finding the petitioner's exceptions to be without merit, the Commissioner adopted the ALJ's comprehensive Initial Decision as the final decision in this matter. The Board's claim for tuition payments was granted, and petitioner was ordered to pay the Board $24,322.78 as reimbursement for I.M.'s tuition costs for the 2023-2024 school year. The petition of appeal was dismissed.

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.

364-24
OAL Dkt. No. EDU 09166-23
Agency Dkt. No. 223-8/23

New Jersey Commissioner of Education

Final Decision

K.P., on behalf of minor child, I.M.,

Petitioner,

v.

Board of Education of the Pascack Valley Regional High School District, Bergen County,

Respondent.

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 the Board's reply thereto, have been reviewed and considered.[1]

Petitioner and her daughter, I.M., have lived in the Township of Saddle Brook since at least 2011, in a home she owns. Beginning in January 2021, I.M. attended school in respondent's district as a non-resident student pursuant to a discretionary Special Education Tuition Contract Agreement (agreement) between respondent and the Saddle Brook Board of Education (Saddle Brook).[2] Per the agreement's terms, Saddle Brook agreed to reimburse the Board for educating I.M., a Saddle Brook resident, at Pascack Valley Regional High School (PVRHS) from January 11,

[1] Petitioner's response to the Board's reply was not considered by the Commissioner because *N.J.A.C.* 1:1-18.4 does not permit the filing of a response to a reply.

[2] Pursuant to *N.J.S.A.* 18A:38-3(a) and *N.J.A.C.* 6A:22-2.2, school districts have the discretion to admit nonresident students with consent of the board of education.

2021, through June 16, 2021. Saddle Brook and the Board entered into subsequent agreements for school years 2021-2022 and 2022-2023.

In July 2023, Saddle Brook submitted another agreement to the Board for the 2023-2024 school year, which was I.M.'s final year of high school. The related admission application, completed by petitioner and dated June 23, 2023, states that petitioner and I.M. reside in Saddle Brook as they had in prior years. On July 27, 2023, the Board informed Saddle Brook that it rejected the agreement for the 2023-2024 school year. Petitioner was informed of same in writing on August 4, 2023, and requested a statement of reasons for the Board's decision. On August 7, 2023, the Board provided a written statement to petitioner which cited numerous reasons for their decision to reject the agreement, including her lack of civility and repeated, belligerent behavior toward the school dance coach, guidance counselor, and other staff members which created a substantial disruption at PVRHS.

Two days later, on August 9, 2023, petitioner attempted to enroll I.M. at PVRHS as a resident of Montvale by claiming that she and I.M. lived in Montvale with Fatima Spiradinova in Spiradinova's home. In support of the application, petitioner submitted Residency Affidavit #1: Oath of Non-Support by Non-Resident Parent (petitioner's affidavit), which contained conflicting statements. Petitioner's affidavit states that she and I.M. had resided in Spiradinova's home since August 2023, and that she was not capable of caring for or supporting her child due to her health. Her affidavit states in one section that Spiradinova was supporting I.M. without any financial contributions from her, and yet, in the same affidavit, she also states that she was supporting I.M. and remained responsible for her. Spiradinova submitted Residency Affidavit #2: Oath of Support for Non-Resident Child by District Resident (Spiradinova's affidavit), which states

that she was supporting I.M. due to financial hardship without any financial contribution from petitioner and that I.M. lived in her home.

On August 10, 2023, PVRHS notified petitioner in writing that they denied the enrollment application. Via letter dated August 22, 2023, PVRHS gave petitioner the opportunity to appear before the Board at an upcoming meeting to provide information to support her claim that she was now domiciled in Montvale. In that letter, PVRHS informed petitioner that "the timing of [her] alleged 'residency' in Montvale, being represented only three days after notification of the termination of the prior tuition contract relationship with the Saddle Brook School District, raises significant questions regarding [its] validity." Exhibit P-166.

On September 12, 2023, after considering additional information petitioner presented to the Board at its meeting, PVRHS issued petitioner a Notice of Final Ineligibility (Notice) regarding I.M. In the Notice, PVRHS concluded that: petitioner was not domiciled in Montvale; petitioner was domiciled in Saddle Brook; and—even assuming petitioner was temporarily living in Montvale, despite the Board's conclusion to the contrary—the reason for doing so was solely to receive a free public education at PVRHS, contrary to *N.J.A.C.* 6A:22-3.2(c)(1). Accordingly, I.M. was not entitled to a free public education at PVRHS. The Notice informed petitioner that tuition for I.M.'s period of ineligible attendance could be assessed against her by the Commissioner, to be calculated at the approximate rate of $134.38 per day.

Petitioner appealed, and the matter was transmitted to the OAL for a hearing which took place on May 14, May 21, and June 4, 2024. Petitioner submitted hundreds of pages of exhibits, called numerous witnesses, and also testified on her own behalf. As indicated in the Initial Decision, petitioner testified that she began living with Spiradinova in July 2023 because of

her health and her inability to live alone.[3] Petitioner's testimony was contradicted by her therapist, who testified that petitioner has suffered from illness since at least 2006, does not need constant supervision by an adult, and can live alone. Petitioner further testified that she was living with Spiradinova because of financial issues. For her part, Spiradinova initially testified that she has helped three other family members who lived with her enroll at PVRHS and that she is very familiar with the required forms. However, she later testified that she is not very fluent in English, and that the forms were confusing to her. Spiradinova did not testify that she was supporting I.M. financially as if she were her own child, or that I.M. intended to live with her for any period longer than her final year of high school.

Ultimately, the ALJ held that petitioner failed to meet her burden, by a preponderance of credible evidence, to demonstrate that she was domiciled in Montvale. Specifically, the ALJ found that: (1) petitioner and I.M. are not domiciled in Montvale and remain domiciled in Saddle Brook; (2) because the Board declined to renew the tuition agreement with Saddle Brook for the 2023-2024 school year, petitioner applied for enrollment for I.M. at PVRHS as a resident of Montvale; and (3) petitioner used Spiradinova's Montvale address for the sole purpose of receiving a free education at PVRHS for I.M., in violation of law. Accordingly, the ALJ determined that petitioner owes the Board tuition payments for I.M. for the 2023-2024 school year in the amount of $24,322.78.

In her exceptions, petitioner expresses her strong disagreement with the ALJ's determination. She reiterates the arguments she made during the OAL hearing – primarily, that various documents in the record (including bank statements, motor vehicle licenses, and

[3] The parties have not provided the Commissioner with copies of the hearing transcripts.

registrations) coupled with witness testimony establish that she and I.M. moved to Spiradinova's home in Montvale in August 2023 due to her financial and health issues. Petitioner's exceptions also include vitriol toward the ALJ.

In response, the Board argues that the ALJ's factual findings, credibility determinations, and conclusions are supported by the record and should be adopted. The Board reiterates its position that petitioner's purported temporary residence in Montvale with Spiradinova—which commenced just days after receiving notice that I.M.'s non-residency student application for the 2023-2024 school year was denied—was for the sole purpose of receiving a free education in the Pascack Valley Regional High School District in violation of *N.J.A.C.* 6A:22-3.2(c)(1).

Upon careful review, the Commissioner adopts the ALJ's comprehensive Initial Decision as the final decision in this matter. Under New Jersey law, I.M. is entitled to a free public education in the school district in which she is domiciled. *N.J.S.A.* 18A:38-1(a). "A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district." *N.J.A.C.* 6A:22-3.1(a)(1). *See Somerville Bd. of Educ. v. Manville Bd. of Educ.*, 332 *N.J. Super.* 6, 12 (App. Div. 2000) ("A child's domicile is normally that of his or her parents."), *aff'd*, 167 *N.J.* 55 (2001). "Domicile" in this context means a "true, fixed, permanent home." *D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist.*, 366 *N.J. Super.* 269, 273 (App. Div. 2004). "[A] person may have several residences or places of abode, but only one domicile at a time." *Id.* at 274. The parent "'shall have the burden of proof by a preponderance of the evidence' to prove domicile in the school district." *Ibid.* (quoting *N.J.S.A.* 18A:38-1(b)(2)).

With respect to I.M.'s ineligibility under *N.J.S.A.* 18A:38-1(a) to attend school free of charge at PVRHS, the Commissioner concurs with the ALJ that the documentary evidence in the

record coupled with the hearing testimony confirms that petitioner remains domiciled in Saddle Brook, not in Montvale. Her true, fixed, and permanent home is in Saddle Brook. A temporary stay with Spiradinova in Montvale does not equate to a true, fixed, and permanent home in Montvale. Contrary to the assertions petitioner makes in her exceptions, nothing in the record supports a finding that petitioner relinquished her domicile in Saddle Brook at any point during the 2023-2024 school year.

More specifically, the fact that petitioner might have intended to list her home for sale in July 2024 fails to support her position that she was not domiciled in Saddle Brook during the 2023-2024 school year. Similarly, the fact that she might have leased certain rooms of her Saddle Brook home to other individuals fails to support her position that she was not domiciled in Saddle Brook. Additionally, having mail delivered to Spiradinova's Montvale address does not establish that petitioner is no longer domiciled in Saddle Brook. Furthermore, the fact that petitioner provided bank statements, motor vehicle licenses, and registrations listing the Montvale address as her own does not establish that she is no longer domiciled in Saddle Brook when considering the record as a whole. Accordingly, the Commissioner holds that I.M. was ineligible to attend school free of charge at PVRHS pursuant to *N.J.S.A.* 18A:38-1(a) because petitioner, with whom I.M. lives, was domiciled in Saddle Brook.

That said, relevant to the facts at issue herein, the Commissioner must consider two related exceptions to the general rule expressed in *N.J.S.A.* 18A:38-1(a) that permit a student to attend school at a district in which they are not domiciled under certain circumstances. First, if the student is living with a person other than his parent or guardian, and that person is domiciled in the school district and is supporting the student "without renumeration as if the student were

his or her own child," then the student is eligible to attend school in the district pursuant to *N.J.S.A.* 18A:38-1(b). *N.J.A.C.* 6A:22-3.2(a). However, *N.J.S.A.* 18A:38-1(b) "requires a showing by the child's parent or guardian that he or she is incapable of caring for the child due to 'family or economic hardship' and that the child is not residing in the district solely for purposes of receiving a free public education in the district." *P.B.K. v. Bd. of Educ. of Borough of Tenafly*, 343 *N.J. Super.* 419, 428 (App. Div. 2001).

To satisfy the requirements of *N.J.S.A.* 18A:38-1(b), the student's parent or guardian must file, "together with documentation to support its validity, a sworn statement that he or she is not capable of supporting or providing care for the student due to family or economic hardship and the student is not residing with the other person solely for the purpose of receiving a free public education," and the person who is providing care for the student must provide "[a] sworn statement that he or she is domiciled within the school district, is supporting the child without renumeration and intends to do so for a time longer than the school term, and will assume all personal obligations for the student pertaining to school requirements." *N.J.A.C.* 6A:22-3.2(a)(1)(ii)(1), (2).

Second, "[a] student is eligible to attend the school district pursuant to *N.J.S.A.* 18A:38-1(d) if the student's parent or guardian temporarily resides within the school district and elects to have the student attend the school district of temporary residence, notwithstanding the existence of a domicile elsewhere." *N.J.A.C.* 6A:22-3.2(c). However, "no student shall be eligible to attend school based upon a parent or guardian's temporary residence in a school district unless the parent demonstrates, if required by the district board of education, the temporary

residence is not solely for purposes of a student's attending the school district." *N.J.A.C.* 6A:22-3.2(c)(1), (2).

The Commissioner concurs with the ALJ that I.M. is not entitled to attend PVRHS free of charge pursuant to either *N.J.S.A.* 18A:38-1(b) or *N.J.S.A.* 18A:38-1(d). Petitioner has failed to demonstrate that she is incapable of caring for I.M. due to a family or economic hardship, or that her temporary residence in Montvale with Spiradinova was not solely for purposes of I.M. attending PVRHS. Initially, the timing of the commencement of petitioner's temporary residency in Montvale cannot be overlooked. It occurred suddenly, just days after the Board rejected the tuition agreement with Saddle Brook for the 2023-2024 school year. And although petitioner claimed that she was living in Montvale with Spiradinova out of necessity due to her health and financial issues, the record as a whole lacks credible evidence to support those claims.

While petitioner's affidavit states that she was unable to provide care for I.M. due to her health, nothing in the record establishes that her health problems rendered her unable to provide care for I.M., a high school student. As for any alleged economic hardship, petitioner's financial situation is unclear at best. The extent of her income, assets, and liabilities is unknown. The record suggests that she might have been receiving unemployment benefits of unknown amounts at some point during 2023. However, she did not provide bank statements or other documents to demonstrate whether her income could support her expenses. The record lacks any documentation to suggest that she had fallen behind on her mortgage payments or other bills.

Moreover, petitioner has failed to establish that Spiradinova was supporting I.M. without renumeration, with the intent to do so for a time longer than the school term. As noted,

petitioner's conflicting affidavit states both that Spiradinova was supporting I.M. without any financial contributions from her, and also that petitioner was supporting I.M. and remained responsible for her. While Spiradinova's affidavit states that she was supporting I.M. without any financial contribution from petitioner, she testified at the hearing that she is not very fluent in English, and that the forms were confusing to her. Neither petitioner nor Spiradinova produced any documentation to demonstrate that Spiradinova was supporting I.M. Petitioner also testified that I.M. would be leaving New Jersey for college at the conclusion of the school year, which undercuts any claim that Spiradinova intended to support I.M. for a time longer than the school term. Accordingly, the Commissioner holds that I.M. was not entitled to attend PVRHS pursuant to *N.J.S.A.* 18A:38-1(b) or *N.J.S.A.* 18A:38-1(d), as she has not demonstrated that she is incapable of caring for I.M. due to a family or economic hardship, or that her temporary residence in Montvale with Spiradinova was not solely for purposes of I.M. attending PVRHS.

It is important to recognize that the ALJ's conclusions in this matter are intertwined with credibility determinations that are entitled to deference. Pursuant to *N.J.S.A.* 52:14B-10(c), the Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." "When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ's credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole." *Cavalieri v. Bd. of Trs. of Pub. Empl. Ret. Sys.*, 368 *N.J. Super.* 527, 537 (App. Div. 2004). "[I]t is not for . . . the agency head to disturb [the ALJ's] credibility determination, made after due consideration of the witnesses'

testimony and demeanor during the hearing." *H.K. v. Dep't of Human Servs.*, 184 *N.J.* 367, 384 (2005).

The ALJ found that petitioner "was loud and belligerent, and many times during the hearing she would digress with long monologues, which would increase in volume, speaking over everyone else. Many times, she would make disparaging comments about the witnesses, including offensive comments about their appearance." Initial Decision, at 7. And although the record is replete with threatening emails sent by petitioner to various staff members at PVRHS, the ALJ found that petitioner "denies being threatening in her emails to Pascack and states that her language is not threatening—that it is just words." *Ibid.* The Commissioner also finds that petitioner's affidavit discussed herein, which contains conflicting information, is of questionable veracity. The Commissioner finds no reason to disturb the ALJ's assessment of petitioner's credibility.

Consequently, the Commissioner shall assess tuition against petitioner for the time period during which I.M. was ineligible to attend school at PVRHS. Pursuant to *N.J.A.C.* 6A:22-6.2(a), if "petitioner does not sustain the burden of demonstrating the student's right to attend the school district, . . . the Commissioner may assess tuition for the period during which the hearing and decision on appeal were pending, and for up to one year of a student's ineligible attendance in a school district prior to the appeal's filing and including the 21-day period to file an appeal." *N.J.S.A.* 18A:38-1(b) provides that the Commissioner may order tuition "computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance." As found by the ALJ, based upon a daily rate of $134.38 and 181 days

of ineligible attendance, the total amount of tuition owed by petitioner to the Board is $24,322.78.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed. The Board's claim for tuition payments is granted. Petitioner shall pay the Board for I.M.'s tuition costs for the 2023-2024 school year in the amount of $24,322.78.

IT IS SO ORDERED.[4]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2024
Date of Mailing: October 9, 2024

[4] 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 09166-23
AGENCY DKT. NO. 223-8/23

K.P. ON BEHALF OF MINOR CHILD I.M.,
Petitioner,
v.
BOARD OF EDUCATION OF THE PASCACK VALLEY REGIONAL HIGH SCHOOL DISTRICT, BERGEN COUNTY,
Respondent.

K.P., petitioner, pro se

Rodney T. Hara, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: June 4, 2024 Decided: July 16, 2024

BEFORE **PATRICE E. HOBBS**, ALJ:

STATEMENT OF THE CASE

Petitioner, K.P., is domiciled in Saddle Brook, New Jersey. Her minor child, I.M., lives with her. Is I.M. entitled to free public education in Montvale, New Jersey? No. Under N.J.S.A. 18A:38-1(a), a public education is free within a particular school district only to those who are domiciled in that school district.

PROCEDURAL HISTORY

On August 9, 2023, I.M. was denied enrollment at Pascack Valley Regional High School (Pascack or PVRHS). On August 16, 2023, petitioner filed her appeal with the Commissioner of Education. On September 14, 2023, this matter was transmitted from the New Jersey State Department of Education to the Office of Administrative Law (OAL) for a hearing as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On October 11, 2023, a prehearing conference was held. The petitioner was attempting to retain an attorney but refrained from doing so. On November 8, 2023, a second prehearing conference was held. Discovery was ordered to be completed by December 15, 2023, and hearing dates were scheduled for January 2024. The parties did not complete the discovery as ordered, and discovery motions were filed. On February 6, 2024, discovery motions were heard, and the parties were ordered to complete all discovery by March 25, 2024. The parties were still unable to complete discovery or complete their witness and exhibit list, and on April 1, 2024, a conference call was scheduled, and discovery was finalized.

The hearing dates were scheduled for April 8, April 9, April 10, and April 11, 2024. On April 8, 2024, petitioner sent an email stating that she was hospitalized and not expected to be discharged until later that day. On April 9, 2024, the petitioner sent an email stating that she would not be discharged until April 10, 2024. A telephone conference was scheduled for April 9, 2024, to discuss the adjournment request, and notices were sent to petitioner and respondent via email. On April 9, 2024, the petitioner failed to appear for the status conference. The hearing was rescheduled for May 14, 2024, and May 21, 2024. K.P. did not finish her case until May 21, 2024. An additional hearing date was scheduled for June 4, 2024, and the record was closed on that date.

FINDINGS OF FACT

Based upon the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following **FACTS**:

In 2021, K.P. was listed as the registered owner of a home in Saddle Brook, New Jersey. (P-111.) At that time, K.P. lived in the home with her daughters, A.M. and I.M. A.M. is an adult student at Kent State University in Ohio. A.M. is the recipient of federal Pell Grants and financial aid. A.M.'s federal 1098 tax notifications for 2023 list her address as Saddle Brook, New Jersey. (P-96.)

In January 2021, the Saddle Brook School District Board of Education (Saddle Brook) entered into a special education tuition contract agreement (tuition agreement) with the respondent (PVRHS Board or Board). (P-264.) This agreement states that Saddle Brook would reimburse respondent for educating I.M., a Saddle Brook resident, at Pascack Valley Regional High School from January 11, 2021, through June 16, 2021. The tuition agreement must be agreed upon and approved by the respondent for each school year. On June 7, 2021, Saddle Brook entered into a second tuition agreement with respondent for I.M. for the school year commencing on September 21, 2021, and extending through June 16, 2022. The tuition agreement was approved by the respondent. (P-266.) On June 27, 2022, Saddle Brook entered into a third tuition agreement with respondent for I.M. for the school year commencing on August 31, 2022, and extending through June 15, 2023. The tuition agreement was approved by the respondent. (P-267.)

In July 2023, Saddle Brook submitted the request for the tuition agreement for I.M.'s final high school year, 2023–2024, to respondent, along with K.P.'s admission application for a non-resident student to Pascack. (R-7.) This admission application, dated June 23, 2023, stated that K.P. and I.M. reside in Saddle Brook and that Saddle Brook would be responsible for the tuition for I.M. to attend Pascack. On July 27, 2023, respondent notified Saddle Brook that they would not be entering into a tuition agreement with Saddle Brook for the 2023–2024 school year for I.M. (P-158; R-8.) On August 4,

2023, respondent notified K.P. that they denied Saddle Brook's request for a tuition agreement for the 2023 school year for I.M. (P-160; R-8.)

On August 7, 2023, respondent notified K.P. why they had denied the tuition agreement. (P-162; R-8.) Pascack stated that one of the reasons was K.P.'s belligerent behavior toward the dance coach, Dena Noone (Noone). Despite requests from the administration that K.P. discontinue her attacks on the dance staff, K.P. continued to be abusive, insulting, and demeaning towards Noone. Noone testified that she told the respondent that she would rather resign than be subjected to the continued vitriol from K.P. Noone testified that K.P. was loud and belligerent towards her during the school year. K.P. made several disparaging remarks about and towards Noone during the hearing, despite being asked to conduct herself in an appropriate manner.

K.P. was also verbally abusive towards the guidance counselor, Shelly Tobin (Tobin), at Pascack, which interfered with Pascack's ability to provide guidance counseling services to I.M. (P-162.) A sampling of the barrage of emails to Pascack from January 2023 through June 2023 (R-9) further supported respondent's refusal to enter into a tuition agreement for the 2023–2024 school year. K.P. demanded that Tobin not speak with I.M. and that all communications should be done through K.P. Tobin testified that it made her job as guidance counselor for students almost impossible. K.P. made several inappropriate and disparaging remarks to Tobin during the hearing, despite being asked again to conduct herself in an appropriate manner.

K.P.'s demeanor, attitude, and disparaging comments toward the witnesses from Saddle Brook and Pascack can be described as hostile at best and disrespectful and abusive at worst. K.P. was aggressive and rambunctious, and her behavior made it clear why both school boards and teachers had difficulty tolerating her behavior.

On August 8, 2023, K.P. submitted a student registration form as a resident of Montvale for Pascack. K.P. listed her address as Montvale, New Jersey, and included an affidavit from Fatima Spiradinova (Spiradinova) certifying that K.P. and I.M. reside in Montvale. (P-23; P-12.) The registration included a copy of Spiradinova's driver's license and the deed for her Montvale home. (P-17; P-13; R-3.) There is no dispute that

Spiradinova is domiciled in Montvale. In support of the student registration form, K.P. submitted Residency Affidavit #1, Oath of Non-Support for Non-Resident (P-18), and Spiradinova submitted Residency Affidavit #2, Oath of Support for Non-Resident by Resident (P-20; R-3). The residency affidavits are inconsistent. In K.P.'s affidavit, she states that she intends to continue to support her child and will be assuming all the obligations of her child with Pascack. It also states that K.P. has read Residency Affidavit #2, submitted by K.P. Residency Affidavit #2 was submitted by Spiradinova. Spiradinova stated that she has helped three other family members who lived with her enroll at the PVRHS. She testified that she is very familiar with the forms, as she has submitted them to the other schools in Montvale and PVRHS. She later testified that she is not very fluent in English, and the forms were confusing to her.

On August 10, 2023, Pascack informed K.P. that her registration for I.M. at Pascack was denied. (P-165; R-4.) On August 10, 2023, K.P. requested a statement of reasons for the denial of her resident student application. (P-85; R-4.) On August 22, 2023, Pascack notified K.P. that her application for registration attesting to residency within the district was questionable and lacked sufficient supporting documentation. K.P. requested an appeal before respondent. (P-166.)

Since the denial on August 10, 2023, K.P. has submitted various documents showing her address to be in Montvale. She has submitted her driver's license dated August 26, 2023 (P-27), I.M.'s driver's license dated September 19, 2023 (P-150), various solicitation letters dated September 20, 2023 (P-130 through P-137), offer letters from various universities for I.M. (P-138; P-140), and various credit-card bills and bank statements from September 2023. (P-141 through P-149.) All the documents submitted are dated August 10, 2023, or later. However, some of her documents—notably, her health insurance records from Horizon dated October 20, 2023 (P-69), her 2023 W-2 form (P-100) and her 2022 W-2 form (P-1), and her federal tax transcripts for 2020–2022 (P-6 through P-11)—list her residence as Saddle Brook, NJ.

On August 11, 2023, K.P. entered into a one-year lease agreement with Crystal Mason (Mason) for the house in Saddle Brook. (P-106.) Mason testified that she visited the Saddle Brook residence in May 2023, and at that time, K.P. and I.M. were living in the

Saddle Brook home. Mason testified that she moved to the Saddle Brook residence on August 11, 2023, and she rented a single room inside the three-bedroom residence. There is no language in the lease that precludes K.P. or I.M. from residing in the home. The lease expires in September 2024.

On August 23, 2023, Pascack sent an email to K.P. notifying her that I.M. had been enrolled at Pascack, pending the outcome of her appeal. However, because of her past behavior and threats to the staff at Pascack, K.P. was not allowed on the campus of the high school; all communication with Pascack would be via email, and should K.P. violate this policy, Pascack reserved the right to contact law enforcement. (P-170.)

On September 15, 2023, K.P. entered into a one-year lease agreement with Erna Xheraj. (P-107.) However, the section titled "Term" states that the lease began on August 2, 2023, and ended on September 2, 2024. K.P. testified that the lease expired on September 15, 2024. On October 7, 2023, K.P. entered into a one-year lease agreement with Diane Mistarka. (P-110.) In the section titled "Term," the dates for the commencement and termination of the lease are blank. The tenants were not produced to validate these leases. On October 5, 2023, K.P. signed a real-estate contract for the sale of the Saddle Brook residence. (P-32.) The contract lists the house as being available for sale on July 1, 2024. (P-111.)

K.P. testified on her own behalf. She stated that she has lived with Spiradinova since July 2023 because of her health and that she could not live alone. Fatima Ismali (Ismali) is a friend of K.P., and they have been friends for over twenty years. Ismali stated that K.P. was currently renting a room in an Airbnb. Ismali testified that K.P. has had some financial trouble and has been renting her house. Ismali testified that K.P. was so sick that she could not be left alone. This contradicted her earlier statement that K.P. was renting an Airbnb room. In addition, Sandra Gaulker (Gaulker), K.P.'s psychotherapist, testified that K.P. has suffered from these illnesses since at least 2006. Gaulker testified that K.P. does not need constant supervision by an adult and can live alone.

K.P. also stated that she was living with Spiradinova due to financial issues. She did not provide any documentary evidence of her financial issues. She is not working and

has not worked for at least one year. She provided three leases renting rooms in the Saddle Brook residence for $1,000 each. She has not provided any bank statements showing the deposits for the rent she has received. She also did not provide her tax returns for 2023. She has not provided any mortgage statements for the Saddle Brook residence. She stated that she has at least three different signatures and could not be certain that the signatures on the non-residency application (R-7) were hers. However, when compared to her signature on the enrollment documents (R-3), they appear identical. Spiradinova did not provide any financial evidence or testimony to show that she was supporting I.M. as if she were her own child and that I.M. intended to live with her for any period longer than her final high school year. Spiradinova did not know where I.M. was attending college.

On August 3, 2023, five days before she submitted I.M.'s registration application to Pascack, K.P. submitted several Open Public Records Act (OPRA) requests to Pascack using her Saddle Brook address. (R-11.) She stated that she can use any address she likes on any form. She said she used her Saddle Brook residence because she wanted to surprise Pascack; she did not want them to know her true plans. On August 6, 2023, K.P. submitted a request for due process petition and used her Saddle Brook address. She stated that using the Saddle Brook address does not mean she lives there.

K.P. was loud and belligerent, and many times during the hearing she would digress with long monologues, which would increase in volume, speaking over everyone else. Many times, she would make disparaging comments about the witnesses, including offensive comments about their appearance. She denies being threatening in her emails to Pascack (R-4; R-9) and states that her language is not threatening—that it is just words. She stated that I.M. will be leaving for college and will be leaving New Jersey.

To be clear, I **FIND** that I.M. and K.P. reside in Saddle Brook. I further **FIND** that because PVRHS declined to renew the tuition agreement with Saddle Brook, I.M. applied for enrollment at Pascack as a resident. I further **FIND** that K.P. listed her address in Montvale with Spiradinova to obtain a free education at Pascack.

CONCLUSIONS OF LAW

The sole issue for determination in this case is whether I.M. is domiciled within the Pascack Valley Regional High School District. Any person between the ages of five and twenty years old is entitled to free public education in the district in which he or she is domiciled. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). "A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district." N.J.A.C. 6A:22-3.1(a)(1). A student may attend school in a district in which he or she is a non-resident, with or without payment of tuition, only at the discretion of the school district. N.J.S.A. 18A:38-3(a); N.J.A.C. 6A:22-2.2.

Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention to return. State v. Benny, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is that of his or her parent, custodian, or guardian. P.B.K. ex rel. minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001). A child who is kept in the home of another person is domiciled in the district if the child is fully supported by that person gratis, as if they were her own child. N.J.S.A. 18A:38-1(b)(1). The parent of the child must provide a sworn affidavit with documentary evidence to show that the parent is not capable of supporting or providing care for the child **and** that the child is not residing there solely for the purpose of a free education. Ibid. Where a local board determines that a child is not properly domiciled in its district, the parent has a right of appeal and bears the burden of proof by a preponderance of the credible evidence. N.J.S.A. 18A:38-1(b)(2).

I.M. and K.P. resided in Saddle Brook from at least 2021 through 2023. Three days after Pascack declined to renew the tuition agreement with Saddle Brook, I.M. applied for enrollment at Pascack Valley Regional High School as a resident. K.P. listed her address in Montvale with Spiradinova. There was no evidence or testimony of any agreement between K.P. and Spiradinova for the support and care of I.M. There were no bank statements, mortgage statements, credit-card bills or tax returns provided for 2023. There was no documentary evidence or testimony provided that K.P. and I.M. intended to establish domicile at the address in Montvale. There was no evidence that K.P. had given

up her domicile in Saddle Brook. The real-estate sales contract does not list the Saddle Brook residence for sale until after July 2024. The leases had dates that were inconsistent with K.P.'s testimony. There was also conflicting testimony from Ismali, who stated that K.P. was living in an Airbnb. Merely having documents or mail delivered to an address is not proof of domicile within the district. K.P. herself admitted that she uses different addresses on legal documents. K.P. testified that I.M. is leaving for college and leaving New Jersey. Spiradinova had no knowledge of where she was going to college. There is not a preponderance of evidence to support K.P.'s allegation that I.M. was domiciled within the Pascack school district as of July 2023. Rather, it appears to be an attempt to reside in the district for the sole purpose of receiving a free education at Pascack for I.M.'s last year of high school.

The statute provides affirmative obligations for both K.P. and Spiradinova to prove that I.M. was domiciled in the district. K.P. did not show by a preponderance of the credible evidence that I.M. is domiciled in the district.

Based on the record herein, I **CONCLUDE** that K.P. is not domiciled in Montvale. I **CONCLUDE** that I.M. is using the Montvale address of Spiradinova to receive a free public education from Pascack Valley Regional High School, in violation of N.J.S.A. 18A:38-1(b)(1), and I further **CONCLUDE** that K.P. and I.M. were not domiciled in the Pascack Valley Regional High School District for the 2023–2024 school year.

N.J.S.A. 18A:38-1(b)(1) and N.J.A.C. 6A:22-6.3(a) provide that when the evidence does not support the claim of the resident, the resident shall be assessed tuition for the number of days of ineligible attendance for up to one year. Pascack has provided the per-student daily rate as $134.38 and the number of days of ineligible attendance for I.M. as 181. The individual student's record of daily attendance shall not affect the calculation. N.J.A.C. 6A:22-6.3(a). The total amount of tuition reimbursement owed is $24,322.78. Based on the facts and legal principles cited above, I **CONCLUDE** that the petitioner owes the respondent tuition for out-of-district students in the amount of $24,322.78 for the entire 2023–2024 school year.

ORDER

Based upon the foregoing, it is **ORDERED** that this residency appeal be **DISMISSED**. It is further **ORDERED** that the petitioner owes the respondent the cost of tuition for an out-of-district student, I.M., for her attendance at Pascack Valley Regional High School in the amount of $24,322.78.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 under 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 **ACTING 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.

Patrice E. Hobbs

July 16, 2024
DATE

PATRICE E. HOBBS, ALJ

Date Received at Agency: July 16, 2024

Date Mailed to Parties: July 16, 2024
lsr

APPENDIX

WITNESSES

For Petitioner:

K.P., petitioner
Fatima Ismali
Fatima Spiridonova
Crystal Moore
Sandra Gaulker, RN
Dena Noone, Pascack Valley Regional High School
Shelly Tobin, Pascack Valley Regional High School
Tim Wieland, Pascack Valley Regional High School
Yas Usami, Pascack Valley Regional High School
Paul Zeller, Pascack Valley Regional High School
Sarah Bilotti, Pascack Valley Regional High School
Jillian Cawley, Saddle Brook High School
Tara Flannery, Saddle Brook High School
Toni Violetti, Saddle Brook High School

For Respondent:

Sarah Bilotti, Pascack Valley Regional High School

EXHIBITS

For Petitioner:

P-1	W-2 Wage and Tax Statement 2022
P-2–P-5	Medical records from Sovereign Medical Group
P-6–P-7	IRS account transcript for 2022
P-8–P-9	IRS account transcript for 2021
P-10–P-11	IRS account transcript for 2020
P-12	Letter from Fatima Spiridonova, dated August 7, 2023

P-13–P-14	Fatima Spiridonova's deed for 10 Forshee Circle, Montvale, dated April 30, 2008
P-15–P-16	Fatima Spiridonova's Rockland Electric Company bill, dated August 29, 2023
P-17	Fatima Spiridonova's driver's license
P-18–P-19	K.P.'s Residency Affidavit #1, dated August 9, 2023
P-20–P-21	Fatima Spiridonova's Residency Affidavit #2, dated August 9, 2023
P-22	Request for records from PVRHS to SBHS, dated June 6, 2023
P-23–P-24	PVRHS student registration form, dated August 8, 2023
P-25–P-26	Authorization for release of medical records from Hackensack, dated February 8, 2024
P-27	K.P.'s driver's license, dated August 26, 2023
P-28	Medical records from Holy Name Medical Center, dated May 9, 2022
P-29	Medical records from Dr. Michael Scherl
P-30	Prescription from Dr. Basel Baghal for home health aide, dated July 20, 2023
P-31	Prescription from Dr. Hormoz Asl for asthma/apnea, dated October 4, 2023
P-32	Letter from Sandra Gauker, RN, dated October 5, 2023
P-33	Letter from Sandra Gauker, RN, dated August 11, 2023
P-34	Email from K.P. to Gaulker, dated August 5, 2023
P-35	Letter from Dr. Raimonda Goldman, dated October 10, 2023
P-36	Letter from Optum Medical Care (undated)
P-37	Letter from Dr. Collette M. Knight, dated November 14, 2023
P-38	Letter from Dr. Kenneth Park, dated January 26, 2024
P-39	Letter from Dr. Kishan Patel, dated March 8, 2024
P-40	Prescription letter from CVS Pharmacy, dated September 15, 2023
P-41	Letter from Dr. Igor Kofman, dated October 17, 2023

P-42	Prescriptions from Dr. Natalia Raeva, dated May 2022–December 2023
P-43	Bill from Ciox Health, dated September 18, 2023
P-44–P-48	Medical records from the Inserra Family Diabetes Institute, dated May 4, 2023
P-49	Discharge note from Dr. Vishta Khatri, dated November 6, 2022
P-50	Bill from Ciox Health, dated February 26, 2024
P-51–P-53	Authorization for release of medical records, dated February 26, 2024
P-54–P-59	Medical records from Dr. Asit K. Shah, dated February 8, 2024
P-60–P-63	Medical records from Dr. Michael F. Pizzillo, dated May 3, 2023
P-64	Medical records from Inserra Family Diabetes Institute, dated May 4, 2023
P-65	Medical records from Riverside Internal Medicine, dated September 22, 2023
P-66–P-67	Medical records from Dr. J. Diorio, dated December 13, 2023
P-68	Medical records from Riverside Internal Medicine, dated September 22, 2023
P-69–P-70	Medical records from Englewood Health, dated October 20, 2023
P-71–P-72	Medical records from Hackensack Meridian, dated December 13, 2023
P-73	Medical records from Dr. Joseline Chummar, dated November 1, 2023
P-74	Letter from CVS Pharmacy, dated October 13, 2023
P-75–76	Letter from Horizon, dated November 9, 2022
P-77–P-81	Emails from Horizon, dated September 26, 2023, March 16, 2023, and March 17, 2023
P-82	Emails between PVRHS and K.P. regarding computer, dated March 12, 2022
P-83	Email from SBHS to PVRHS, dated June 29, 2023

P-84	Email from SBHS to K.P. regarding dance fee, dated January 24, 2023
P-85–P-94	Emails between K.P. and PVRHS, dated January 23, 2023, January 25, 2023, August 10, 2023, August 15, 2023, August 22, 2023, and August 23, 2023
P-95	Check from Mr. and Mrs. Hunter for $600, dated February 2, 2023
P-96–P-98	1098 Form for A.M. for FY 2023
P-99	2024 tax bill for Saddle Brook home
P-100	W-2 Wage and Tax Statement 2023
P-101–P-103	Change of address from Department of Labor, dated November 8, 2023
P-104	Letter from Momna Aslam, dated August 27, 2023
P-105–P-106	Lease between Crystal Mason and K.P., dated August 11, 2023
P-107–P-108	Lease between Erna Xheraj and K.P., dated September 15, 2023
P-109–P-110	Lease between Diane Mistarka and K.P., dated October 7, 2023
P-111–P-112	MLS listing for Saddle Brook property, dated March 4, 2024
P-113–P-122	Letter from Roundpoint Mortgage, dated January 24, 2023
P-123	Letter from DCP&P, dated August 23, 2022
P-125	OPRA request by Crystal Mason, dated September 26, 2023
P-126–P-127I	Immunization records for I.M., dated September 9, 2023
P-128	Contact Information Form PVRHS (undated)
P-129	Letter from Ciox (undated)
P-130–P-137	Various letters from ticket attorneys to I.M., dated September 20, 2023
P-138–P-140	Letters from Grand Valley and Monmouth University
P-141–P-142	Bill from Capitol One, dated September 10, 2023
P-143–P-144	Check #100 from K.P. to CEDA and check #101 from K.P. to Pascack Parents Dance Association, dated October 10, 2023
P-145–P-146	Bill from T-Mobile, dated September 28, 2023

P-147–P-148	Statement from TD Bank, dated September 25, 2023
P-149	DMV renewal, dated September 30, 2023
P-150	Driver's license for I.M., dated September 19, 2023
P-151	Change of address from DMV, dated August 11, 2023
P-152	Police report, dated August 18, 2023
P-153	Police report, dated August 17, 2023
P-154–P-157	Front door camera pictures, dated August 17, 2023–August 18, 2023
P-158–P-159	Letter from PVRHS to SBHS denying placement for the 2023–2024 school year, dated July 27, 2023
P-160–P-161	Letter from PVRHS to K.P. denying placement for the 2023–2024 school year, dated August 4, 2023
P-162–P-164	Letter from PVRHS to K.P. regarding reasons for placement denial, dated August 7, 2023
P-165	Letter from PVRHS to K.P. denying enrollment, dated August 10, 2023
P-166–P-167	Letter from PVRHS to K.P. regarding enrollment, dated August 22, 2023
P-168–P-169	Letter from PVRHS to K.P. regarding Board decision, dated September 12, 2023
P-170–P-171	Email from PVRHS to K.P. regarding behavior, dated August 23, 2023
P-172–P-187	District Policy 5111 Eligibility
P-188	OPRA request, dated November 8, 2023
P-189–P-216	Transcript of PVHRS Board hearing, dated September 11, 2023
P-217	PVRHS student eligibility rules
P-218–P-222	N.J.A.C. 6A:22-3.1
P-223–P-232	N.J.A.C. 6A:22-3.2
P-233–P-234	N.J.A.C. 6A:22-4.2
P-235–P-237	N.J.A.C. 6A:22-4.1
P-238–P-239	N.J.A.C. 6A:22-3.1
P-240–P-243	N.J.A.C. 6A:22-3.2

P-244–P-245	N.J.A.C. 6A:22-3.4
P-246	Driver's license for Fatima Spiridonova, dated January 21, 2020
P-247–P-250	PVRHS Board agenda, dated September 11, 2023
P-251	Resolution of PVRHS Board, dated September 11, 2023
P-252–P-253	PVRHS letter to K.P. regarding OPRA request, dated October 18, 2023
P-254	OPRA request, dated October 8, 2023
P-255–P-256	PVRHS letter to K.P. regarding OPRA request, dated October 4, 2023
P-257	OPRA request, dated September 24, 2023
P-258–P-259	PVRHS letter to K.P. regarding OPRA request, dated October 4, 2023
P-260	OPRA request, dated September 24, 2023
P-261	OPRA request, dated October 16, 2023
P-262–P-263	PVRHS letter to K.P. regarding OPRA request, dated October 20, 2023
P-264	Special education tuition contract agreement for I.M. from SBHS to PVRHS, dated January 11, 2021
P-265	Special education tuition contract agreement for I.M. from SBHS to PVRHS, dated June 27, 2022.
P-266	Special education tuition contract agreement for I.M. from SBHS to PVRHS, dated June 7, 2021
P-267–P-270	School calendar for I.M. at PVRHS from 2020–2024
P-271–P-274	Letter to K.P. from PVRHS, including OPRA requests, dated August 25, 2023

For Respondent:

R-1	PVRHS Board Policy and Regulation 5111 Eligibility of Resident/Non-Resident Students
R-2	I.M. 2022–2023 PVRHS transcript
R-3	Enrollment documents submitted to PVRHS by petitioner
R-4	Correspondence pertaining to denial of enrollment

R-5	Correspondence/documents submitted at Board hearing
R-6	Enrollment decision by the PVRHS Board
R-7	Admission application for non-resident student
R-8	Enrollment decision by the PVRHS Board
R-9	Email correspondence pertaining to petitioner's conduct towards district staff
R-10	Petition of appeal filed with the Commissioner of Education
R-11	OPRA requests from K.P., dated August 3, 2023

365-24
OAL Dkt. No. 00940-2024
Agency Dkt. No. 342-12/23

New Jersey Commissioner of Education

Final Decision

Jennifer Ferrara,

Petitioner,

v.

Board of Education of the City of Newark,

Respondent.

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

The threshold procedural issue in this case is whether the petition should be dismissed pursuant to the 90-day rule, *N.J.A.C.* 6A:3-1.3(i). *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 *N.J.* 572, 582 (1993). Petitioner is a tenured schoolteacher, employed by respondent since November 14, 2014. On June 22, 2022, petitioner received written notice from respondent that her salary increment for the 2022-2023 school year would be withheld because she received a "partially effective" rating on two consecutive annual performance reviews. On July 29, 2022, Petitioner received written notice of a tenure charge for inefficiency from the Board. Petitioner timely challenged the tenure charge, and the parties proceeded to an arbitration hearing. On September 18, 2023, the arbitrator concluded that petitioner's ratings of "partially effective" were influenced by petitioner's union activity, were arbitrary and capricious, and failed to adhere to the prescribed

evaluation process. On December 15, 2023, petitioner appealed the withholding of her 2022-2023 and 2023-2024 salary increments to the Commissioner of Education. After the matter was transmitted to the OAL, respondent filed a Motion for Summary Decision, and the petitioner filed opposition. The Administrative Law Judge (ALJ) requested supplemental briefs regarding relaxation of the 90-day rule.

After reviewing the written submissions and oral arguments, the ALJ granted the Board's motion for summary decision, concluding that the petition was untimely filed. The ALJ also rejected petitioner's assertion that her claim warranted relaxing of the 90-day rule, reasoning that petitioner has failed to raise a substantial constitutional issue, and that petitioner's claim has only personal significance.

In her exceptions, petitioner does not challenge the ALJ's factual findings or his legal conclusion that petitioner filed her petition well beyond the 90-day time limit. Instead, she disputes the ALJ's decision that the circumstances in the instant matter fail to warrant relaxation of the rule pursuant to *N.J.A.C.* 6A:3-1.16. Citing to the Arbitrator's Order, Petitioner reiterates that the 90-day rule should be relaxed because she has presented a substantial constitutional issue. She argues that the partially effective ratings, on which the increment withholding and tenure charge are predicated, were a result of anti-union animus, thus violating her First Amendment right to associate with a union without retaliation. In addition, petitioner asserts that relaxation of the rule is appropriate because her claim implicates a pattern of unconstitutional retaliation by the Board that extends beyond personal significance to similarly situated public employees. She cites two New Jersey Superior Court Orders to support her assertion.

In response, the Board reiterates that the 90-day rule should not be relaxed under the circumstances as petitioner failed to raise a constitutional violation in her petition. Further,

petitioner's reliance on the Arbitrator's Opinion and Award is improper given that the Arbitrator was not tasked with deciding any issue regarding the merits of the increment withholding, nor did he make any finding regarding whether petitioner's constitutional rights had been violated. The Board also contends that no substantial constitutional issue exists regarding the increment withholding and reiterates that petitioner has failed to assert claims that are novel or have significance beyond her personal employment relationship. Lastly, Respondent objects to petitioner's submission of the Superior Court Orders because those items were not considered during the hearing.

Upon review, the Commissioner concurs with the ALJ's conclusion that the petition was untimely. *N.J.A.C.* 6A:3-1.3(i) mandates that petitions shall be filed "no later than the 90th day from the date of receipt of the notice of a final . . . action by the district board of education." 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. It "provides a measure of repose" and "gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days." *Ibid.*

Here, the ALJ correctly concluded that the 90-day period began on June 22, 2022 – when petitioner received notice of the increment withholding – and not from when the arbitrator concluded that petitioner's performance review was arbitrary and capricious. The filing period expired on September 22, 2022; however, the petition was not filed until December 15, 2023. To the extent petitioner postponed the filing of the petition in anticipation of the arbitration's outcome, the Commissioner still deems the petition untimely. The mandatory filing deadline is not subject to change based upon a petitioner's legal strategy; that would defeat the measure of repose to which school districts are entitled. *See Nissman v. Bd. of Educ. of Twp. of Long Beach Island, Ocean Cnty.*, 272 *N.J. Super.* 373, 382 (App. Div. 1994) (affirming State Board decision to dismiss petition as time

barred and explaining that while petitioner may have opted not to file a petition sooner for tactical reasons, the Board "was entitled to know within 90 days of its action whether its [decision] was going to be challenged").

Petitioner admits that she received written notice from the Board regarding the salary increment withholding on June 22, 2022. She does not take exception to the ALJ's conclusion regarding timeliness and instead focuses exclusively on the ALJ's decision to not relax the 90-day rule. However, the Commissioner does not find petitioner's exceptions to be persuasive. The Commissioner adopts the ALJ's conclusion that petitioner presents no compelling reason or exceptional circumstances warranting relaxation of the 90-day limitation period. Further, petitioner has presented no case law in which the 90-day limitation was relaxed under *N.J.A.C.* 6A:3-1.16 in circumstances similar to those at issue here.[1]

Accordingly, respondent's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2024
Date of Mailing: October 9, 2024

[1] Petitioner's inclusion of the two Superior Court orders is improper per *N.J.A.C.* 1:1-18.4(c). Therefore, these documents were not considered.

[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

SUMMARY DECISION

OAL DKT. NO. EDU 00940-2024

AGENCY DKT. NO. 342-12/23

JENNIFER FERRARA,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY OF NEWARK,

Respondent.

Colin M. Lynch, Esq., for petitioner (Zazzali, P.C, attorneys)

Adam S. Herman, Esq., for respondent (Adams, Lattiboudere, Croot and Herman,attomeys)

Record Closed: June 24, 2024 Decided: July 15, 2024

BEFORE **DANIEL J. BROWN** ALJ:

STATEMENT OF THE CASE

Petitioner has been employed as a schoolteacher by respondent since November 24, 2014. On December 15, 2023, petitioner filed a petition challenging the withholding of her salary increment for the 2022-2023 school year. On June 22, 2022, petitioner received written notice from respondent (Board) that her increment for the 2022- 2023

school year was going to be withheld by the Board. Is the claim time-barred? Yes. Under N.J.A.C. 6A:3-1.3(i) absent exceptional circumstances, a petitioner must file an appeal no later than the ninetieth 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 case.

PROCEDURAL HISTORY

On December 15, 2023, petitioner filed a Petition with the Commissioner of the Department of Education (Commissioner) contesting the withholding of her salary increment for the 2022-2023 school year by the Board. Petitioner alleged that the withholding of her salary increase was not based upon good cause. The withholding was based upon an annual evaluation which found that petitioner was only partially effective. Petitioner alleges that the evaluation was arbitrary and capricious.

In response to the Petition, the Board filed a Motion to Dismiss in place of an Answer on January 16, 2024, asserting that petitioner's appeal was untimely as the petitioner's challenge to the salary increment was not filed within ninety days 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 case as required by N.J.A.C. 6A:3-1.3(i). The Board argued that the latest possible time that petitioner was on notice of the withholding was September 2022, the beginning of the 2022- 2023 school year.

The Commissioner did not address the Board's Motion to Dismiss and transmitted this case to the OAL. On January 18, 2024, 2024, the OAL filed the matter as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On April 12, 2024, the Board filed a Motion for Summary Disposition that relied upon the same timeliness argument as the Motion to Dismiss. On June 11, 2024, petitioner filed an opposition to the Motion for Summary Disposition which argued that the

interest of justice required relaxation of the ninety-day filing requirement and that the instant appeal was timely because the ninety-day filing requirement did not start until petitioner received an arbitrator's decision dismissing related tenure charges. On May 17, 2024, the Board filed a reply brief arguing that petitioner was required to file the instant action within ninety days of June 22, 2022, the day petitioner received written notification from the Board about the increment withholding. Additionally, the Board argued that petitioner failed to establish a sufficient basis to relax the ninety-day filing requirement. Oral argument on the Motion for Summary Disposition occurred on June 11, 2024. At the conclusion of oral argument, I requested that the parties provide me with supplemental submissions regarding relaxation of the ninety-day filing requirement. On June 17, 2024, I received petitioner's submission which argued that the ninety-day filing rule should be relaxed because the Board withheld petitioner's salary increment as retaliation for petitioner's union activities. On June 24, 2024, I received the Board's submission which argued that petitioner had not established that the ninety-day filing requirement should be relaxed because petitioner had not asserted claims which are novel or compelling or that raise issues beyond those of personal significance to petitioner.

FINDINGS OF FACT

Based on the documents submitted in support of and in opposition to the Motion for Summary Decision, when viewed in the light most favorable to the non-moving party, I **FIND** the following as **FACT** for purposes of this Motion only:

Petitioner was hired as a teacher effective November 24, 2014. Between petitioner's date of hire and the withholding at issue, petitioner was given a salary increment every year on February 1. In May 2022, petitioner received a rating of partially effective on her yearly performance evaluation for the 2021- 2022 school year. This was the same rating petitioner received on her yearly evaluation for the 2020- 2021 school year. On June 22, 2022, petitioner received notice, in the form of an email and a letter from the Board that her salary increment for the 2022-2023 school year was being withheld. Petitioner's union was copied on the letter from the Board to petitioner advising that petitioner's 2022-2023 salary increment was being withheld. On July 29, 2022, petitioner received a notice of tenure charge for inefficiency from the Board. Petitioner

challenged the tenure charge in a timely manner. She filed an answer and proceeded to an arbitration hearing. Following the hearing, the arbitrator concluded that petitioner's rating of partially effective was influenced by petitioner's union activity and was arbitrary and capricious. Petitioner did not challenge the withholding of her 2022-2023 salary increment until the filing of the instant petition on December 15, 2023, almost two years after receiving notice of the withholding from the Board.

DISCUSSION AND CONCLUSIONS OF LAW

Summary decision may be granted when "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 rule further provides that an adverse party must respond by affidavit setting forth specific facts showing that there is a genuine issue which can only be determined at an evidentiary hearing. Ibid. The OAL rule is modeled on New Jersey Court Rule 4:46-2. The New Jersey Supreme Court has explained that when deciding a motion for summary judgment under R. 4:46-2,

> . . . 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.
>
> [Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).]

Here, the parties have agreed on all the facts, although they dispute their legal significance. Therefore, I **CONCLUDE** that the matter is appropriate for summary decision.

The Board argues that petitioner failed to file the instant appeal in a timely manner, and the appeal must be dismissed.

Under N.J.A.C. 6A:3-1.3(d), a party must file an appeal with the Commissioner of Education "no later than the ninetieth 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 "provides a measure of repose, an essential element in the proper and efficient administration of the school laws," giving school districts the "security of knowing" that an aggrieved party cannot challenge its actions after ninety days. Kaprow v. Board of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993).

Courts strictly construe and consistently apply the ninety-day limitation period. Kaprow, 131 N.J. at 588-89; Nissman v. Bd. of Educ., 272 N.J. Super 373, 380-81, (App. Div. 1994); Riely v. Bd. of Educ., 173 N.J. Super. 109, 112-14, (App. Div. 1980). This period begins to run when the petitioner "learn[s] from the Local Board the existence of that state of facts that would enable him to file a timely claim." Kaprow, 131 N.J. at 588-89. Indeed, the "notice of a final order, ruling or other action" is "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. Notably, a petitioner need not receive official and formal notification that they may have a valid claim to begin the ninety days. Id. at 588.

The parties agree that petitioner received adequate written notice on June 22, 2022, in the form of an email and a letter from the Board, that her salary increment for the 2022-2023 school year was being withheld. Therefore, the Board argues, petitioner was required to file a petition of appeal on or before September 22, 2022, to meet the time requirements.

Petitioner contends that the time requirement in the instant appeal did not accrue until she knew or had reason to know that the withholding of her salary increment was arbitrary and capricious and was the product of retaliation for her union activity. Petitioner argues that this did not accrue until the arbitrator issued his decision on September 18, 2023. Petitioner filed the instant appeal on December 15, 2023. Petitioner argues as she filed the instant petition within ninety days of the arbitrator's decision that it was filed timely.

Here, petitioner received notice on June 22, 2022, in the form of an email and a letter from the Board, that her salary increment for the 2022-2023 school year was being

withheld. The ninety-day filing requirement flows from that notice, not from when the arbitrator concluded that petitioner's performance evaluation was arbitrary and capricious and was retaliation for petitioner's union activities. Petitioner did not challenge the Board's withholding of the salary increment until the filing of this appeal on December 15, 2023.

Thus, I **CONCLUDE** that petitioner filed her petition well beyond the required time frame.

Next, petitioner argues that the ninety-day filing requirement should be relaxed pursuant to N.J.A.C. 6A:3-1.16 as "strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice." Relaxation of the ninety-day filing requirement is reserved only for situations where the party presents a substantial constitutional issue or a matter of significant public interest beyond concern only to the parties. Portee v. Bd. of Educ. of Newark, 94 N.J.A.R.2d (EDU) 381, 384; Wise v. Trenton Bd. of Educ., EDU 160-00, Initial Decision (July 25, 2000), adopted, Comm'r Decision (September 11, 2000), aff'd, St. Bd. (January 3, 2001), http://njlaw.rutgers.edu/collections/oal. Petitioner asserts that this case presents the issue of the Constitutional right of a public employee to associate with a union based upon the arbitrator's conclusion that her substandard performance evaluation was in retaliation for her union activity. The Board argues that petitioner has failed to raise an issue of substantial Constitutional concern as the arbitrator did not conclude that petitioner's freedom to associate with her Union was violated. Additionally, the Board argues that petitioner has not raised a novel issue and that petitioner has raised an issue of only personal significance to her, making relaxation of the ninety-day rule inappropriate.

Here, petitioner has failed to assert a substantial Constitutional issue. Petitioner places a great deal of reliance on the arbitrator's conclusion that her performance evaluation was in retaliation for her union activity. However, the arbitrator did not conclude that petitioner raised a substantial Constitutional issue. Further, the arbitrator did not conclude that petitioner's Constitutional rights were violated. Petitioner's claim has only personal significance, making relaxation of the ninety-day rule unwarranted. If the Commissioner relaxed the filing timeframe for every harsh result, that action would

nullify the rule's salutary public policy of encouraging prompt resolution of disputes. Pacio v. Bd. of Educ. of Lakeland Reg. High Sch. Dist., 1989 S.L.D. 2060 (Comm'r July 29, 1989). Thus, I **CONCLUDE** that petitioner does not present exceptional circumstances or a compelling reason which would warrant relaxation of the ninety-day rule.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Board be **GRANTED** summary decision. I further **ORDER** that petitioner's Petition of Appeal be **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 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.

Daniel J. Brown

July 15, 2024
DATE

DANIEL BROWN, ALJ

Date Received at Agency: July 15, 2024

Date Mailed to Parties: July 15, 2024

sej

366-24
OAL Dkt. No. EDU 5663-24
Agency Dkt. No. 88-4/24

New Jersey Commissioner of Education

Final Decision

S.W., on behalf of minor child, A.A.,

Petitioner,

v.

Board of Education of the Morris School District, Morris County.

Respondent.

The record of this matter, the proposed Settlement Agreement (Agreement), and the Initial Decision issued by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 6 of the Agreement includes a confidentiality clause. The parties are reminded that the Board must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* in regard to information concerning this matter, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2024
Date of Mailing: October 9, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 05663-24
AGENCY DKT. NO. 88-4/24

S.W. ON BEHALF OF MINOR CHILD, A.A.,
Petitioner,
v.
BOARD OF EDUCATION OF THE MORRIS SCHOOL DISTRICT, MORRIS COUNTY,
Respondent.

S.W., petitioner, pro se

Melanie D. Lipomanis, Esq., for respondent (Porzio, Bromberg & Newman, P.C., attorneys)

Record Closed: August 29, 2024 Decided: August 29, 2024

BEFORE **R. TALI EPSTEIN**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the

Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle this case and have entered into an agreement. Their settlement agreement and the certified resolution of the Board of Education of the Morris School District approving same are attached to this decision.

Having reviewed the terms of the parties' agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

I **FILE** my decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration. This recommended decision may be adopted, modified, or rejected by **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is empowered by law to make a final decision in this case. If the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not so act within 45 days, and unless such time limit is otherwise extended, this recommended decision becomes a final decision in accordance with N.J.S.A. 52:14B-10.

August 29, 2024
DATE

R. TALI EPSTEIN, ALJ

Date Received at Agency: August 30, 2024

Date Mailed to Parties: August 30, 2024

cc

SETTLEMENT AGREEMENT

This settlement agreement ("Agreement") made by and between

Morris School District Board of Education ("Board")

AND

Ms. S.W. o/b/o A.A.,

WHEREAS, the Board is duly organized as a public school district under the laws of the State of New Jersey; and

WHEREAS, the Board determined that A.A. is no longer entitled to a free education within the District pursuant to *N.J.S.A.* 18A:38-1 *et seq.*; and

WHEREAS, Ms. W. appealed to the Commissioner of Education to overrule the Board's residency decision, and the District intends to seek an award of tuition from Ms. W. for January 1, 2024 through the last date of A.A.'s attendance in a District school in that pending proceeding; and

WHEREAS, in order to avoid the time and expense of further litigation of this matter before the Commissioner of Education, the Parties agreed to enter into a settlement agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the Board and Ms. W. (collectively "Parties" and each individually a "Party") desire to enter into the within Agreement as follows:

1. **2023-2024 School Year:** A. A. shall be permitted to remain in the District for the remainder of the 2023-2024 school year.

2. **Tuition Abeyance:** Conditioned upon the fulfilment of the terms of this Agreement, the Board agrees not to seek an award of tuition for A.A. for attending school in the District as a non-resident student, from January 1, 2024 through June 30, 2024 school year.

3. **2024-2025 School Year:** Following the completion of the 2023-2024 school year, the Parties agree that A.A. shall be removed from the District's enrollment and enrolled in the school district where the student then resides. Ms. W. shall provide the District with proof of enrollment in the resident district. The Parties further agree and acknowledge that the Board shall have no further financial obligation toward A.A.'s education, and Ms. W. shall not attempt to re-enroll A.A. in the District unless and until such time as Ms. W. and A.A. become full-time residents within the Morris School District.

4. **Withdrawal and Release.** In exchange for the consideration set forth herein, including, but not limited to the Board permitting A.A. to complete the 2023-2024 school year and holding its collection of tuition for A.A.'s attendance from January 1, 2024 through June 30, 2024, in abeyance subject to the terms of this Agreement, Ms. W. agrees to withdraw her appeal to the Commissioner of Education (OAL Docket NO. EDU 566-2024), and releases and gives up any and all claims and rights she may have against the Board for any damages or injuries to A.A. in connection with A.A.'s education, including any claim for compensatory education, compensatory damages, punitive damages, or any damages or injuries to A.A., arising out of alleged acts or omissions, whether known or unknown, that have taken place through the date of this Agreement.

5. **Agreement Not to Sue.** Ms. W. agrees not to file any lawsuit or claim against the Board, based on any events, whether known or unknown, occurring prior to the date of the execution of this Agreement, in any court or tribunal of the United States, New Jersey or any other state, city, county, or locality, for any claims released in this Agreement.

6. **Confidentiality.** Ms. W. specifically acknowledges and agrees that this Agreement was reached without any admission by the Board of any of the acts or omissions alleged or those that could have been alleged. Ms. W. agrees that they will keep the terms of this Agreement confidential, to the extent permitted by law. Ms. W. acknowledges that this confidentiality requirement is a material term to this Agreement.

7. **Board Remedy for Breach of Agreement.** The Parties acknowledge that under the terms of this Agreement, the Board has agreed to hold its demand and collection efforts for tuition payment in abeyance for the period A.A. attended a district school as a non-resident from January 1, 2024 through present. In the event Ms. W. does not abide by the terms of this Agreement and enrolls A.A. as a student in the 2024-2025 school year, and A.A. is subsequently found to be a non-resident of the District, as defined in this Agreement, the District will not be bound by this term, and specifically preserves its right to demand and seek collection remedies for all tuition owed for the 2023-2024 and 2024-2025 periods in which A.A. attended a District school as a non-resident.

8. **No Precedent.** The Parties agree that this Agreement may not be used to establish precedent in any future proceeding of any type whatsoever involving the Board and that it shall be inadmissible in any such proceeding, other than a proceeding to enforce or prove the existence of same.

9. **Entire Agreement.** This Agreement contains the sole and the entire agreement between Ms. W. and the Board, and fully supersedes any and all prior agreements and understandings between Ms. W. and the Board pertaining to the subject matter of this Agreement. Ms. W. represents and acknowledges that she has not relied upon any representation or statement

by the Board, or its counsel or representatives, with regard to the subject matter of this Agreement, which is not set forth in this Agreement.

10. **Counterparts.** This Agreement may be executed in any number of counterparts, which, taken together, shall constitute but one instrument. It is not necessary that all parties sign all or any one of the counterparts, but each party must sign at least one counterpart for the Agreement to be effective.

11. **Board Approval.** This Agreement is subject to Board approval before taking effect.

BY SIGNING THIS AGREEMENT MS. W. STATES THAT:

A. SHE HAS READ IT;

B. SHE AGREES WITH EVERYTHING IN IT;

C. SHE HAS BEEN ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTING THIS AGREEMENT AND HAD AN OPPORTUNITY TO DO SO;

D. SHE HAS SIGNED THIS AGREEMENT KNOWINGLY AND VOLUNTARILY.

Ms. W.

Dated: 6/25/25

Morris School
District Board of Education

By: Katie Cole, Board President

Anthony LoFranco
Business Administrator/Board Secretary

Dated: 8/15/24

EXTRACT FROM THE MINUTES OF A MEETING OF THE BOARD OF EDUCATION OF MORRIS SCHOOL DISTRICT, MORRIS COUNTY, NEW JERSEY, AS RECORDED IN THE OFFICIAL MINUTE BOOK.

The Board of Education of Morris School District, in the County of Morris, New Jersey, convened in Regular Session on **Thursday, August 15, 2024, at 6:00 p.m.** at 112 Skyline Drive, Morristown, NJ 07960.

The following members of the Board of Education were present: **Mrs. Katie Cole, Mrs. Meredith Davidson, Ms. Lucia Galdi, Mr. Cary Lloyd, Ms. Linda K. Murphy, Mrs. Susan Pedalino, Dr. Vivian Rodriguez, Mr. Alan Smith, Mrs. Melissa Spiotta and Mrs. Beth Wall.**

The following Resolution was offered by **Mrs. Davidson,** seconded by **Mrs. Spiotta** and adopted by the Board of Education by the following roll call vote:

Roll Call:

AYES:	Ms. Galdi, Mr. Lloyd, Ms. Murphy, Mrs. Pedalino, Dr. Rodriguez, Mr. Smith, Mrs. Spiotta, Mrs. Wall, Mrs. Davidson, Mrs. Cole
NOES:	None
ABSTAIN:	None
ABSENT:	None

POLICY

STIPULATION OF SETTLEMENT

Motion #1 that, upon the recommendation of the Superintendent, the Board of Education approve a Stipulation of Settlement resolving a dispute pertaining to student #703641 which is on file in the office of the Business Administrator.

STATE OF NEW JERSEY)
)ss
COUNTY OF MORRIS)

I, Anthony Lo Franco, Business Administrator/Board Secretary of Morris School District, in the County of Morris, State of New Jersey, hereby certify that the foregoing Extract from the Minutes of the Meeting of the Board of Education of said district, duly called and held on **Thursday, August 15, 2024** compared by me with the original Minutes as officially recorded in my office in the Minute Book of said Morris School District Board of Education, and is a true complete copy thereof and of the whole of said original Minutes so far as the same relate to the subject matter referred to in said Extract.

In witness, I have hereunto set my hand and affixed the corporate seal of said Board of Education this **20th day of August, 2024.**

(Seal)

Business Administrator/Board Secretary

SETTLEMENT AGREEMENT

This settlement agreement ("Agreement") made by and between

Morris School District Board of Education ("Board")

AND

Ms. S.W. o/b/o A.A.,

WHEREAS, the Board is duly organized as a public school district under the laws of the State of New Jersey; and

WHEREAS, the Board determined that A.A. is no longer entitled to a free education within the District pursuant to *N.J.S.A.* 18A:38-1 *et seq.*; and

WHEREAS, Ms. W. appealed to the Commissioner of Education to overrule the Board's residency decision, and the District intends to seek an award of tuition from Ms. W. for January 1, 2024 through the last date of A.A.'s attendance in a District school in that pending proceeding; and

WHEREAS, in order to avoid the time and expense of further litigation of this matter before the Commissioner of Education, the Parties agreed to enter into a settlement agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the Board and Ms. W. (collectively "Parties" and each individually a "Party") desire to enter into the within Agreement as follows:

1. **2023-2024 School Year:** A. A. shall be permitted to remain in the District for the remainder of the 2023-2024 school year.

2. **Tuition Abeyance:** Conditioned upon the fulfilment of the terms of this Agreement, the Board agrees not to seek an award of tuition for A.A. for attending school in the District as a non-resident student, from January 1, 2024 through June 30, 2024 school year.

3. **2024-2025 School Year:** Following the completion of the 2023-2024 school year, the Parties agree that A.A. shall be removed from the District's enrollment and enrolled in the school district where the student then resides. Ms. W. shall provide the District with proof of enrollment in the resident district. The Parties further agree and acknowledge that the Board shall have no further financial obligation toward A.A.'s education, and Ms. W. shall not attempt to re-enroll A.A. in the District unless and until such time as Ms. W. and A.A. become full-time residents within the Morris School District.

4. **Withdrawal and Release.** In exchange for the consideration set forth herein, including, but not limited to the Board permitting A.A. to complete the 2023-2024 school year and holding its collection of tuition for A.A.'s attendance from January 1, 2024 through June 30, 2024, in abeyance subject to the terms of this Agreement, Ms. W. agrees to withdraw her appeal to the Commissioner of Education (OAL Docket NO. EDU 566-2024), and releases and gives up any and all claims and rights she may have against the Board for any damages or injuries to A.A. in connection with A.A.'s education, including any claim for compensatory education, compensatory damages, punitive damages, or any damages or injuries to A.A., arising out of alleged acts or omissions, whether known or unknown, that have taken place through the date of this Agreement.

5. **Agreement Not to Sue.** Ms. W. agrees not to file any lawsuit or claim against the Board, based on any events, whether known or unknown, occurring prior to the date of the execution of this Agreement, in any court or tribunal of the United States, New Jersey or any other state, city, county, or locality, for any claims released in this Agreement.

6. **Confidentiality.** Ms. W. specifically acknowledges and agrees that this Agreement was reached without any admission by the Board of any of the acts or omissions alleged or those that could have been alleged. Ms. W. agrees that they will keep the terms of this Agreement confidential, to the extent permitted by law. Ms. W. acknowledges that this confidentiality requirement is a material term to this Agreement.

7. **Board Remedy for Breach of Agreement.** The Parties acknowledge that under the terms of this Agreement, the Board has agreed to hold its demand and collection efforts for tuition payment in abeyance for the period A.A. attended a district school as a non-resident from January 1, 2024 through present. In the event Ms. W. does not abide by the terms of this Agreement and enrolls A.A. as a student in the 2024-2025 school year, and A.A. is subsequently found to be a non-resident of the District, as defined in this Agreement, the District will not be bound by this term, and specifically preserves its right to demand and seek collection remedies for all tuition owed for the 2023-2024 and 2024-2025 periods in which A.A. attended a District school as a non-resident.

8. **No Precedent.** The Parties agree that this Agreement may not be used to establish precedent in any future proceeding of any type whatsoever involving the Board and that it shall be inadmissible in any such proceeding, other than a proceeding to enforce or prove the existence of same.

9. **Entire Agreement.** This Agreement contains the sole and the entire agreement between Ms. W. and the Board, and fully supersedes any and all prior agreements and understandings between Ms. W. and the Board pertaining to the subject matter of this Agreement. Ms. W. represents and acknowledges that she has not relied upon any representation or statement

by the Board, or its counsel or representatives, with regard to the subject matter of this Agreement, which is not set forth in this Agreement.

10. **Counterparts.** This Agreement may be executed in any number of counterparts, which, taken together, shall constitute but one instrument. It is not necessary that all parties sign all or any one of the counterparts, but each party must sign at least one counterpart for the Agreement to be effective.

11. **Board Approval.** This Agreement is subject to Board approval before taking effect.

BY SIGNING THIS AGREEMENT MS. W. STATES THAT:

A. SHE HAS READ IT;

B. SHE AGREES WITH EVERYTHING IN IT;

C. SHE HAS BEEN ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTING THIS AGREEMENT AND HAD AN OPPORTUNITY TO DO SO;

D. SHE HAS SIGNED THIS AGREEMENT KNOWINGLY AND VOLUNTARILY.

Ms. W.

Dated: 6/25/25

Morris School
District Board of Education

By: Katie Cole, Board President

Anthony LoFranco
Business Administrator/Board Secretary

Dated: 8/15/24

EXTRACT FROM THE MINUTES OF A MEETING OF THE BOARD OF EDUCATION OF MORRIS SCHOOL DISTRICT, MORRIS COUNTY, NEW JERSEY, AS RECORDED IN THE OFFICIAL MINUTE BOOK.

The Board of Education of Morris School District, in the County of Morris, New Jersey, convened in Regular Session on **Thursday, August 15, 2024, at 6:00 p.m.** at 112 Skyline Drive, Morristown, NJ 07960.

The following members of the Board of Education were present: **Mrs. Katie Cole, Mrs. Meredith Davidson, Ms. Lucia Galdi, Mr. Cary Lloyd, Ms. Linda K. Murphy, Mrs. Susan Pedalino, Dr. Vivian Rodriguez, Mr. Alan Smith, Mrs. Melissa Spiotta and Mrs. Beth Wall.**

The following Resolution was offered by **Mrs. Davidson,** seconded by **Mrs. Spiotta** and adopted by the Board of Education by the following roll call vote:

Roll Call:

AYES:	Ms. Galdi, Mr. Lloyd, Ms. Murphy, Mrs. Pedalino, Dr. Rodriguez, Mr. Smith, Mrs. Spiotta, Mrs. Wall, Mrs. Davidson, Mrs. Cole
NOES:	None
ABSTAIN:	None
ABSENT:	None

POLICY

STIPULATION OF SETTLEMENT

Motion #1 that, upon the recommendation of the Superintendent, the Board of Education approve a Stipulation of Settlement resolving a dispute pertaining to student #703641 which is on file in the office of the Business Administrator.

STATE OF NEW JERSEY)
)ss
COUNTY OF MORRIS)

I, **Anthony Lo Franco, Business Administrator/Board Secretary** of Morris School District, in the County of Morris, State of New Jersey, hereby certify that the foregoing Extract from the Minutes of the Meeting of the Board of Education of said district, duly called and held on **Thursday, August 15, 2024** compared by me with the original Minutes as officially recorded in my office in the Minute Book of said Morris School District Board of Education, and is a true complete copy thereof and of the whole of said original Minutes so far as the same relate to the subject matter referred to in said Extract.

In witness, I have hereunto set my hand and affixed the corporate seal of said Board of Education this **20th day of August, 2024.**

(Seal)

Business Administrator/Board Secretary

367-24E
OAL Dkt. No. EDU 12122-24
Agency Dkt. No. 268-8/24

New Jersey Commissioner of Education

Order on Emergent Relief

A.C., on behalf of minor child, D.C.,

Petitioner,

v.

Board of Education of the Town of Hammonton, Atlantic County,

Respondent.

The record of this emergent matter, the sound recording of the hearing held at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. This matter shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2024
Date of Mailing: October 9, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

EMERGENT RELIEF

OAL DKT. NO. EDU 12122-24

AGENCY DKT. NO. 268-8/24

A.C. ON BEHALF OF D.C.,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWN OF HAMMONTON,

Respondent.

A.C., petitioner, pro se

William S. Donio, Esq., for respondent (Cooper Levenson, P.A., attorneys)

BEFORE, **GAURI SHIRALI SHAH**, ALJ:

STATEMENT OF THE CASE

Petitioner D.C.'s transfers between Hammonton High School and Williamstown High School on two occasions resulted in a thirty-day penalty on playing football under New Jersey State Interscholastic Athletic Association (NJSIAA) rules which petitioner parent A.C. seeks to have lifted through this emergent application. Should the penalty be lifted? No. In order to obtain extraordinary settled legal emergent injunctive relief, a party must establish the following criteria: that petitioner suffered irreparable harm, the legal

right underlying the claim is settled, there is a likelihood of success on the merits, and in weighing the equities of the parties and balancing their interests, the moving party will suffer greater harm. N.J.A.C. 6A:3-1.6(b); See Crowe v. De Gioia, 90 N.J. 126, 132–35 (1982).

PROCEDURAL HISTORY

On July 18, 2024, respondent Hammonton Board of Education (the Board) upheld Hammonton High School's finding that D.C.'s harassment, intimidation and bullying (HIB) complaint was unfounded.[1] On August 21, 2024, petitioner parent A.C. filed an appeal challenging the Board's decision with the Department of Education, Controversies and Disputes Division (DOE). The DOE acknowledged receipt of the appeal on August 28, 2024.

On August 30, 2024, A.C. filed an emergent appeal with the DOE seeking to have a thirty-day NJSIAA transfer penalty on football participation imposed on D.C. lifted so he could play football at Williamstown High School. The DOE acknowledged receipt of the emergent application on August 30, 2024, and the matter was transmitted to the Office of Administrative Law (OAL) where it was received on September 3, 2024 as a contested emergent case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

I heard oral argument from the parties on September 10, 2024.

FINDINGS OF FACT

Based on the documents the parties submitted and support of and in opposition to the application for emergent relief, **I FIND** the following as **FACT**:

Petitioner, A.C., is the father of D.C, a high school senior currently attending Williamstown High School. D.C. spent his freshman and sophomore years at

[1] D.C.'s proper name is also A.C. and D.C. is the common shortened iteration. For purposes of efficiency and clarity, he is identified by D.C. as identified in the filing of this emergent application and the underlying appeal.

Williamstown High School where he participated in baseball and football during those school years. D.C. transferred to Hammonton High School in the summer of 2023, and played football there in the fall of his junior year. A.C. lives in the Monroe school district which includes Williamstown High School. In June 2023, D.C. and his mother, L.C., filed documents to establish their domicile in Waterford Township (Waterford). Waterford has a send-receive agreement with the Board, which allows students domiciled in Waterford to attend HHS.

In September 2023, an anonymous letter was received by Hammonton alleging that D.C. did not reside in Waterford but in Williamstown.

At some point prior to January 2024, Waterford conducted an investigation and sent a January 12, 2024 letter of Initial Determination of Eligibility for D.C. to attend school in the district to A.C. The January 12, 2024 letter concluded that D.C. was not domiciled in Waterford, but Williamstown and thus not eligible to attend school in the Waterford's district, meaning Hammonton High School. The January 12, 2024 letter advised that a hearing in the matter was scheduled on February 21, 2024, invited A.C. to attend, and notified him of his appeal rights of their finding.

During November 2023, a "hate page" consisting of a Snapchat story that was subsequently deleted was posted by an Hammonton High School student who D.C. had previously been dating. A.C. discovered that the student's mother also was a teacher at the same high school.

In December 2023, D.C. was advised by the baseball coach, Greg Silvesti (Coach Silvestri) that he would not be attending a Florida baseball training trip (the Florida trip) with other members of the team. Unlike the other team members, D.C. had not fundraised for the trip in the prior year.

On January 22, 2024, A.C. met with the Hammonton High School Athletic Director Chis Sacco and Coach Silvestri to discuss the Florida trip. A.C.'s request to pay in full for the trip was denied. Superintendent Thomas Ramsay (Superintendent Ramsay) also attended part of the meeting. A.C. advised that D.C. was being intimidated by letters

suggesting he did not live in Waterford and informed them about the residency issue with Waterford. A.C. could fight the residency with Waterford or return to Williamstown.

The NJSIAA policy requires that if two school transfers occur, under certain timelines, the student is assessed a penalty from playing in a sport for thirty days.

On January 30, 2024, D.C. filed a HIB complaint. On February 2, 2024, before the resolution of the HIB issue, A.C. transferred D.C. to Williamstown High School. Due to the timing of the transfer and the fact that D.C. had not played baseball for Hammonton High School before the transfer, D.C. was able to participate in baseball at Williamstown High School without penalty. However, the transfer penalty did apply to football. Notably, it was Williamstown High School that applied the NJSIAA penalty.

The Board conducted an investigation of the HIB complaint and concluded the complaint was unfounded. A.C. has appealed that finding with the DOE. However, A.C. now seeks to have the thirty-day penalty prohibiting D.C. from playing football lifted through this emergent application.

CONCLUSIONS OF LAW

A.C. seeks to lift the NJSIAA thirty-day penalty Williamstown WHS imposed on D.C. Under Crowe v. De Gioia, 90 N.J. 126, 132–35 (1982), and N.J.A.C. 1:6A-12.1(e), emergency relief may be granted if the moving party meets a four part test and establishes that: it will suffer irreparable harm if the relief is not granted; that the legal right underlying the party's claim is settled; there is a likelihood of success on the merits, and in weighing the equities of the parties, the moving party will suffer greater harm. The moving party must satisfy all four prongs of this standard to establish an entitlement to emergent injunctive relief. See also N.J.A.C. 6A:3-1.6(b). Here, A.C. seeks to lift the thirty-day transfer penalty imposed on D.C. from playing football at Williamstown High School.

In this case, A.C. argues that D.C. will suffer irreparable harm because D.C. will miss potential football scholarship opportunities if he misses four of the season's nine games due to the penalty. However, A.C. has not set forth any evidence to support that

claim. Notably, D.C. has played football for three out of his four high school years and would be eligible to continue playing after the thirty-day penalty expires. Thus, **I CONCLUDE** that A.C. has not established irreparable harm.

A.C. also has not established that the relief sought, the removal of the penalty, is a well settled legal right or that there is a likelihood of prevailing on the merits. Specifically, the penalty is required by NJSIAA rules and imposed by Williamstown High School, not by Hammonton High School or by respondent Board. The penalty only impacts current athletic participation at Williamstown High School. Thus, it is not a penalty that the Board has the ability to remove. Moreover, even if the Board's HIB finding below was found to be incorrect in the underlying appeal, it would not support a removal of the penalty on D.C. under the HIB transfer exception. This is because for that exception to apply, the Board would have needed to transfer D.C. to an alternate out-of-district or other school based on their substantiated HIB findings. In this instance, A.C. transferred D.C. to Williamstown of his own accord, before the HIB was resolved by the Board, and by his own admission, so D.C. could participate in baseball. **I CONCLUDE** that A.C. has not met his burden of establishing the required elements to support the grant of emergent relief and that the thirty-day penalty shall not be lifted.

Based upon the foregoing, I **CONCLUDE** that the petitioner has failed to meet all of the requirements set forth in N.J.A.C. 6A:3-1.6(b) warranting an order for emergent relief in this matter. However, further issues remain upon the resolution of this emergent matter relative to the underlying HIB appeal filed with DOE.

ORDER

For the reasons stated above, I **ORDER** that petitioner's application for emergent relief is **DENIED** and the thirty-day penalty on participation in football shall remain.

This order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If Commissioner of the Department of Education does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

September 11, 2024
DATE

GAURI SHIRALI SHAH, ALJ

GSS/nn
c: Clerk-T

APPENDIX

EXHIBITS

For Petitioner

None

For Respondent

Exhibit A	January 12, 2024 letter to A.C. from Waterford School District
Exhibit B	Student Transfer Card of D.C. dated February 1, 2024
Exhibit C	HIB complaint, investigation and March 15, 2024 letter of unfounded HIB
Exhibit D	BOE letter upholding finding of that HIB complaint was unfounded
Exhibit E	NJSIAA Guidelines, Polices and Procedures
Exhibit F	NJSIAA Transfer Policy
Exhibit G	Documents submitted in June 2023 to Waterford Township in support of petitioner's domicile in school district and letter from Waterford to Hammonton Superintendent advising of domicile

368-24

New Jersey Commissioner of Education

Final Decision

D.F., on behalf of minor children, I.F. and D.F.,

Petitioner,

v.

Board of Education of the Borough of Roosevelt, Monmouth County,

Respondent.

Synopsis

Pro se petitioner filed a petition of appeal and a motion for emergent relief seeking an out-of-district placement for her two minor children for alleged violations of the respondent Board's harassment, intimidation, and bullying (HIB) policy after the Board's anti-bullying specialists determined that the student conduct petitioner reported in her complaint did not constitute HIB under New Jersey's Anti-Bullying Bill of Rights Act, *N.J.S.A.* 18A:37-14. Petitioner contended that the Roosevelt public school was not a safe environment for I.F. and D.F. because of the HIB that petitioner asserts was inflicted upon them during their time at the school; she therefore sought an out-of-district placement for the children to have them educated in either the Millstone Township Elementary School or an East Windsor Regional School District elementary school.

The ALJ found, *inter alia*, that: in this case, petitioner failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6; petitioner did not show a likelihood of obtaining the relief she sought, namely an out-of-district placement for I.F. and D.F., as neither the HIB statute nor case law authorizes an out-of-district placement as a form of relief for a HIB violation. The ALJ concluded that petitioner's request for emergent relief does not satisfy the applicable requirements; further, the parties agreed that there are no remaining issues to be determined. Accordingly, the ALJ denied petitioner's application for emergent relief.

Upon review, the Commissioner adopted the ALJ's recommended Order denying petitioner's application for emergent relief for the reasons stated therein. As the parties represented to the ALJ that there are no remaining issues to be resolved, the Commissioner dismissed the petition of appeal. In so doing, the Commissioner noted that if petitioner wishes to pursue an appeal of the Board's HIB determinations, she may file a separate petition of appeal as that issue is outside of the scope of the within petition.

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.

368-24
OAL Dkt. No. EDU 11981-24
Agency Dkt. No. 276-8/24

New Jersey Commissioner of Education

Final Decision

D.F., on behalf of minor children, D.F. and I.F.,

Petitioner,

v.

Board of Education of the Borough of Roosevelt, Monmouth County,

Respondent.

The record of this emergent matter, the sound recording of the hearing at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. As the parties represented to the ALJ that no issues remain to be resolved,[1] the petition of appeal is hereby dismissed.

[1] Petitioner indicated during oral argument that she is seeking reversal of the Roosevelt Board of Education's (Board) harassment, intimidation, and bullying (HIB) determinations. However, that issue is outside the scope of the petition filed in the matter, which is limited to petitioner's request for a transfer to an out-of-district placement for her children. To the extent that petitioner wishes to pursue an appeal of the Board's HIB determinations, she may file a separate petition of appeal. The Commissioner notes that any such petition will be subject to the filing timeline established by *N.J.A.C.* 6A:3-1.3(i), as well as any other applicable statutes or regulations.

IT IS SO ORDERED. [2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2024
Date of Mailing: October 9, 2024

[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

ORDER ON EMERGENT RELIEF
OAL DKT. NO. EDU 11981-24
AGENCY DKT. NO. 276-8/24

D.F. ON BEHALF OF
MINOR CHILDREN D.F. AND I.F.,
Petitioner,
v.
BOARD OF EDUCATION OF THE
BOROUGH OF ROOSEVELT,
MONMOUTH COUNTY,
Respondent.

D.F., on behalf of D.F. and I.F., petitioner, pro se

Bruce W. Padula, Esq. and **Janice Arellano,** Esq., for respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC, attorneys)

BEFORE **MAMTA PATEL,** ALJ:

STATEMENT OF THE CASE

Petitioner D.F. seeks an out-of-district placement for her two minor children for alleged violations of respondent Board of Education of the Borough of Roosevelt's harassment, intimidation, or bullying (HIB) policy. Even if there were HIB violations, are D.F.'s children entitled

to out-of-district placement? No. The Anti-Bullying Act does not authorize out-of-district placement for a HIB violation. See N.J.S.A. 18A:37-15(b)(7).

PROCEDURAL HISTORY

On August 22, 2024, the Board of Education of the Borough of Roosevelt (Board) denied D.F.'s request for out-of-district placement for D.F.'s two minor children, D.F. (her son) and I.F. (her daughter), based on her allegations that the school was not safe for her children to attend. On August 26, 2024, D.F. filed a pro se petition of appeal and a motion for emergent relief with the Office of Controversies and Disputes of the New Jersey Department of Education (DOE). On August 28, 2024, without a response from the Board the petition of appeal and motion for emergent relief were transmitted to the Office of Administrative Law (OAL) under N.J.A.C. 6A:3-1.6(c)(3), where 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. On September 3, 2024, the DOE emailed its response to D.F.'s request for emergent relief. The appeal and motion for emergent relief were heard via Zoom Communications, Inc., on September 4, 2024, and I closed the record.

FINDINGS OF FACT

Based on the testimony the parties submitted and my assessment of its credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following as **FACT**:

The Roosevelt Public School (the school) is a pre-kindergarten through fifth-grade school district. The class sizes are small, and the student-to-teacher ratio is approximately 12:1. D.F.'s son, D.F., and daughter, I.F., have attended the school since September 1, 2020. Both children identify as biracial, specifically African American and Caucasian. In the 2023–2024 school year, her son was in the third grade, and her daughter was in the second grade.

I.F. was the only African American student in her class during the 2023–2024 school year and has texturally different hair. In December 2022, D.F. sent several emails to Dr.

Karen Barry, superintendent of the Roosevelt Public School, who at the time was also the anti-bullying coordinator, complaining that students were inappropriately touching I.F.'s hair. In December 2023, with the assistance of Barry, D.F. filed six HIB complaints on behalf of her daughter, I.F., regarding incidents between November 2022 and December 2022. Five of the six HIB complaints involved students engaging in various forms of touching I.F.'s hair without her consent. The sixth complaint involved a student allegedly telling I.F. that "real people don't look like that" about an image of a person I.F. colored red.

The six HIB complaints were assigned to anti-bullying specialists Scot Gershman and Donna Gazzani for investigation. Gershman and Gazzani are also teachers at the school; Gazzani was I.F.'s second-grade teacher. All teachers at the school receive annual "anti-bullying" training. On January 27, 2023, the school sent D.F. six letters notifying her of the outcome of each HIB complaint. D.F. was advised that the investigations "did not find evidence of HIB." Although the allegations were unfounded, several students apologized to her daughter, and one student was required to sit in Barry's office for fifteen minutes at the end of the day. D.F. believes that touching her daughter's hair without her permission is a form of discrimination under the "Crown Act."[1]

None of the complained-about conduct resulted in the filing of formal charges by law-enforcement officials for the commission of a violent crime, nor was any student sanctioned by the district board of education's code of student conduct, nor was there a pre-existence of a restraining order against any of the student(s).

D.F. also complained to Barry about other students' treatment of her son. Specifically, D.F. complained that other students mispronounced her son's name. In October 2023, one student allegedly told her son that he would "make him and his family disappear." On or about October 12, 2023, D.F. met with Gina Morrone, principal of the school, regarding the treatment of her children. Although D.F. believes that her son was mistreated because of his

[1] The act establishes that discrimination based on hair texture, type, or style constitutes unlawful race discrimination in New Jersey. The Crown Act amends the New Jersey Law Against Discrimination (NJLAD), which bars employers from discriminating against individuals based on race, among other protected categories. N.J. Stat. Ann. § 10:5-12(a).

race and disability, D.F. did not file any HIB complaints on his behalf. Following the meeting, on or about October 13, 2023, D.F. removed her children from school and homeschooled them for the remainder of the 2023–2024 school year.

On November 27, 2023, D.F. emailed Barry requesting an out-of-district placement for her children—either Millstone Township Elementary School or an East Windsor Regional School District elementary school. Barry advised that day that the school did not have the ability to transfer the children to either school.

On August 22, 2024, D.F. appeared before the Board Executive Committee and requested an out-of-district placement for her children. During the hearing, D.F. did not challenge the HIB findings but rather premised her request for out-of-district placement on the Unsafe School Choice Option. The Unsafe School Choice Option (section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001). See 20 U.S.C. § 7912. Specifically *Provision II, Victims of Violent Criminal Offenses.*

CONCLUSIONS OF LAW

When the subject matter of a controversy is action by a board of education, the petitioner may file "a separate motion for emergent relief . . . pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). Here, D.F. has initiated due-process proceedings to challenge the Board's denial of her request for out-of-district placement of her two children. Based on prior alleged HIB incidents, D.F. claims that the school is not safe for her children to attend. Although D.F. did not challenge the Board's HIB findings, even if the HIB rulings are overturned and affirmed by the DOE, the relief she requests—both on an emergent and permanent basis—may not be available under the HIB statute.

The standards for granting emergent relief are outlined in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6(b). The petitioner bears the burden of proving all four prongs of the Crowe test stated below:

1. Petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying the petitioner's claim is settled;

3. Petitioner has a likelihood of prevailing on the merits of the underlying claim; and

4. When the equities and the interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

D.F.'s emergent claim fails because she has not shown a likelihood of obtaining the relief she seeks, an out-of-district placement for I.F. and D.F. The HIB statute requires the school to adopt a policy that includes "consequences and appropriate remedial action for a person who commits an act of [HIB]." N.J.S.A. 18A:37-15(b)(4). The law states that if a HIB violation is found, the school should implement support and remedial measures, including the following:

> [T]he range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified, which shall be defined by the principal in conjunction with the school anti-bullying specialist, but shall include an appropriate combination of services that are available within the district such as counseling, support services, intervention services, and other programs, as defined by the commissioner. In the event that the necessary programs and services are not available within the district, the district may apply to the Department of Education for a grant from the "Bullying Prevention Fund" established pursuant to section 25 of

> P.L.2010, c.122 (C.18A:37-28) to support the provision of out-of-district programs and services[.]
>
> [N.J.S.A. 18A:37-15(b)(7).]

Neither the statute nor case law authorizes an out-of-district placement as a form of relief for a HIB violation.

Additionally, D.F.'s argument for out-of-district placement under the Unsafe School Choice Option provision (Title VIII, Part F, Subpart 2, SEC. 8532) under the federal Every Student Succeeds Act (ESSA) of 2015 is inapplicable because the ESSA does not authorize out-of-district placements either. It only authorizes placement in another school in the district when a student is a victim of a violent offense at school:

> [A] student . . . who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.
>
> [See 20 U.S.C. § 7912(a).]

The ESSA specifically indicates the following criteria to determine whether a student is a victim under the Act: A student is considered a victim of a violent criminal offense when:

- A referral has been made to law enforcement officials for suspicion that one of the violent criminal offenses enumerated below has occurred; and
- One or more of the following applies:
  - Law enforcement officials have filed formal charges against the offender(s) for commission of the violent crime; or
  - The offender(s) has received sanctions in accordance with the district board of education's code of student conduct; or

- The offender(s) either has not been identified or is not an enrolled student(s), but it is clear that the student (victim) has become a victim of a violent criminal offense based on objective indicators such as physical evidence, eyewitness testimony, and/or circumstantial evidence; or
- The pre-existence of a restraining order against the offender(s).

Parenthetically, there are no facts supporting the application of ESSA in this case. None of the alleged conduct was deemed violent or resulted in the filing of criminal charges by law enforcement. The alleged HIB conduct, i.e., inappropriate hair touching or comments by second and third-graders in this instance, does not meet the criteria stated above for D.F. and I.F. to be considered victims under ESSA.

The second consideration of the Crowe test is whether the legal right underlying D.F.'s claim is settled, N.J.A.C. 6A:3-1.6(b)(2). Here, as stated above, I **CONCLUDE** that D.F. does not meet the second prong of the emergent-relief standard.

Since D.F. cannot meet all four prongs of the Crowe standard, this Order will not address the other three prongs.

I **CONCLUDE** that D.F.'s request for emergent relief does not satisfy the applicable requirements.

I further **CONCLUDE** upon agreement by the parties that there are no remaining issues.

ORDER

For the reasons stated above, I hereby **ORDER** that petitioner D.F.'s application for emergent relief on behalf of D.F. and I.F. is hereby **DENIED**.

This Order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

September 6, 2024

DATE

MAMTA PATEL, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

MP/dw

APPENDIX

Witnesses

For petitioner

D.F., parent

For respondent

Dr. Karen Barry, Superintendent of the Roosevelt Board of Education

Exhibits

For petitioner

P-1 Pro Se Petition of Appeal and supporting statement, dated August 23, 2024; and Certification of Service, dated August 26, 2024

P-2 Emails between Dr. Karen Barry and D.F. regarding son, D.F., incidents, dated February 6, 2023; May 17, 2023; October 10, 2023

P-3 HIB Finding letter to D.F., dated January 27, 2023

For respondent

R-1 Opposition to Petition for Emergent Relief, and Certification of Dr. Karen Barry, Superintendent of the Borough of Roosevelt, dated September 3, 2024

R-2 Student Safety Data System Report Form 2022–2023, Incident 1, dated January 5, 2024

R-3 Student Safety Data System Report Form 2022–2023, Incident 2, dated January 5, 2024

R-4 Student Safety Data System Report Form 2022–2023, Incident 3, dated January 5, 2024

R-5 Student Safety Data System Report Form 2022–2023, Incident 4, dated January 5, 2024

R-6 Student Safety Data System Report Form 2022–2023, Incident 5, dated January 5, 2024

R-7 Student Safety Data System Report Form 2022–2023, Incident 6, dated January 5, 2024

R-8 Emails between Dr. Karen Barry re I.F. incidents (touching hair and foul language), dated November 14, 2022; December 7, 9, 13, 22, 2022

R-9 Letter from student to I.F.—apology

R-10 Millstone Township BOE Checklist re Investigation of HIB Reports

R-11 Investigation Notes re Hair Touching from Anti-Bullying Specialist

Joint Exhibits

J-1 Roosevelt Anti-Bullying Specialist Report Form from petitioner

J-2 Email from petitioner to Commissioner of Education regarding HIB, dated November 27, 2024

J-3 Response to petitioner from Dr. Barry, dated November 27, 2024

NEW JERSEY DEPARTMENT OF EDUCATION
OFFICE OF CONTROVERSIES AND DISPUTES

Agency Docket No.: 247-9/23
Ralph H. Colflesh, Jr., Esq.
Arbitrator

IN THE MATTER OF
TENURE CHARGES BY
THE SCHOOL DISTRICT
OF THE CITY OF TRENTON,
MERCER COUNTY,

Petitioner,

and

WILLIAM RUSSELL,

Respondent.

Appearances
For Petitioner School District:
James Rolle, Jr., Esq.
Trenton Board of Education
Trenton, New Jersey
For Respondent William Russell
Edward Cridge, Esq.
Melk Cridge LLC
Pennington, New Jersey

DECISION AND AWARD

Certified tenure charges having been filed by Petitioner, City of Trenton Board of Education, (sometimes herein "the Board") (P1), and Respondent, William Russell, having timely filed an Answer to those Charges, the undersigned arbitrator was appointed to determine the truth of the Charges, and, if some or all are found true, to determine whether or not Petitioner should be removed from his position or suffer some lesser penalty.

Following pre-hearing conference calls with counsel regarding procedural issues, hearings were conducted on February 9, 2024 at the Respondent's offices in Trenton, New Jersey, April 12, 2024 at the Jefferson Intermediate School, in Trenton, and May 20, 2023 at Respondent's offices in Trenton. At those times and places both parties had the opportunity to

call and confront witnesses, present all relevant and admissible non-testimonial evidence, and make arguments in support of their respective positions. At the conclusion of the last hearing the parties agreed to submit briefs following the preparation of transcripts. Those briefs have been submitted to the undersigned, and, there being no unresolved procedural or evidentiary disputes, this matter is ready for adjudication on its merits.

Background:

Respondent, Willam Russell, was employed by Petitioner as a tenured computer teacher and working at Jefferson Intermediate School on November 18, 2022. On that date, according to the school's Principal, Nadia Ramcharan, he grabbed a student identified herein as TM by both her arms and pushed her against a wall, leaving her distraught and crying. Further, according to Ms. Ramcharan, he further antagonized the student by following her and yelled at the class that he was "tired of the bullshit." (Tenure Charges at Paras 4-5, 8). That act, in addition to other alleged behavior[1], led Petitioner to file timely Tenure Charges on September 12, 2023 seeking Petitioner's removal from his employment.[2] Petitioner filed a timely answer, and the undersigned was appointed to arbitrate the matter under the TEACHNJ law.

Relevant Factual Assertions of Petitioner:

The Petitioner presented **Nadia Ramcharan**, the Principal of Jefferson Intermediate School at all times material herein. Ms. Ramcharan testified that Respondent was a computer teacher at the school in 2022, the first year the school opened. It was her further testimony, taken as background information and not in support of Petitioner' position herein, that Respondent did

[1] Allegations involving that other behavior cited in the Charges were excluded from the hearing on evidentiary grounds. Petitioner answered Respondent's Interrogatory asking Petitioner to "identify and set forth with specificity" "each and every act or omission" which Petitioner alleged constituted conduct unbecoming a teaching staff member. Petitioner responded by exclusively identifying the event of November 18, 2022. See, Tr. 24-27; RX 2, p. 4. Therefore, this case turns only on Petitioner's alleged conduct of November 18, 2022.

[2] Respondent has been on administrative leave since in or around the month of November 2022. The hearing in this matter was delayed for settlement discussions as well as a successful motion by Respondent for an *in camera* inspection of student statements and records relevant to the November 18, 2022 incident. Those statements, collected by Petitioner shortly after the incident and provided to the State's Department of Children and Families, were otherwise protected from discovery under New Jersey law.

not comply with several administrative requirements in the fall of that year and that he "struggled with classroom—with the students a lot." (Tr. 23).

Turning to the allegations deemed relevant to this matter, Ms. Ramcharan related that she was conducting a "walkthrough" of the building on November 18. She related that she observed Respondent through a window in the door of his classroom standing in front of a student—later identified as TM—whose back was against a wall, while manhandling her with both hands. (Tr. 29; 2 Tr. 17, 18-20, 22-24, 25-26, 31-32, 3941). Ms. Ramcharan recalled "a raucous going on" in the classroom and said that as she approached the door of the room Respondent and TM were making their way outside. (Tr. 123; 2Tr. 29-29). TM was crying hysterically at the time and asserted Respondent was roughly handling her (Tr. 29) although on cross-examination Ms. Ramcharan conceded she did not see Respondent push TM out the door. Ms. Ramcharan then said that Respondent told her he had asked TM to leave the classroom because of her behavior and to go to another room but that she was not listening and refused to do as he said. (*Id.*). Ms. Ramcharan explained it was a practice at the school for teachers to send pupils with whom they were having problems to a "buddy teacher" in order to de-escalate the situation. (Tr. 29-30). When Ms. Ramcharan asked TM to get her "stuff" and go to Ms. Ramcharan's office, she noticed TM had no shoes on (2Tr. 30) and that Respondent continued to, in Ms. Ramcharan's words, "antagonize [TM]." (Tr. 30). Ater closing the door of Respondent' classroom, Ms. Ramcharan heard him say "I'm tired of this bullshit" and then begin to interact with another student, whereupon Ms. Ramcharan asked him to leave the classroom, go to her office and contact his union representative. (Tr. 31). She said she then took TM to the school nurse because she complained of pain in her arms.(*Id.*). Upon meeting with Respondent and his union representative, Ms. Ramcharan stated, Respondent told her he was "going through some stuff," and she told him to leave the building and that Human Resources would contact him. (Tr. 32). She said that later the same day she filed a report with the appropriate state agency on institutional abuse. (Tr. 33). Subsequently, Ms. Ramcharan explained, she had students in the classroom at the time write accounts of the incident in the presence of a staff member. (Tr. 34-35, 76).

Ms. Ramcharan also introduced the District's Board Policy 3281 which addresses staff misconduct (PX 6; Tr. 36-37) and requires staff to protect the health safety, and welfare of students within the district. She opined that Respondent had not followed that policy. Similarly,

she introduced Board Policy 3211 regarding staff ethics (PX 7) which requires staff to treat students with dignity. (Tr. 38). She expressed her belief that Respondent had violated it, as well as another Board policy, 3217 (PX 8) which prohibits use of physical force upon a student except in special situations such as to quell a disturbance or seize weapons. (Tr. 38-39, 42-43). In Ms. Ramcharan's opinion, Respondent was doing none of those things. (Tr. 43-44, 45). In addition, Ms. Ramcharan introduced a memorandum (PX 5) relating to a meeting in May 2022 in which Respondent was counseled about an incident at another school and the Petitioner's restrictions on staff making physical contact with students. (Tr. 46-48).[3]

Ms. Ramcharan said she had received some training in investigating staff conduct (Tr. 56-58). As to November 18, 2022, she said she was familiar with the building, having worked there since August 2022, and knew the location of Respondent's classroom. (Tr. 60-61). She also prepared a sketch of the area outside the classroom and her approach to it as she was walking through on November 18, 2022. (Tr. 63). She explained that she both heard and saw the commotion in Respondent's classroom around the same time and testified to the positions of TM and Respondent when she first spotted them through the window in the classroom door—which opens outward into the hallway (Tr. 70) at a distance of 3-5 feet. (Tr. 64-66, 72).[4] As to the number of students present at the time of the incident, Ms. Ramcharan said she did not know. (Tr. 80, 81). Nor was she sure of the staff member who collected student statements that day (Tr. 86-87) and conceded she did not know what instructions students present in the classroom were given other than they were told to write what happened. (NT 88). Nor did she know whether the students collaborated on their statement. (*Id.*). Despite having collected only seven statements, Ms. Ramcharan recalled there being 10-12 students in the room—more students than the number of statements that were collected. (2TR 46-47). Further, Ms. Ramcharan said she thought there were no cameras in the hallway outside in a position to record events in Respondent's classroom that day. (Tr. 91, 94, 95, 96). However, on cross-examination, Ms. Ramcharan said cameras could record TM leaving Respondent's classroom (2Tr. 37) but she had not taken steps to preserve that footage. (2Tr. 38).

[3] In accordance with the ruling above on the scope of evidence relevant to this case, that information was admitted solely to provide evidence Respondent was on notice to comply with Petitioner's policies.
[4] On re-direct examination, Ms. Ramcharan estimated the distance to be about ten feet. (Tr. 121).

Turning to her own response to the incident, Ms. Ramcharan said she had made notes (R 27, 2 Tr. 14, 43; 2 Tr. 57) but did not give those notes to anyone. (2Tr. 9-10).

Ms. Ramcharan agreed with Respondent's counsel there are times a student can be removed from a classroom, including occasions when a student is disruptive, not listening, or destroying property. (Tr. 98-99. If such a student refuses to leave the classroom, she said, a teacher can call the office or school security can remove the student. (Tr. 99-100). Although Ms. Ramcharan said she had never seen a situation where a security officer had to deal with a pupil who would not voluntarily leave a classroom, she opined that officers could get physically involved in breaking up a fight and that "it may have happened" in the District that a school security officer took hold of a student and forced the student from a classroom. (Tr. 103). On November 18, 2022, she recalled, there were three or four contracted security officers at Jefferson. (Tr. 104).

Ms. Ramcharan further stated there were occasions when she herself had "held a student's" hand" while walking him/her out of a classroom but said such an act would be to calm the student (Tr. 109) and conceded such a student may not have wanted handholding. (Tr. 111). Further, she conceded there may have been times when she put a hand on a student's shoulder when the student did not want her to. (Tr. 111-112, 114).

Turning to her report of the November 18, 2022 incident (RX 26), Ms. Ramcharan concurred that it omitted the use of profanity by the Respondent to which her earlier testimony referred. She credited that omission to the fact that the profanity was uttered after TM had left the classroom. (Tr. 119). As for the written student statements she had prompted (RX 25), Ms. Ramcharan testified that one female student who was returning from the bathroom when the incident occurred wrote she did not see anything between Respondent and TM. (Tr. 134-135); a second student wrote nothing about Respondent touching TM (Tr. 135); a third stated Respondent "kicked" TM from the classroom but said nothing about actual physical contact (Tr. 136); a fourth said Respondent grabbed TM's arm but not her shoulder nor did it mention profanity (Tr. 137); a fifth said Respondent used his body (rather than his hands) to push TM (Tr. 137); and, a sixth reported that Respondent pushed MT rather than grabbed her. Tr. 138).

Ms. Ramcharan conceded that none of the statement mentions a wall against which she had testified Respondent had pushed TM. Ms. Ramcharan further agreed she had no statement from MT herself and did not remember if she received one from her. (Tr.139-140). However,

Ms. Ramcharan said that the student statements corroborated elements of her testimony about seeing Respondent removing MT from the classroom, MT crying, MT being "manhandled" by Respondent (Tr. 145), and Respondent physically forcing MT from the classroom.

Also testifying for Petitioner was **Cheryl Tolor**, the District's Executive Director of Human Resources ("HR"). Ms. Tolor recalled first dealing with Respondent in the fall of 2022 when Ms. Ramcharan called her about the November 18, 2022 incident. According to Ms. Tolor, Ms. Ramcharan explained the incident and asked her to gather student statements. (Tr. 165-166, 203). Ms. Tolor further said she met with Respondent and his union representative sometime after November 18, 2022 but did not know exactly when. At that meeting, she recollected, she gave Respondent an opportunity to explain his version of what had happened, but he did not. (Tr. 170). Ms. Tolor said she did what she called a "secondary investigation" (Tr.172-173) which resulted in a March 27, 2023 report she authored for the Board's Superintendent. (PX 3). The report was admitted although, given the undersigned's ruling that specific references to incidents other than that of November 18, 2022 are not admitted, references to those other allegations are not being considered. (Tr. 176).

Ms. Tolor's recommendations to the Superintendent in that report included a recommendation for tenure charges "in alignment with" Board Policy 3217 (PX 8) as well as letter of reprimand from Ms. Ramcharan for violation of Board Policy 3281 (PX 6) which prohibits inappropriate comments to pupils or about pupils and Board Policy 3211 (PX 7) which prohibits "usage of corporal punishment." (PX 3, p. 5).

Recalled for further testimony at the May 20, 2024 hearing, Ms. Tolor testified that she had examined Board Policy 3217 which prohibits physical contact with students except in special circumstances which Ms. Tolar said were not present in this case.[5] (3Tr. 46-49). She further testified that she believed Respondent also violated Board Policy 3281 which prohibits staff from, *inter alia,* using "inappropriate language or comments." (PX 3Tr. 50-51).

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[5] Policy 3217—Use of Corporal Punishment—states in pertinent part :The board of Education cannot condone an employee's resort to force or fear in the treatment of pupils, even those pupils whose conduct appear to be open defiance of authority. Each pupil is protected by law from bodily harm and from offensive bodily touching. Teaching staff members shall not use physical force or the threat of physical force to maintain discipline or compel obedience except as permitted by law....A teaching staff member who: uses force or fear to discipline a pupil except as such force or fear may be necessary to quell a disturbance threatening physical injury to others...[or] touched a pupil in an offensive way...will be subject to discipline by the Board and may be dismissed."(PX 8).

On cross-examination, Ms. Tolor testified that she held a teaching certificate in Legal Studies" and was a classroom teacher of college subjects in various high schools as part of a special program run through Essex County College. (Tr. 189-190) She also said she holds a certificate of eligibility for New Jersey public school superintendent certification. (Tr. 190-191). As to her report on the November 18, 2022 matter, she testified it was finalized on March 27, 2023 (Tr. 191, 195) after her meeting with Ms. Ramcharan on December 5, 2022. That memo does not refer to her meeting with Respondent, referenced above, which Ms. Tolor said occurred around November 18, 2022. (Tr. 193, 194). As to that meeting with Respondent, Ms. Tolor testified again that he chose not to make a statement to her, a refusal Ms. Tolor said did not influence her conviction that he had violated Board policies. (Tr. 199-201). When asked if she knew how many students were present in Respondent's class when the incident with TM occurred, Ms. Tolor said she did not know but that she received a total of seven student accounts from Ms. Ramcharan. (NT 205). She also said she did not recall whether or not she got a statement from TM. (Tr. 205) and said she had not spoken to any of the students. (Tr. 212). Ms. Tolar also denied recalling whether findings of the State's Institutional Abuse Investigative Unit ("IAIU") regarding this matter played a role in her March 27, 2023 report.

Further, at the May 20, 2024 hearing, Ms. Tolar testified to effective teaching ratings given to Respondent in the past (3Tr. 56) and acknowledged that none of the student statements taken about the November 18, 2022 incident mentioned Respondent's use of bad language which Board Policy prohibits. Further, like Ms. Ramcharan, Ms. Tolar agreed there are circumstances under which a security officer could forcibly remove students from a classroom (3Tr. 68-69) and further agreed a teacher could physically remove a student from a classroom. (*Id.*). However, she testified that Board Policy does not permit a teacher to use physical force against a pupil who is even extremely disruptive but conceded that a security officer could. (3Tr. 71-71 74-75).

Two student witnesses also testified on behalf of Petitioner and are identified herein as "**AH**" and "**MM**."

The first, **AH**, testified that she was a student at Jefferson Intermediate School and had Respondent as a teacher and TM as a classmate in Respondent's class. (3Tr. 7). She characterized Respondent as a "very kind and friendly and welcoming" teacher and said she had no recollection of him having "bad interactions with any students." (3Tr. 8). However, she

recalled the incident in question here. According to her testimony (3Tr. 8-9), TM was "dancing and playing around" near the door of the room when Respondent asked her and others to sit down. When TM refused, AH stated, Respondent directed her to sit down, an order that she also refused. At that point, AH recalled, Respondent told her to leave the classroom, which she also declined to do. Respondent then "grabbed her hand and tried to lead her out the class, but she pulled against him...[and] they kept pulling back and forth" until Respondent dragged her out of the class causing TM to hold herself against the door so she could not be pulled further. At that time, AH said, Respondent grabbed TM and, AH thought, TM hurt her wrist. From AH's perspective, when Ms. Ramcharan appeared the Principal at first saw but then could not see what was happening because Respondent was standing in the doorway. (3Tr. 10-11, 20-21Meanwhile, AH recalled, TM had gotten loose and was "roaming the hallways" because she was upset. (3Tr. 23-24). Later, AH said, pupils were given paper to write down what happened. (3Tr. 10-11). AH then authenticated a writing she said was her statement of the matter given on November 18, 2022 (3Tr. 13-14) which was admitted as "BX 9"[6].

AH described TM as an associate but not a friend and said she had not spoken to TM about Respondent. (3Tr. 17-18). She estimated that Respondent had asked TM to take a seat about five to six times and that each time TM either ignored him or said "no." (3Tr. 18-19). Similarly, AH recalled, TM refused when Respondent asked her to leave the room, and he put his hand around her waist and started pulling her out. (3Tr. 19, 21-22).

MM testified that Respondent asked TM to either sit down or leave the room, but TM "wasn't paying him no mind." (3Tr. 27-28, 35). MM said that Respondent walked over to where TM was standing and told her to sit down or get out, and she ignored him again at which time "he put her to the wall." (3Tr. 28). In doing so, MM recalled, Respondent used both his hands and seemed to grab TM by the shoulders, and, although he did not push her to the wall, he "pinned" her there. (3Tr. 29-30, 37). MM also gave a written statement of the incident which was admitted as "B-10".[7] (3Tr. 31-32).

[6] This exhibit, referred to in the transcript as "BX9," is actually PX 9.
[7] As with "BX9", this exhibit is actually PX 10.

Relevant Factual Contentions of Respondent:

Respondent, **William Russell**, only offered testimony from himself. He stated he had taught in the District for about 24 years (3Tr. 78) and that his evaluations for school years going ack to 2002-2003 were all satisfactory. (3Tr. 81-82; RX 5-R 17).[8] Mr. Russell, describing himself as a trained "technology teacher" (3Tr. 106-107), explained that on November 18, 2022 he was teaching TM's class coding through the use of keyboards. (3Tr. 85-86). He said that on that day he was distributing candy to the class as a treat, something he said he had done in the District for 20 years. (3Tr. 87). TM, according to Mr. Russell, began dancing until he told her to stop and take her seat three or four times to no avail. (3Tr. 88). Mr. Russell said he then told her more loudly and said if she did not obey she would have to go to the class across the hallway where there was a music teacher who was his "buddy teacher, *i.e.*, a fellow staff member who would take referred students who needed settling. (3Tr. 88-90; 117-119). Mr. Russell said TM still refused (3Tr. 114) and began screaming at him loudly, which quickly escalated the situation. (3Tr. 90). He said he then stood and approached her, telling her again to take her seat and work with her computer, but MT continued yelling at him defiantly and was extremely angry. He said at that point the door of him room opened and Ms. Ramcharan appeared.

At that instant, according to Mr. Russell, TM tried to go around him. He put his arm out to stop her and "kind of like, moved her, but not hard" as TM ran to Ms. Ramcharan crying, at which time, he said, the incident was over. (3Tr. 93-94). As for Ms. Ramcharan, he said she did not enter the room and denied that he and she had dialogue. TM then left the room with her belongings when Ms. Ramcharan told her to do so. (3Tr. 94-96). Mr. Russell said that TM came back to retrieve some other belongings, at which point he told her he needed a conference with her parents. He denied using the word "bullshit" (3Tr. 96, 141) and categorically denied putting his hands on MT's shoulders or waist, putting her against a wall, and touching her in any way during what he called an "engagement" (3Tr. 97, 98) other than when she came in contact with his arm which he said happened simultaneously with her walking into him. (3Tr. 103, 120; 3Tr. 142). He opined that had MT stayed in his classroom it would not have been possible for pupils to get any work done. (3Tr. 104).

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[8] There was no evaluation in the COVID impacted year of 2019-2020. (3Tr. 80).

Respondent also testified to prior interactions with Ms. Ramcharan, starting with a time he attempted to help a new teacher who was having trouble controlling her class. (3Tr. 140-141). Eventually that teacher had to file a report but did not know how to do one. When he notified Ms. Ramcharan, he alleged, she refused to help. (3Tr. 99-100). He further asserted Ms. Ramcharan had a policy of not allowing students to be brought to the school's office. (3Tr. 100-101).

On cross-examination, Mr. Russell denied allowing MT to take off her shoes on November 18, 2022 or seeing her without shoes. (3Tr. 1114-115, 116-117) and said TM's anger was a threat to or disturbance of classroom order. (3Tr. 124).

Arguments of Petitioner:

Petitioner relies on the evidence to support its contention Respondent should be dismissed for "inefficiency, incapacity, unbecoming conduct, or other just cause" NJSA 18A:6-10. Citing *Bound Brook Bd. of Ed. v. Ciripompa*, 228 NJ 4 (2017), Petitioner notes that unbecoming conduct "need not be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior due from one who stands in the public eye as an upholder of that which is morally and legally correct." (*Id.* at 13-14, quoting *Karine v. City of Atlantic City,* 152 NJ 523, 555 (1996). Simply put, Petitioner argues, unbecoming conduct involves acts that tend to harm morale or damage the public's image of a school system. *In re Emmons,* 63 NJ Super 136 (App. Div. 1960). As such, the concept of unbecoming conduct is variable or "elastic."

Petitioner next argues that evidence proving unbecoming conduct is not necessarily limited to the admissibility standards of a court proceeding. Rather, in an administrative setting such as the instant matter, the "residuum" rule applies, allowing the consideration of evidence otherwise inadmissible as long as the tribunal's decision is ultimately based on a preponderance of a "residuum" of judicially admissible evidence. *Weston v. State*, 60 NJ 36, 51 (1972); *In re Tenure Hearing of Cowan*, 224 NJ Super. 737 (App. Div. 1972); *In Re Polk,* 9 NJ 550 (1982). Given that principle, Petitioner says, the undersigned is obliged to consider any evidence material to the case. *Manchester Twp. Bd. of Educ. v. Thomas P. Carney, Inc.*, 199 NJ Super 266

(App. Div. 1985); NJCAC 1:1-15.5., including hearsay evidence. *Ruroede v. Borough of Hasbrouck Heights*, 214 NJ 338 (2013).

Petitioner says it has presented four bases for a finding of unbecoming conduct. First, Petitioner cites the eyewitness testimony of the students who testified that Respondent was the aggressor in the confrontation between him and TM. That testimony is corroborated, Petitioner says, by Respondent himself who said he initiated contact with TM, approached her, and at least bumped her with part of his body. Three other witnesses, Petitioner says, testified they saw him put his hands on TM. Petitioner says none of this was necessary because Respondent could have called security or allowed TM to return to her seat. As such, Respondent's actions violated Petitioner's policy 3217 which prohibits an employee to resort to force or fear in treatment of pupils "even those whose conduct appears in open defiance of authority." Petitioner says that given Respondent's height and weight, it is unreasonable to assume he was not resorting to fear and the testimony proves he used force against TM.

On those facts, Petitioner urges, termination is the only appropriate response, citing *In re Tenure Hearing of Fulcomer*, 93 NJ Super. 404 (App. Div. 1967). There the Appellate Division observed three considerations regarding penalty: (1) nature and gravity of the offense; (2) the accused's attitude at the time of the conduct; (3) evidence of provocation, extenuation or aggravation. The *Falconer* court also noted mitigating factors: (1) ability, record and length of the accused's service; the accused's disciplinary record; and (3) the impact of penalty on the accused's career in obtaining a position in the State. Petitioner says an application of the *Falconer* principles mandates termination, especially given Respondent's responsibility to pupils, his clearly prohibited conduct, and his demonstrated lack of remorse at hearing.

Arguments of Respondent:

Like Petitioner, Respondent cites the "residuum rule" as the evidentiary framework for deciding this case. *In the Matter of City of Camden,* 429 NJ Super. 309 (App. Div.) cert. den, 215 NJ 485 (2013). As stated above in Petitioner's arguments, the residuum rule requires a decision in this case to be supported by some quantum of competent evidence, *i.e.,* evidence that would be admissible in a court of law. *Weston, supra; Ruroede, supra.* As for the burden of proof, Respondent correctly argues it is on the Petitioner. *Douglas E. Wicks v. Bd. of Ed. of Bernards*

Twp., OAL Dkt. No. EDU 4006-00, citing *SSI Medical Serv. v. State Dept. of Human Serv.*, 146 NJ 614 (1996). Such a burden means, Respondent says, specificity as to the action or behavior underlying the charge against Petitioner. Daly v. Department of Corrections, 331 NJ Dept. 344, 351 (App. Div. 2000); NJAC 6A:3-5.1(b) (1).

Respondent points out that unbecoming conduct—i.e., that which would affect morale or efficiency or tends to destroy confidence in government service—requires more than just negligence or an unwise act. *IMO Certificates of Featherson*, OAL Dkt. No. EDE 05329-05; Agency Dkt. No. 0405-177; *IMO Burlap, Camden County Dept. of Corr.*, OAL Dkt. No CSV 10834-12, Agency Dkt. No. 2013-231 NJ AGEN LEXIS 64. And, Respondent argues, even if his conduct met these standards and was therefore "unbecoming," it should not result in an automatic dismissal. Rather, Respondent says, the undersigned must examine a number of factors within the context of the event and Respondent's career using the *Falconer* criteria, above.

Conceding that a single, flagrant incident might justify termination, Respondent argues that progressive disciplinary steps should be considered, including prior infractions unless there is reason to the contrary, and that discipline should be consistent with the seriousness of the wrongful act, *Elkouri & Elkouri, How Arbitration Work,* 7th ed, 15-40. Consideration must be given, Respondent maintains,, where the employer has previously condoned such acts without giving warnings they will be punished.

Turning specifically to the case at bar, Respondent underscores the degree of restraint and self-control required of public school teachers in today's permissive environment. From there, he reasons, even unjustified physical contact with a student does not create grounds for removal. *IMO Tenure Hearing of Eddie Lee Harrell*, 1979 SLD 479; *IMO Tenure Hearing of Ostergreen*, 1966 SLD 185; *IMO Tenure Hearing of Edith Craft*, Commissioner of Ed. Dec. No. 366-11; *Matter of Tenure Hearing of Boyd*, 93 NJAR. 2d (EDU) 445 ; *In the Matter of the Tenure Hearing of Barbara Emri, Comm. Of Ed. Dec. No. 371-02.* Of special note is Respondent's claim that conduct that was not cruel or premeditated may not justify removal. *Boyd, supra; Craft, supra.* Respondent points out that in *Craft*, the Commissioner of Education did not impose removal even where a teacher had slapped an eight-year old special education student in the face. Similarly, Respondent looks to egregious conduct in other cases where removal was not imposed, such as where there was inappropriate physical contact or pupils were struck by

teaching staff, *Boyd, supra*, (use of the "n word"); *Emri, supra;* in-class slurs about a student's mother, *IMO the Tenure Hearing of Poston, Comm. Of Ed.* Dec. No. 362-06; pushing a student into a seat; *IMO Tenure Hearing of Adam Mierzwa*, Comm. Of Ed. Dec. No. 283-08, and various instances of failure to supervise, *IMO Tenure Hearing of Carmen Quinones*, 1996 NJAR 2d (EDU) 649.

Moving from arguments on the penalty imposed here, Respondent argues against the credibility of Petitioner's witnesses, the assessment of which is for the undersigned with the condition that Petitioner must provide a preponderance of credible evidence. *Freud v. Davis*, 64 NJ Super 242 (App. Div. 1960). Such evidence must be drawn from credible witnesses whose credibility depends on an overall estimate of their accounts considering rationality, consistency and harmony with other evidence. *Carbo v. United States*, 314 F.2d 718 (1963); *In re Perrone*, 5 NJ 514 (1950).

Abiding by those principles, Respondent says, the undersigned must reject the testimony of Ms. Ramcharan and Ms. Tolor, calling their testimony obfuscatory, evasive, and cagey, while he touts his own testimony as candid, open, and transparent, even admitting at one point to using the "n word" in an event not material to this case. That admission, Respondent urges, is indicative of his candor at hearing.

Respondent next argues that his service entitles him to consideration as to penalty. His clear and unrebutted testimony was that he had worked with Petitioner full-time for 24 years and for several other years in a substitute capacity and had been rated as satisfactory or "effective" in many, many of those years.. (RX 4, 5, 7, 8, 9, 10, 13, 14, 15, 20). Respondent trumpets that Petitioner's disciplinary policy (RX 22) directs that discipline should be applied "wherever possible for progressive penalties."

According to Respondent, there was no appropriate investigation of any unbecoming conduct attributed to him. Such inquiries have been found essential to disciplinary measures. *Enterprise Wire, Co,* 46 LA 359 (1966). Among other things, Respondent underscores Petitioner's failure to ascertain there had been an interview of all of the pupils present in Respondent's classroom at the time of the incident, including TM, who was not interviewed at all. Further, Petitioner's witnesses, Ramcharan and Tolor, could not identify who was with the

students whose statements of the incident were collected at the time they were, and no other investigation was done into the incident.

Respondent further charges that Petitioner did not establish a clear standard of conduct for him to follow, charging that Petitioner's witnesses could not articulate the circumstances under which a teacher is permitted to make physical contact when a disruptive student threatens the right of other students to receive an education which Respondent asserts is a property interest. , *Hernandez v. Bosco Preparatory High,* 322 N J Super 1 (App. Div. 1999). Given that interest, Respondent urges that the statute prohibiting corporal punishment, NJSA 18A: 6-1 may not be interpreted as disallowing the physical restraint Petitioner charges Respondent with imposing on TM. In fact, Respondent says, Ms. Ramcharan and Ms. Tolor conceded there were instances in which staff might physically interfere with a student even where that student is not fighting, bearing a weapon, or destroying school property.

Returning to Petitioner's witnesses, Respondent says their testimony was inconsistent internally and with other witnesses. For example, Respondent says that none of the student witnesses called by Petitioner said Respondent uttered a profane word at the end of the incident. However, Ms. Ramcharan claimed to recall him saying "I'm tired of this bullshit!"[9] Additionally, Respondent asserts that Ms. Ramcharan—who viewed much of the event through a classroom window, lacked a clear observation of the incident including important details of the allegedly forceful touching of TM by Respondent. (NT 1, 39-41). Respondent summarizes Ms. Ramcharan's testimony as inconsistent with the testimony of student witness MM and AH as to how exactly Respondent supposedly physically restrained or coerced TM.

To the contrary, Respondent touts his testimony as consistent and credible. In his account, he did not hold her by her waist, wrist or shoulders, instead telling the undersigned he said he wanted her to leave the room because of her disruptive outburst and merely put his arm out in a passive manner, causing the two to make contact as TM moved into him. That he swore, was the extent of physical contact between the two.

From the foregoing, Respondent says, the undersigned should credit his account over Ms. Ramcharan's and—to whatever extent their testimony inculpated him—the actions described by

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[9] Even if he had said that, Respondent claims, the profanity was so mild as to not justify even partial grounds for his dismissal under a "conduct unbecoming standard or any other standard.

the students. Alternatively he argues, even if Petitioner's witnesses' accounts are credited, they are insufficient to support his dismissal, and the tenure charges should be dismissed.

Opinion:

The parties agree that the statutory criteria for Respondent's removal is set forth in NJSA 18A:6-10 is "inefficiency, incapacity, unbecoming conduct, or other just cause" and that Petitioner's petition relies on "unbecoming conduct." Such conduct is not necessarily limited to the violation of any rule or regulation and can be based on a breach of any implicit standard expected of a person in the public eye who is to uphold morally and legally correct values. *Ciripompa, supra*, quoting *Karins, supra.*; *Emmons, supra.* Further, both parties recognize that evidence of such unbecoming conduct must be proven by a preponderance of legally admissible evidence. In other words, a decision must be based on a residuum of judicially admissible evidence which may be joined with otherwise inadmissible evidence such as hearsay which tends to support findings of fact. *Ruroede, supra.*; *Weston, supra*; *City of Camden, supra.* Ultimately Petitioner bears the overall burden of proving unbecoming conduct by a preponderance of the evidence which may include that which would be admissible at law or equity and that which, although bearing on the case, would not. However, the undersigned's decision must ultimately be predicated on a residuum of such judicially admissible evidence. *Ciripompa, supra.*

In this matter, Petitioner's factual averments are entirely based on evidence that would be admissible in a judicial proceeding, namely the testimony of Ms. Ramcharan and the two student witnesses AH and MM. Petitioner views that testimony as supporting its contention Respondent engaged in unbecoming conduct, both as it would be judged by the public and as it would specifically violate Petitioner's Policy 3217 prohibiting its employees from using force in the treatment of pupils even when pupils exhibit conduct that appears to be an open defiance of authority.

The question is whether or not that testimony is credible when examined in light of Respondent's sworn version of the November 18, 2022 incident.

I find that it is. Ms. Ramcharan, the Jefferson School Principal, presented as a wholly credible witness and testified in a guileless, candid, and straight-forward manner concerning what she observed. In her account, Respondent, seen through a window in his classroom's door,

had both hands on TM as he had her against a wall—a violation of Petitioner's policy 3217—and after Ms. Ramcharan intervened, Respondent continued to "antagonize" TM. Moreover, I credit Ms. Ramcharan's testimony that after TM left the classroom as directed by her, Respondent expressed he was tired "of this bullshit" which itself was a violation of Petitioner's Policy 3281 proscribing Inappropriate Staff Conduct. Although it is true that neither student witness called by Petitioner reinforced Ms. Ramcharan's account in a precisely congruent manner, neither did they expressly contradict it. In fact, they supported it. Student witness AH, who described Respondent as a "very kind and friendly and welcoming teacher," told the undersigned that Respondent grabbed TM's hand and tried to lead her out of the room and that Respondent dragged her. MM testified that Respondent "put [TM] against the wall," used both and seemed to grab TM by the shoulders after which he "pinned" her there." Neither pupil appeared to have been coached or directed to testify from a script, and both impressed the undersigned with their desire to render an accurate account of the incident.

The above testimony contrasts strongly with the self-interested testimony offered by Respondent. In his version, there was no grabbing or holding or TM. Rather, he claimed TM walked into him as he merely put his arm out to stop her from going around him. In light of Ms. Ramcharan's version and that of the two students, I do not find Respondent's memory of the incident as accurate. I also do not find any basis for his assertion that Ms. Ramcharan was biased against him despite his allegation that she refused to help a new teacher file a report on student deportment in her classroom. As for the charge that he used a profanity, I note Respondent's denial but credit Ms. Ramcharan's account.

In sum, I find Respondent violated Petitioner's Policy 3217 pertaining to use of force against students and therefore a violation of NJSA 18A:6-10 against "unbecoming conduct." I also find he violated Policy 3281 which prohibits inappropriate staff conduct.

Having so determined, I turn to the last issue: the appropriateness of the penalty.

I am convinced that the 57-year old paradigm set forth in *Falconer, supra* applies. As stated above, the *Falconer* court described tests for penalties in New Jersey school tenure cases: the nature and gravity of the offense; the accused's attitude at the time; and, evidence of provocation, extenuation, or aggravation. In the case at bar, Respondent is not accused of purposeful infliction of pain on TM. Instead, he is guilty of using physical force to, in my judgment, restrain TM and coerce her out of his classroom. I find no evidence that Respondent's

attitude was pre-formed or malignant. Rather, faced with a difficult classroom management situation, he reacted without malice but out of desperation, however unwise his actions were. I further conclude his attitude and actions were provoked by TM's failure to follow his original directions which escalated to an exasperated demand she leave the classroom. Most importantly, I find no proof of an intentional infliction of harm and find no evidence any real harm occurred to her.

I consider those factors together with his long career with Petitioner and his overall satisfactory teaching record. Even if his record of occasional missteps were to be considered, I am persuaded his overall record is sufficient to mitigate his penalty here to some degree. Therefore, I find Respondent's removal should be rescinded and his tenure maintained. However, his actions justify the elimination of any pay he has already been denied and further justify the withholding of any salary increment due him for school years, 2024-2025 and 2025-2026. Petitioner shall reinstate him with all deliberate speed and without imposing any conditions on his return that are not customarily placed on others who return after an absence equal in length to that of Respondent.

An Award will be entered accordingly.

Award:

Respondent's removal is reversed. He shall be returned to his former position forthwith, subject only to conditions customarily imposed on others who return after an absence equal in length to that of Respondent. Respondent's next two salary increments—for school years 2024-2025 and 2025-2026 shall be withheld.

10/10/24
Date

Ralph H. Colflesh, Jr. (digital signature)
Ralph H. Colflesh, Jr., Esq./Arbitrator

379-24

New Jersey Commissioner of Education

Final Decision

Michael Skowronski,

Petitioner,

v.

Board of Education of the Township of East Greenwich, Gloucester County,

Respondent.

Synopsis

Following a decision from the Appellate Division upholding the Commissioner's prior determination that petitioner was entitled to indemnification pursuant to *N.J.S.A.* 18A:12-20 for costs and fees incurred while defending against an ethics complaint stemming from petitioner's service on the East Greenwich Township Board of Education (Board), this matter was remanded to the OAL for calculation of reasonable attorney fees and costs owed to petitioner. Petitioner filed a motion for summary decision, and petitioner's counsel submitted a certification of fees and costs with invoices attached. The Board opposed the motion for summary decision, challenging the reasonableness of the hourly rate and the hours reasonably expended in petitioner's defense over the multi-year pendency of this matter.

The ALJ found, *inter alia*, that: in 2019, petitioner retained the law firm of Dilworth Paxon to represent him in this matter, at the reasonable reduced hourly rate of $240.00; as per detailed and itemized invoices, the time reasonably expended by petitioner's counsel in his defense was 285.3 hours through June 2024; Dilworth Paxon incurred expenses on petitioner's behalf totaling $674.93; the total requested award of attorney fees in the amount of $68,472 and costs in the amount of $674.93 was reasonable; the Board's arguments that the hourly rate should have been reduced from $240 to $165 per hour because that is the rate at which the Board pays its general counsel for legal services is without merit; and the Board had numerous opportunities over the long pendency of this case to cut its losses but chose instead to move forward with the litigation. The ALJ concluded that the fees and costs sought are reasonable and petitioner is entitled to indemnification for counsel fees in the amount of $68,472, plus expenses in the amount of $674.93, for a total amount of $69,146.93.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ's findings and conclusions and adopted the Initial Decision of the OAL as the final decision in this matter. In so doing, the Commissioner found the Board's exceptions to be without merit and disagreed with the Board's newly raised contention that an evidentiary hearing was required to establish the reasonableness of petitioner's attorney fees. Accordingly, petitioner's appeal was granted, and the Board was ordered to pay petitioner's reasonable attorney fees and costs in the total amount of $69,146.93.

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.

379-24
OAL Dkt. No. EDU 02418-24 (EDU 05603-21 on remand)
Agency Dkt. No. 92-6/21

New Jersey Commissioner of Education

Final Decision

Michael Skowronski,

Petitioner,

v.

Board of Education of the Township of East Greenwich, Gloucester County,

Respondent.

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

Following the Appellate Division's decision in *Skowronski v. Board of Education of the Township of East Greenwich*, Dkt. No. A-3602-21, 2024 *N.J. Super. Unpub.* LEXIS 69 * (App. Div. Jan. 16, 2024), the Commissioner remanded this matter to the OAL for calculation of the reasonable attorney fees and costs owed to petitioner, pursuant to *N.J.S.A.* 18A:12-20, incurred while defending an ethics complaint initiated by the Board's former superintendent. Petitioner moved for summary decision, and petitioner's counsel submitted a certification of fees and costs with invoices attached. The Board filed a certification in opposition to summary decision challenging the reasonableness of the hourly rate and the hours reasonably expended on the matter.

The Administrative Law Judge (ALJ) found and concluded that: (1) as an accommodation to petitioner, the law firm of Dilworth Paxon (retained in 2019) reduced its hourly rate for legal services from $490 to $240 per hour, a reasonable hourly rate; (2) no portion of the fee was contingent upon the matter's outcome; (3) the time reasonably expended by petitioner's counsel was 285.3 hours through June 2024, as per detailed, itemized invoices contained in the record for the work billed; (4) Dilworth Paxon incurred expenses on petitioner's behalf totaling $674.93, as per an itemized, detailed list contained in the record; and (5) the requested award of attorney fees in the amount of $68,472 and costs in the amount of $674.93 is reasonable.

The ALJ rejected the Board's arguments that the hourly rate should have been reduced from $240 per hour to $165 per hour because that is the rate at which the Board pays its general counsel for legal services, the district is relatively small, and the district has a fiduciary duty to taxpayers to minimize legal fees and expenses per *N.J.A.C.* 6A:23A-5.2. The ALJ was unpersuaded, reasoning that petitioner's counsel was not representing the Board but was retained by a private client in a matter that lasted almost five years, and finding that Dilworth Paxson charged petitioner less than its standard government hourly rate of $250. Moreover, the ALJ noted the Board had numerous opportunities to calculate the risk it undertook and to cut its losses; however, it decided to move forward with the litigation. The ALJ also rejected as speculative the Board's contention that petitioner's counsel could have achieved the same results in 177 hours versus 285.3 hours.

In its exceptions, the Board reiterates the arguments that were considered and rejected by the ALJ, including that the hours billed should be reduced to 177 because "it seems likely that the same result could have been achieved in fewer hours" and "since examining each entry" on

the invoices "would be tedious and time-consuming." Exceptions, at 3. The Board also contends again that the hourly rate should be reduced to $165 because of the district's small size and its fiduciary duty to minimize legal expenses. Additionally, for the first time, the Board asserts that "an evidentiary hearing as to reasonableness should have been granted" if the fee "application was to be granted in full." *Id.* at 4.

In reply, petitioner argues that the Board's exceptions simply repeat the arguments it previously made that were properly rejected by the ALJ. He contends that the Board failed to dispute any of the underlying facts and failed to identify any sufficient reason for the Commissioner to reject the ALJ's legal conclusions. Because the ALJ's determination was rendered pursuant to the correct legal standard and supported by sufficient, undisputed evidence, petitioner requests that the Commissioner adopt the ALJ's Initial Decision.

When analyzing a fee application, it is necessary to begin with the calculation of the "lodestar," which is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Rendine v. Pantzer*, 141 *N.J.* 292, 334-35 (1995). "[T]he focus must be on 'the amount of time *reasonably* expended' rather than merely an acceptance of 'the amount of time *actually* expended.'" *Walker v. Giuffre*, 209 *N.J.* 124, 131 (2012) (quoting *Rendine*, 141 *N.J.* at 335). To complete the calculation, the reasonable hourly rate must be evaluated according to prevailing market rates in the relevant community. *Rendine*, 141 *N.J.* at 337. Although the determination "need not be unnecessarily complex or protracted," the court must ensure that the hourly rate is "fair, realistic, and accurate." *Ibid.*

Upon review, the Commissioner concurs with the ALJ's determination that Dilworth Paxon reasonably expended 285.3 hours on petitioner's case. The hours logged are not

excessive. The record contains detailed and itemized invoices reflecting the time petitioner's counsel spent representing his interests for approximately five years. The representation included, but was not limited to, motion practice, discovery, hearings at the OAL, settlement discussions, and an appeal before the Appellate Division. The Board's contention that petitioner's counsel could have achieved the same results in 177 hours versus 285.3 hours is speculative, arbitrary, and unsupported by the record. Notably, the Board's objection is not based upon an analysis of the invoices' content, as their exceptions state that examining each entry on the invoices would take too much time. In sum, the Board has failed to establish that the 285.3 hours expended in this case were unreasonable.

The Commissioner also concurs with the ALJ that the hourly rate of $240 is reasonable. Contrary to the Board's contentions, "the hourly rate charged by the Board's attorney is not dispositive in determining whether [petitioner's counsel's] hourly rate was reasonable" in this matter. *Castriotta v. Bd. of Educ. of Twp. of Roxbury*, Commissioner Decision No. 108-13, at 4 (Mar. 21, 2013). That is because "board of education attorneys bill differently than private attorneys because they represent a public entity and benefit from a long-term contract and consistent billing." *Ibid.* The record in this matter lacks any evidence to establish that the $240 hourly rate—which is more than 50% less than what petitioner's attorney typically charges private clients—was unreasonable. It was only established that the Board attorney's hourly rate was $165, and that other school districts in Southern New Jersey paid similar rates to their general counsel. Moreover, the record does indicate that hourly rates charged by law firm partners at Dilworth Paxon to New Jersey governmental entities are typically $250 or higher. For

these reasons, the Commissioner agrees with the ALJ that the fees should be calculated using $240 as the reasonable hourly rate.

Additionally, the Commissioner finds that the Board's reliance upon *N.J.A.C.* 6A:23A-5.2 is misplaced. While *N.J.A.C.* 6A:23A-5.2 requires boards of education to establish policies to minimize legal costs,[1] it does not address indemnification claims made pursuant to *N.J.S.A.* 18A:12-20. In fact, "[t]he only restriction the rule places on the type of legal service of which a district may avail itself involves any affirmative cause of action on behalf of individual board members in which damages would benefit the individual rather than the district." *Princeton Int'l Acad. Charter Sch., Inc. v. Princeton Reg'l Schs. Bd. of Educ.*, OAL Dkt. No. EDU 9657-11, Initial Decision at 17 (Nov. 16, 2011), *adopted*, Commissioner Decision No. 124-12 (Apr. 2, 2012). Consequently, *N.J.A.C.* 6A:23A-5.2 does not affect the Board's responsibility to pay reasonable attorney fees and costs for indemnification claims made pursuant to *N.J.S.A.* 18A:12-20.

Finally, the Commissioner finds that the Board's newly raised contention that an evidentiary hearing should have been held regarding the reasonableness of the fees lacks merit. In most cases, a court can determine the lodestar and rule upon a request for legal fees "by a review of detailed certifications and argument by counsel, without the need to hear from witnesses." *Furst v. Einstein Moomjy, Inc.*, 182 *N.J.* 1, 24 (2004). "[A] plenary hearing should be conducted only when the certifications of counsel raise material factual disputes that can be resolved solely by the taking of testimony." *Ibid.* The Supreme Court of New Jersey has "strongly

[1] *"N.J.A.C.* 6A:23A-5.2 was promulgated to ensure accountability in districts when drafting cost effective policies . . . ." *Nelson v. Elizabeth Bd. of Educ.*, 466 *N.J. Super.* 325, 342 (App. Div. 2021).

discourage[d] the use of an attorney-fee application as an invitation to become mired in a second round of litigation." *Ibid.* Here, nothing in the Board's certification in opposition to summary decision raises a material factual dispute regarding petitioner's counsel's certification of fees and costs that can only be resolved via the taking of testimony. Therefore, the ALJ did not need to hold an evidentiary hearing prior to ruling upon the fee application.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The petition of appeal is hereby granted. The Board is ordered to pay petitioner's reasonable attorney fees in the amount of $68,472 and costs in the amount of $674.93 for a total of $69,146.93.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 10, 2024
Date of Mailing: October 11, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 02418-24
AGENCY DKT. NO. 92-6/21
(ON REMAND EDU 05603-21)

MICHAEL SKOWRONSKI,
Petitioner,
v.
BOARD OF EDUCATION OF EAST GREENWICH, GLOUCESTER COUNTY,
Respondent.

Benjamin W. Spang, Esq., for petitioner (Dilworth Paxson, LLP, attorneys)

Steven J. Edelstein, Esq., for respondent (Weiner Law Group, LLP, attorneys)

Record Closed: August 2, 2024 Decided: August 28, 2024

BEFORE **MARY ANN BOGAN**, ALJ:

STATEMENT OF THE CASE

This matter comes before the Office of Administrative Law (OAL) by way of remand from the Appellate Division, for a determination as to the amount due petitioner, Michael Skowronski (Skowronski), for indemnification for legal fees and costs from respondent,

the East Greenwich Board of Education (Board), under N.J.S.A. 18A:12-20. For the reasons set forth below, the costs and fees are awarded in its entirety.

PROCEDURAL HISTORY

The underlying case in which petitioner seeks indemnification began when Dr. James J. Lynch, the Board superintendent, filed a three-count complaint (the Ethics Complaint) on behalf of the Board with the School Ethics Commission (Commission) alleging that Skowronski violated provisions of the School Ethics Code, as well as the New Jersey Open Public Meetings Act. On March 14, 2019, Skowronski filed a motion with the Commission to dismiss the Ethics Complaint filed by the Board in lieu of an answer. When Skowronski demanded indemnification from the Board, the Board advised Skowronski that it would not consider his claim for indemnification until the conclusion of the Ethics Complaint. In a decision dated June 20, 2019, the Commission granted Skowronski's motion in part, dismissing Counts 1 and 2 of the Ethics Complaint, but denied Skowronski's motion with respect to Count 3, which alleges a violation of the State Ethics Code, N.J.S.A. 18A:12-24.1(g), for sending an email on January 22, 2019, to fellow members of the Board and copying a non-Board member. N.J.S.A. 18A:12-24.1(g) pertains to the duty of the Board member to hold matters confidential that if disclosed would needlessly injure individuals or the schools. The remaining count of Skowronski's complaint was transmitted to the OAL, where it was filed on July 25, 2019, under docket number EEC 10213-19. In an initial decision dated February 2, 2020, the Administrative Law Judge (ALJ) concluded that Dr. Lynch failed to prove that Skowronski had violated N.J.S.A. 18A:12-24.1(g). In its May 19, 2020, decision, the Commission adopted the ALJ's factual findings but found that Skowronski had violated N.J.S.A. 18A:12-24.1(g) and recommended a penalty of reprimand. The New Jersey Commissioner of Education determined that the Commission's decision was supported by sufficient credible evidence and that Skowronski had failed to establish that the decision was arbitrary, capricious, or contrary to law. Lynch v. Skowronski, East Greenwich Twp. Bd. of Educ., Gloucester Cnty., #284-20SEC, Comm'r Decision (December 15, 2020), https://www.nj.gov/education/legal/; N.J.A.C. 6A:4-1.1. Skowronski's request for reconsideration was denied by the Commissioner. Skowronski did not appeal the Commissioner's decision.

Thereafter, after the conclusion of the Ethics Complaint and subsequent appeals, Skowronski again demanded indemnification on February 25, 2021. On March 22, 2021, counsel for the Board advised that the demand for indemnification was denied.

On May 27, 2021, Skowronski filed a petition with the Commissioner of Education seeking indemnification pursuant to N.J.S.A. 18A:12-20. The matter was transmitted to the OAL, where it was received on July 2, 2021, and filed for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A prehearing conference was conducted, after which the parties agreed to and requested time to file motions for summary decision on the issue of whether the Board should indemnify petitioner for legal fees and costs incurred in defending this action. An initial decision for summary disposition was issued on May 5, 2022, granting summary decision in favor of Skowronski and finding the Board was required to indemnify him pursuant to N.J.S.A. 18A:12-20. On June 16, 2022, the Commissioner of Education issued a final decision affirming the decision and ordered the Board to pay Skowronski for reasonable legal fees and costs in connection with this matter.

On July 26, 2022, the Board filed a notice of appeal of the Commissioner's decision to the Appellate Division. The parties were directed to participate in the Civil Appeals Settlement Program and attend a settlement conference. No settlement was reached, and the appeal process continued after submission of written briefs, appendixes, and oral argument. On January 16, 2024, the Appellate Division issued a decision affirming the Commissioner of Education's decision to order indemnification of fees and costs. On the same day, Skowronski wrote to the Board seeking payment of the costs and fees. After the Board did not respond, Skowronski sent correspondence to the Commissioner of Education requesting a determination of the fees and costs owed, and the matter was transmitted on remand to the OAL for a determination regarding the amount of fees and costs following the Appellate Division decision.

FINDINGS OF FACT

The facts relevant to the legal fees charged by Skowronski's counsel, Dilworth Paxson, LLP, are not in dispute, and I **FIND**:

Skowronski initially retained Benjamin W. Spang, Esq. (Spang) with the firm of Dilworth Paxson, LLP (Dilworth Paxson) to represent him in connection with the Ethics Complaint brought against him by Dr. James Lynch before the Commission, and additionally for the indemnification claim against the Board. Spang has represented Skowronski on various matters since 2016. He is a partner with the firm and practices general litigation. (Exhibit P-A.) Spang has experience representing governmental entities and has knowledge of its billing practices. Spang previously charged governmental rates when he served as litigation counsel for the County of Cumberland, and pursuant to the agreement with the county, Dilworth Paxson charged $250 per hour for all attorneys working on those matters. Dilworth Paxson is currently retained by other governmental entities and charges $250 per hour for all attorneys working on those matters.

The standard hourly rate for services charged by Dilworth Paxson to its clients is currently $490 per hour. As an accommodation to Skowronski, Dilworth Paxson reduced its hourly rate in this case for charges for services to $240 since the firm was retained in 2019. No portion of the fee charge is or was contingent upon the outcome of the matter.

The time expended by Dilworth Paxson on behalf of Skowronski totaled 277 hours as of May 31, 2024. Dilworth Paxson has submitted itemized, detailed timesheets that delineate how the time was actually spent. (Exhibit P-B.) In June 2024, Spang also certified that he spent 8.3 hours on this matter to research and prepare for this motion for summary disposition. The total amount of time spent on this matter is 285.3 hours, resulting in fees to Skowronski of $68,472 (285.3 hours x $240 per hour). True copies of invoices for this work billed to Skowronski through June 2024 have been submitted and reviewed. Ibid.

The firm of Dilworth Paxson has also incurred expenses on Skowronski's behalf in the amount of $674.93. Dilworth Paxson has submitted an itemized, and detailed list of expenses in addition to the attorney fees which have also been reviewed. Ibid.

Together, Skowronski requests that he be awarded attorney fees in the amount of $68,472 and costs in the amount of $674.93 for a total award of $69,146.93.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, allow a party to "move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Such a motion "shall be served with briefs and with or without supporting affidavits." N.J.A.C. 1:1-12.5(b). A judge may grant a motion for summary decision "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." Ibid. If a motion is "made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid.

N.J.S.A. 18A:12-20 provides in pertinent part:

> Whenever a civil, administrative, criminal or quasi-criminal action or other legal proceeding has been or shall be brought against any person for any act or omission arising out of and in the course of the performance of his duties as a member of a board of education . . . the board of education 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 . . . .

The amount of fees paid to indemnify Skowronski is based on the criteria set forth in Walker v. Giuffre, 209 N.J. 124; Rendine v. Pantzer, 141 N.J. 292; and R. 4:42-9. The Supreme Court in Walker reconfirmed that a fee award must start with a calculation of the

"lodestar," derived by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Walker, 209 N.J. at 130.

Our Supreme Court has directed that the fees sought should not be accepted "passively," but rather evaluated carefully and critically for reasonableness. Id. at 131. A fee application must be supported by "fairly definite information as to the hours devoted . . . and the hours spent by various classes of attorneys." Ibid. Moreover, a reduction may be appropriate if "the hours expended, taking into account the damages prospectively recoverable, the interests to be vindicated, and the underlying statutory objectives, exceed those that competent counsel reasonably would have expended." Rendine, 141 N.J. at 366.

Relative to the hourly rate charged, it must be calculated "'according to the prevailing market rate in the relevant community' and should include an assessment of the 'experience and skill of the prevailing party's attorney and [a] compar[ison] . . . to the rates prevailing in the community for similar services' by comparable attorneys." Walker, 209 N.J. at 132 (citing Rendine, 141 N.J. at 337). A reasonable hourly rate is one charged by "an adequately experienced attorney possessed of average skill and ordinary competence—not those that would be set by the most successful or highly specialized attorney in the context of private practice." Walker, 209 N.J. at 132–33 (citing Singer v. State, 95 N.J. 487, 500–01 (1984)).

Finally, the reasonableness of the fee must be informed by the criteria set forth in R.P.C. 1.5(a), which provides that:

> A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
(8) whether the fee is fixed or contingent.

Petitioner asserts that the rate of $240 per hour is reasonable and almost fifty percent lower than Dilworth Paxson's standard hourly rate charged to private clients for his services and is less than the standard government hourly rate the firm charges when representing various state, county, and local governmental entities that typically begin at $250 per hour.

The Board urges that its attorneys bill $165 per hour for their services as general counsel and urges that a similar rate be applied here.

Rendine and its progeny require a reasonableness determination based on the "prevailing market rates in the relevant community . . . for similar services." Rendine, 141 N.J. at 337 (citation omitted). The Board urges that the relevant community is comprised of general counsel practitioners who focus on the representation of boards of education and bill $165 per hour. The Board also seeks consideration for the small size of the District, which has fewer students and an annual budget of about $24,000,000. The Board is seeking a fee from a public entity that pays its attorneys at a reduced rate because it has a fiduciary duty to the taxpayers to minimize legal fees and expenses. That fiduciary duty is memorialized in regulation. N.J.A.C. 6A:23A-5.2.

The Board's argument is unpersuasive. Spang did not represent the entity, does not base his business model on the fees that can be reasonably generated from such representation, and even so, in this matter, charged less than the standard government hourly rate of $250 that Dilworth Paxson charges for its litigation services when it represents governmental entities, to an individual who would typically pay the firm's $490 hourly rate. Although government agencies and public entities like the Board generally

pay a lower rate than private individuals for legal services, here, this is a private client who after seeking indemnification from the Board, retained Dilworth Paxson for a lawsuit that lasted five years against a school district. This legal relationship differs from contracted work and consistent billing opportunity between the public entity and the firm it retains for services that undoubtedly are consistent and longer term. Furthermore, even though as the Board argues this client is a smaller school with a smaller budget, there were numerous opportunities to calculate the risk that it undertook that would require the smaller district to be forced to indemnify the Board member even if the petitioner did not win. Instead, even though the Board had many opportunities to cut its losses, it decided to move forward.

Accordingly, I **CONCLUDE** that the rate of $240 per hour agreed to between Dilworth Paxson and Skowronski is a reasonable hourly rate.

Spang certifies that he spent 285.3 hours in representing Skowronski relative to his claims against the Board. The Board concludes that the same result could have been achieved in fewer hours and seeks a reduction of the number of hours to 177 and points out that the ethics violation was not overturned. The Board maintains that if the award was calculated using the hours reduced to 177 and the rate reduced to $165, the total amount to be reimbursed would be $29,205, plus costs. As to the number of hours spent, petitioner submitted detailed, and itemized invoices reflecting the time spent and the costs incurred by the firm in the representation of Skowronski's interests, which have been reviewed, and I am unable to agree with the Board that the hours logged, or costs are excessive. This matter included two plenary hearings before the OAL; the filing of motions; the filing and perfecting of an appeal and representation of his client before the Appellate Division. Counsel needed to research the relevant law and, at each phase of the process, prepare and file briefs and affidavits. The work in question spanned the course of approximately five years.

Here the Board fails to particularize how the results could have been achieved in fewer hours in order to demonstrate that 285.3 hours was unreasonable and should then be reduced to 177 hours.

Indemnification may be granted to school board members regardless of the success of the case result. Petitioner took all appropriate steps to seek the Board's indemnification when the case began and was denied. Had the Board agreed to indemnify the petitioner at the inception of the case, it would likely have reduced the amount of its fees and costs.

Accordingly, I **CONCLUDE** that the firm of Dilworth Paxson reasonably expended 285.3 hours on this matter.

In summary, I **CONCLUDE** that the petitioner has demonstrated that the fees and costs sought are reasonable and petitioner is entitled to be indemnified for counsel fees in the amount of $68,472, plus expenses in the amount of $674.93, for a total amount of $69,146.93.

ORDER

Based on the foregoing, it is **ORDERED** that the Board shall defray the total cost of petitioner's legal fees and expenses in the amount of $69,146.93

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, P.O. 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.

August 28, 2024
DATE

MARY ANN BOGAN, ALJ

Date Received at Agency: August 28, 2024

Date Mailed to Parties: August 28, 2024

MAB/sg/nn

APPENDIX

EXHIBITS

For petitioner

P-A Benjamin W. Spang, Esq.'s biography

P-B Dilworth Paxon LLP invoices for work billed through May 31, 2024

380-24R

New Jersey Commissioner of Education

Final Decision

Board of Education of the Town of Princeton,
Mercer County,

Petitioner,

v.

A.V. and R.C., on behalf of A.V.C. and D.V.C.,

Respondent.

Synopsis

The petitioning Board brought an action against respondents, the parents of minor children, A.V.C. and D.V.C., for reimbursement of tuition for a period of alleged ineligible attendance of their two children in the Princeton Township Public School District. The respondents contended that they were homeless, having been displaced from their Princeton home by storm damage from Hurricane Ida. The Board contends that petitioners lived in a fixed, regular, and adequate three-bedroom townhouse in Lawrenceville during the period in question, and could not be considered homeless; therefore, their children were ineligible to attend school in Princeton during the period in question. The Board filed a motion for summary decision which was not opposed by the respondents. A zoom hearing in the matter was held on July 15, 2024; neither respondents nor their counsel attended the hearing.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; the minor children were not domiciled within the Princeton School District while attending school there during the period from October 8, 2021 to December 10, 2022; neither were the children homeless during this period, as they resided with their mother in a leased townhouse in Lawrenceville that provided a fixed and regular nighttime residence for the family; respondents lived in Lawrenceville for 63 days during the 2022-2023 school year and were ineligible to attend school in Princeton during that time. Accordingly, the ALJ assessed tuition reimbursement in the amount of $47,266.72.

Upon review, the Commissioner rejected the Initial Decision and remanded the matter to the OAL. In so doing, the Commissioner found that the respondents' exceptions indicate they did not know that their attorney was not filing on their behalf or appearing before the court in July. Accordingly, the matter was remanded to the OAL for further proceedings to provide respondents with an opportunity to oppose petitioner's motion for summary decision and to appear for oral argument.

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.

380-24R
OAL Dkt. No. EDU 03265-23
Agency Dkt. No. 71-3/23

New Jersey Commissioner of Education

Final Decision

Board of Education of the Town of Princeton, Mercer County,

Petitioner,

v.

A.V. and R.C., on behalf of A.V.C. and D.V.C.,

Respondents.

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

The Board filed the petition in this matter, seeking reimbursement of tuition for a period of alleged ineligible attendance by respondents' children in Princeton schools. Petitioner filed a motion for summary decision. Respondents did not file opposition, nor did their attorney appear for oral argument. The Administrative Law Judge (ALJ) found that respondents lived in Lawrenceville for 63 days during the 2022-2023 school year and were ineligible to attend school in Princeton during that time. Accordingly, the ALJ assessed tuition reimbursement in the amount of $47,266.72.

In their exceptions, respondents[1] indicate that they did not know that their attorney was not filing on their behalf or appearing before the court. They request that the case be remanded to the OAL so that they can respond to petitioner's motion.

Upon review, the Commissioner concludes that it is appropriate to remand this matter for further proceedings, including an opportunity for respondents to oppose petitioner's motion for summary decision and to appear for oral argument, consistent with any scheduling orders or other instructions given by the ALJ. If respondents wish to represent themselves moving forward, they should notify the OAL to communicate directly with them and to remove their attorney from all communications.

Accordingly, the Initial Decision is rejected, and this matter is remanded to the Office of Administrative Law for further proceedings.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 10, 2024
Date of Mailing: October 11, 2024

[1] The exceptions were filed by respondents on their own behalf, not by their attorney.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 03265-23

AGENCY DKT. NO. 71-3/23

TOWN OF PRINCETON
BOARD OF EDUCATION,
MERCER COUNTY,
Petitioner,

v.

A.V. AND R.C. ON BEHALF OF
A.C. AND D.V.C.,
Respondents.

Brett E.J. Gorman, Esq., for petitioner (Gorman, D'Anella & Morlock, attorneys)

Richard J. Kaplow, Esq., for respondents

Record Closed: July 18, 2024 Decided: September 3, 2024

BEFORE **CARL V. BUCK III**, ALJ:

STATEMENT OF THE CASE

Town of Princeton Board of Education (Princeton or Board or petitioner) brought an action against A.V. and R.C.[1] (A.V. or respondents), the parents of minor children, A.V.C. and D.V.C., for reimbursement of tuition for a period of alleged ineligible attendance of their two children in the Princeton Township Public School District (District)[2]. Respondents dispute the Board's claim. The Board brought an action against the parents for reimbursement of tuition for a period during which A.C. and D.V.C. were not domiciled within the District and that tuition reimbursement is required. The respondents allege that they, and the minor children, were displaced by damage to their residence. This damage was incurred as a result of Hurricane Ida. At issue is whether A.C. and D.V.C. were entitled to be enrolled in the District for purposes of receiving a thorough and efficient public education free of charge for the period in question, pursuant to N.J.S.A. 18A:38-1.

PROCEDURAL HISTORY

By letter, dated October 8, 2021, respondents informed the District that they had been rendered homeless by damage caused by Hurricane Ida and their children would need to be picked up and dropped off at an address in Lawrenceville, NJ (P-7). On November 15, 2022, the Executive County Superintendent sent the finding that the family is not homeless and has not been for more than a year to the District and respondents along with information on how to appeal the decision (R-1). Thereafter on December 10, 2022, the respondents secured a lease for a residence in Princeton which placed the family back in the District (P-2).

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[1] A.V. is the mother and R.C. is the father. R.C. did not participate in initial matters and on two occasions made inquiries to the Tribunal as to the status of this matter.

[2] This action was filed by the Board subsequent to two actions filed by the parents captioned: A.V. and R.C. on behalf of A.V. v. Princeton Public Schools Board of Education (OAL Dkt. No. EDS 03637-22) and A.V. and R.C. on behalf of D.V.C. v. Princeton Public Schools Board of Education (OAL Dkt. No. EDS 03638-22).

Respondents did not file a challenge to that finding.

Several telephone conferences were conducted and a briefing schedule for a motion for summary decision was set. The petitioner filed a motion for summary decision on June 14, 2024. Respondents did not file opposition to the summary decision motion at the time it was due nor was anything sent up to the date of the July 15, 2024,oral argument on the motion.

FACTUAL DISCUSSIONS AND FINDINGS

The majority of the facts are not in dispute, and I **FIND** the following as **FACT**:

1. On October 8, 2021, the respondents informed the District that they had been rendered homeless by damage to their home in Princeton Boro which was caused by Hurricane Ida. As a result of this damage the children will need to be picked up and dropped off at 1---5 E--- R--- Drive in Lawrenceville, NJ (P-7).

2. On November 11, 2021, the District began transporting A.V.C. and D.V.C. from Lawrenceville to Princeton (P-7).

3. On October 25, 2022, the District wrote to respondents informing them that they are not homeless under the definition of homelessness and asking them to enroll in the Lawrenceville school district for the term commencing January 2023. This letter also informed respondents how to proceed if they disagreed with this determination stating, "If you dispute this determination, pursuant to N.J.A.C. §6A:17-2.7(a), please immediately notify the executive county superintendent (ECS), Daryl Minus-Vincent, at the Mercer County Office of Education, 1075 Old Trenton Road, Trenton, NJ 08690 or you can notify Micki Crisafulli who will notify Mr. Minus-Vincent on your behalf." (R-6).

4. On November 4, 2022, the respondents emailed the ECS, with Board members copied, stating that their home in Princeton was rendered uninhabitable and they were homeless. At this time respondent A.V. was living in a three-bedroom townhouse with her two children "As such, I continue to be a Princeton taxpayer, and my special needs children will continue to attend their school in Princeton, NJ. They also love their fantastic and caring teachers, case manager, and principal. It is beyond appalling that Ms. Crisafulli, the director of special services, would send a letter seeking my children with multiple needs and diagnoses, two of which are autism and anxiety, to be removed from the district mid-year. Especially the timing of which is right before a settlement hearing regarding a previous legal matter." (R-5).

5. On November 7, 2022, the District wrote to ECS explaining the facts that were revealed on its investigation of respondents' residency (R-4).

6. On November 15, 2022, the ECS sent to the District and the respondents their finding that the family is not homeless and has not been for more than a year. This included information on how to appeal the decision stating "The family has secured a housing lease in a neighboring town and has been residing there for more than a year. (N.J.A.C. 6A:17-2.2). The family is in a fixed, regular, and adequate nighttime residence. (42 U.S. Code § 11302). This determination may be appealed to the Commissioner of Education, pursuant to N.J.A.C. 6A:17-2.7, Disputes and Appeals." (R-1).

7. On December 10, 2022. the respondents were able to secure a lease for residence in Princeton which began on December 10, 2022. Based on this action, the District did not seek to remove respondents' children from the District (R-2).

8. On February 28, 2023, the District wrote to respondents requesting tuition

reimbursement for the time that respondents' children were attending the District while residing in a fixed, regular, and adequate three-bedroom townhouse in Lawrenceville (R-3).

9. On or about April 1, 2023, the District filed Bd. of Educ. of the Town of Princeton, Mercer Cnty. v. A.V. and R.C. obo A.V.C. and D.V.C., Agency Ref. No 71-3/23 to recover tuition.

10. As of May 25, 2024, no appeal of the November 15, 2022, ECS decision was filed with ECS or the District.

11. As of May 25, 2024, it has been 559 days and 379 business days since the ECS decision.

12. As of the date of the hearing respondents filed no written information to the Court refuting the position of the District.

13. Oral argument on the motion for summary decision was scheduled for July 15, 2024, at 4:00 p.m.

14. On the date of the hearing counsel for respondents did not appear for the scheduled zoom hearing. I personally sent an email to counsel for respondents at 4:07 p.m. stating that I was waiting for him to appear.

    a. At 4:20 p.m. I received the following message:

       On behalf of Mr. Kaplow:
       Mr. Kaplow is at the doctors.
       Thank you.
       Leslie Peckham
       Paralegal to Richard J. Kaplow, Esq.

    b. At 4:27 p.m. I received the following message from a judicial assistant:

> Petitioner (Ms. V.) just called to advise that her attorney (Mr. Kaplow) called to advise her that he was still at the doctors and not making the hearing today at 4:00 p.m.

15. I did not hear from him on that date, nor did I hear from him within several days after the scheduled hearing as to why he did not appear.

16. At no time subsequent to the hearing date did I receive any correspondence or documents regarding respondents' position on the motion.

It is unchallenged that during the 2022-2023 school year, A.V.C. and D.V.C. were attending Princeton Public Schools and living in Lawrenceville for a total of sixty-three ineligible days between September 6 (the first day of school) and December 10, 2022 (the day the lease in Princeton began). Tuition for elementary students is $22,570 per student which is just over $125.38 per day. For each student, Princeton Public Schools is owed $7,898.94 in tuition for a total of $15,797.88 for the 2022- 2023 school year. Additionally, A.V.C. and D.V.C. were attending Princeton Public Schools for a total of 146 ineligible days from October 28, 2021 (the day respondents informed the District they were living in Lawrenceville and would need transportation) to June 20, 2022 (the last day of school). During the 2021-2022 school year, tuition for elementary students was $19,400 per year or approximately $107.77/day. For each student, Princeton Public Schools is owed 15,734.42 for a total of $31,468.84 for the 2021-2022 school year. Altogether, the total amount due and owing is 47,266.72.

Additionally, I **FIND** as fact that A.V.C. and D.V.C. were not residents within the purview of the Princeton Boro Board of Education between the period October 8, 2021 to December 10, 2022.

I further **FIND** as fact that the tuition rate for the District is detailed above resulting in a total amount due and owing of $47,266.72.

LEGAL ANALYSIS AND CONCLUSIONS

A motion for summary decision shall 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).

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 alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). 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." Id. (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249 (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 252. The evidence in this case is one-sided as counsel for respondents deemed not to submit any documentation challenging petitioner's position nor to appear at oral argument on the motion. As such I **CONCLUDE** that this matter is ripe for summary decision.

The issue in this appeal is whether A.V.C. and D.V.C. had been domiciled in the District during the period October 8, 2021 to December 10, 2022, and, if not, is tuition owed to petitioner for education expenses for that period?

Public schools are required to provide a free education to individuals between the ages of five and twenty years in certain circumstances, including individuals who are domiciled within the school district. N.J.S.A. 18A:38-1(a). Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning.

State v. Benny, 20 N.J. 238, 250 (1955). N.J.A.C. 6A:22-3.1(a)(1) provides: "A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district." See also P.B.K. ex rel. minor child E.Y. v. Bd. of Educ. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001). Thus, a child would routinely attend school in the district where his or her parents live. The petitioner has the burden of proof in a determination of residency eligibility. N.J.S.A. 18A:38-1(b)(2). When a child is found to be ineligible to attend a school in its district, a school board is entitled to recover tuition from the parent or guardian of the child found ineligible to attend within the district. N.J.S.A. 18A:38-1(b)(2).

A review of the record and undisputed (as unchallenged) facts reveals that A.V.C. and D.V.C. :

1. Were not domiciled within the District or living with a parent or guardian whose domicile was located within the District (while attending school there) during the period October 8, 2021 to December 10, 2022;

2. Were not eligible for a free education in the District during that period;

3. Were not eligible to attend the District pursuant to N.J.S.A. 18A:38-1(b)(1); and

4. Were not eligible for a free education in the District because they were not homeless having produced a lease for a residence in Lawrenceville.

Accordingly, respondents owe the District reimbursement of tuition for the period from October 8, 2021 to December 10, 2022.

Thus, it is unchallenged that respondents' family was domiciled outside of the District in Lawrenceville from October 8, 2021 to December 10, 2022. Accordingly, I **CONCLUDE** that the petitioner is entitled to summary decision and that A.V.C. and D.V.C.

were not entitled to attend school in the District and receive a free public education there pursuant to N.J.S.A. 18A:38-1(a) for the period October 8, 2021 to December 10, 2022.

I further **CONCLUDE** that because A.V.C. and D.V.C. were not entitled to receive a free public education in the District for the period October 8, 2021 to December 10, 2022, the petitioner is entitled to tuition reimbursement from respondents resulting in a total amount owed of $47,266.72. Therefore, I **CONCLUDE** that petitioner is entitled to summary decision on its motion for summary decision for tuition reimbursement from respondents for the cost of providing an education to A.V.C. and D.V.C. at the daily per pupil rate of $125.38 per day in the 2022-2023 school year and $107.77 in the 2021-2022 school year. For each student, Princeton Public Schools is owed 15,734.42 for a total of $31,468.84 for the 2021-2022 school year and the Board is owed $7,898.94 in tuition for a total of $15,797.88 for the 2022- 2023 school year. Altogether, the total amount due and owing is 47,266.72.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that petitioner's motion for summary decision is **GRANTED**.

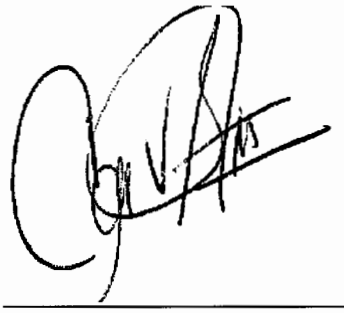
It is further **ORDERED** that the total amount due and owing to petitioner by respondents is $47,266.72 representing payment for educational services rendered from October 8, 2021 to December 10, 2022.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.



September 3, 2024
DATE

CARL V. BUCK, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

CVB/mph/tat

APPENDIX

EXHIBITS

For petitioner

Notice of Motion for Summary Decision; Petitioner's Statement of Material Facts in Support of Motion for Summary Decision; Petitioner's Brief in Support of Motion for Summary Decision; and attached Exhibits

Correspondence from respondents' counsel, dated June 14, 2024

For respondents

None

381-24
OAL Dkt. No. EDU 05140-23
Agency Dkt. No. 119-5/23

New Jersey Commissioner of Education

Final Decision

Robert Donza,

Petitioner,

v.

Board of Education of the Township of Jefferson, Morris County,

Respondent.

The record of this matter, the proposed Global Settlement Agreement and Mutual Release (Agreement), and the Initial Decision issued by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that Paragraph 8 of the Agreement includes a confidentiality clause. The parties are reminded that the Board must comply with the requirements of New Jersey's Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* in regard to information concerning this matter, notwithstanding any agreement the parties may have between themselves to keep the terms of their settlement confidential.

In light of the foregoing, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 10, 2024
Date of Mailing: October 11, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 05140-23
AGENCY DKT. NO. 119-5/23

ROBERT DONZA,
Petitioner,
v.
TOWNSHIP OF JEFFERSON BOARD OF EDUCATION, MORRIS COUNTY,
Respondent.

Zinovia H. Stone, Esq. for petitioner (Caruso Smith Picini, PC, attorneys)

Mark A. Wenczel, Esq. for Respondent (Cleary Giacobbe Alfieri & Jacobs, LLC, attorneys)

Record Closed: August 27, 2024 Decided: September 3, 2024

BEFORE **KELLY J. KIRK**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle this case and have entered into an agreement. Their settlement agreement is attached to this decision.

Having reviewed the terms of their agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

I **FILE** my decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration. This recommended decision may be adopted, modified, or rejected by **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is empowered by law to make a final decision in this case. If the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not so act within 45 days, and unless such time limit is otherwise extended, this recommended decision becomes a final decision in accordance with N.J.S.A. 52:14B-10.

Kelly J Kirk

September 3, 2024

DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:
am

CLEARY GIACOBBE ALFIERI & JACOBS, LLC
169 Ramapo Valley Road
Upper Level, Suite 105
Oakland, New Jersey 07436
Telephone: 973-845-6700
Facsimile: 201-644-7601
Attorneys for Respondent, Jefferson Township Board of Education

ROBERT DONZA, Petitioner, v. JEFFERSON TOWNSHIP BOARD OF EDUCATION, Respondent.	STATE OF NEW JERSEY OFFICE OF CONTROVERSIES & DISPUTES OAL Dkt. No: EDU 05140-23 Agency Dkt. No. 119-5/23 **GLOBAL SETTLEMENT AGREEMENT & MUTUAL RELEASE**

This Global Settlement Agreement and Mutual Release ("Agreement") is entered into by and between Robert Donza ("Petitioner") and the Jefferson Township Board of Education ("Board" or "Respondent"), having principal offices at 31 NJ-181, Lake Hopatcong, NJ 07849 (the Board and Petitioner are collectively referred to as the "Parties").

WHEREAS, Petitioner was employed as a full-time bus driver for the Board on February 28, 2022; and

WHEREAS, a criminal complaint was filed against Petitioner for allegedly harassing a co-worker while at work on or about February 28, 2022; and

WHEREAS, the criminal complaint was dismissed by the Township of Jefferson Municipal Court on August 15, 2022; and

WHEREAS, pursuant to N.J.S.A. 18A:16-6.1, whenever a criminal complaint is filed against an employee for any act or omission arising out of and in the course of the performance of the duties of such position and should such proceeding be dismissed or result in a final

disposition in favor of the employee, the board shall reimburse the employee for the cost of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial and all appeals; and

WHEREAS, after the dismissal of the criminal proceeding, the Petitioner filed a Petition seeking reimbursement of legal fees; and

WHEREAS, the Respondent has filed an Answer to Petition, denying the duty to reimburse Petitioner's legal fees on the basis that the criminal complaint filed against Petitioner was not for acts or omissions "arising out of and in the course of the performance of the duties" of his position; and

WHEREAS, without any admissions, the Parties have come to an amicable resolution for the dismissal with prejudice of all claims asserted in this matter and wish to set forth the terms of such agreement herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby memorialize the terms and conditions of their agreement in writing, subject to the approval of the Commissioner of Education, as follows:

1. In full and final resolution of all claims, Respondent will deliver the sum of Six Thousand, Five Hundred Dollars ($6,500.00) (hereinafter "Settlement Sum") by check made payable to "Caruso Smith Picini Attorney Trust Account" within thirty (30) days of the Commissioner of Education's approval of this Agreement. The Settlement Sum will be delivered to counsel for Petitioner, Annette Verdesco, Esq., Caruso Smith Picini, P.C., 60 Route 46 East, Fairfield, New Jersey 07004.

2. In consideration of the terms of this Agreement, Petitioner and the Board hereby waive, release and indemnify each other, including each other's respective agents, representatives, members, employees and volunteers, from all possible claims, that have or may have accrued against the other and which arose out of and/or relate to the Parties' employment relationship, status and/or cessation of the employment relationship. This Mutual Release includes, but is not limited to, claims arising under the New Jersey school laws, including but not limited to N.J.S.A. 18A:16-6 and 6.1, New Jersey Conscientious Employee Protection Act, New Jersey Law Against Discrimination, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the federal Age Discrimination in Employment Act of 1967 ("ADEA"), the Older Workers Benefit Protection Act ("OWBPA"), the federal Equal Pay Act, the New Jersey Wage & Hour Law, the United States Constitution, the New Jersey State Constitution, the federal Americans with Disabilities Act, the Families First Coronavirus Response Act, the Family and Medical Leave Act, New Jersey Family Leave Act, the New Jersey Earned Sick Leave Law, the Equal Pay Law, the Equal Rights Act, any other federal, state or local law or ordinances, and/or any common law claims under tort, contract (including any collective bargaining agreement she was subject to or part of) or any other theories now or hereafter recognized.

3. The Release recited in Paragraph 2 shall include any and all claims which Mr. Donza and the Board may have at the time of the execution of this Settlement Agreement and Mutual Release for any type of damages and/or relief cognizable under any of the laws referenced herein, including, but not limited to, any and all claims for wages, compensatory damages, punitive damages, and/or attorneys' fees.

4. Upon Commissioner of Education approval, this action shall be conclusively resolved and dismissed with prejudice. Approval of this Agreement and the dismissal of this action, shall not preclude Petitioner or Respondent from suing for enforcement or for a violation of this Agreement.

5. Petitioner acknowledges that he has had the opportunity to review this Agreement in detail with an Attorney. Petitioner fully understand its requirements and limitations. Petitioner hereby states that he is signing this Agreement voluntarily, of his own free will, and not under duress or coercion of any kind.

6. This Agreement shall be construed fairly according to the plain language of its terms and not for or against any party hereto.

7. All parties are bound by this Agreement and each of its provisions. Anyone who succeeds their rights and responsibilities, such as their successors and assigns are also bound. This Agreement is made for the benefit of all parties hereto and all who succeed to their rights and responsibilities, and expressly includes their officials, representatives, employees, agents, attorneys, successors or assigns.

8. This Agreement is to be kept confidential by both parties to the maximum extent permitted by Law.

9. This Agreement represents the entire Agreement between the Parties and will not be modified in whole or in part except by a mutual subsequent written and signed agreement.

10. This Agreement is governed by the laws of the State of New Jersey. The Parties agree that the courts of the State of New Jersey in Morris County or the Federal District Court of New Jersey in Newark, New Jersey shall be the sole forum in which any legal action concerning or relating to this Agreement shall be brought.

11. In the event that any provision of this Agreement is held to be void or unenforceable by any court or regulatory authority having jurisdiction thereof, such ruling will not affect the validity of this Agreement; the remaining provisions shall continue to be in full force and effect.

12. This Agreement may be executed in one or more original, emailed or telecopied counterparts, all of which together shall be one instrument, and all of which shall be considered duplicate originals.

13. **This Agreement is conditioned upon and subject to the review and approval of an Administrative Law Judge, Commissioner of Education and the Jefferson Township Board of Education.**

The parties hereby acknowledge their agreement to the terms set forth above by signing below.

PETITIONER:

Robert Donza

Date: 7/22/24

Witness for Petitioner:

Timothy M. Smith

Dated: July 22, 2024

FOR THE JEFFERSON TOWNSHIP BOARD OF EDUCATION:

Stacey Poulas
Board of Education President

Date: 8/26/24

Rita Orobo Giacchi
Board Secretary

Date: 8/26/24

382-24

New Jersey Commissioner of Education

Final Decision

R.F., on behalf of minor child, O.F.,

Petitioner,

v.

Board of Education of the Township of Montclair, Essex County,

Respondent.

Synopsis

Petitioner appealed the finding of the respondent Board that his son, O.F., was not the victim of harassment, intimidation, and bullying (HIB) pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 *et seq.* Petitioner alleged, *inter alia*, that his fifth-grade child had been the target of a series of incidents in which O.F. was taunted and kicked by classmates. The Board moved for summary decision, arguing that these incidents were unsubstantiated and did not constitute HIB as defined within the Act. The parties filed a Joint Stipulation of Facts and Joint Exhibits. The petitioner opposed the motion, asserting that the Board's determination that there was no HIB was arbitrary, capricious and unreasonable; further, the petitioner claimed that the Board's HIB investigation was not conducted in a timely manner.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; none of the requisite statutory elements of HIB, codified at *N.J.S.A.* 18A:37-14, were satisfied in this matter because the alleged misconduct was unsubstantiated; the Board conducted a prompt and thorough investigation in compliance with the Act's procedural requirements; and petitioner's claims related to other HIB matters that occurred after the primary incident at issue in this case, as well as his related theories regarding retaliation by the Board, are beyond the scope of the matter herein. The ALJ concluded that the Board's determination that no HIB incident occurred was not arbitrary, capricious, or unreasonable. Accordingly, the Board's motion for summary decision was granted and the petition was dismissed with prejudice.

Upon review, the Commissioner, *inter alia,* agreed with the ALJ that the Board's determination was not arbitrary, capricious, or unreasonable. However, the Commissioner rejected the ALJ's finding that the Board fully complied with the Act's procedural requirements, as the evidence demonstrates that the statutory timeframes set forth at *N.J.S.A.* 18A:37-15(b)(6) were not strictly adhered to by the Board. But both the petitioner and the Board contributed to the delays, which alone do not render the Board's determination arbitrary, capricious, or unreasonable. Accordingly, the Initial Decision of the OAL was adopted as modified herein.

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.

382-24
OAL Dkt. No. EDU 09352-23
Agency Dkt. No. 150-5/23

New Jersey Commissioner of Education

Final Decision

R.F., on behalf of minor child, O.F.,

Petitioner,

v.

Board of Education of the Township of Montclair, Essex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner, R.F., pursuant to *N.J.A.C.* 1:1-18.4, and the reply filed by respondent, Board of Education of the Township of Montclair (Board), have been reviewed and considered.

Petitioner challenges the Board's determination that an alleged series of incidents during which his minor child was taunted and kicked in his private area was unsubstantiated and did not constitute harassment, intimidation, or bullying (HIB) as defined within the Anti-Bullying Bill of Rights Act (the Act), *N.J.S.A.* 18A:37-13 to -32. After the matter was transmitted to the OAL, the Board moved for summary decision. The parties filed a Joint Stipulation of Facts and Joint Exhibits. Petitioner opposed the motion for summary decision by expressing disagreement with the Board's conclusion that no HIB incident occurred and claiming that it was arbitrary and capricious. Petitioner also asserted that the Board's HIB investigation was not conducted in a timely manner. Additionally, petitioner argued that the ALJ should consider the Board's retaliatory and improper motives, raised

in a separate HIB matter then pending before a different ALJ, and should allow that ALJ to determine the issue of retaliation prior to resolution of the instant matter.

Upon finding that the material facts were undisputed, the ALJ determined that the matter was ripe for summary decision. The ALJ concluded that the Board's determination that no HIB incident occurred was not arbitrary, capricious, or unreasonable. In so doing, the ALJ agreed with the Board that none of the requisite statutory elements of HIB, codified at *N.J.S.A.* 18A:37-14, were satisfied because the alleged misconduct was unsubstantiated. The ALJ further found that the Board conducted a prompt and thorough investigation in compliance with the Act's procedural requirements. Finally, the ALJ rejected as beyond the scope of the record petitioner's claims related to other HIB matters that occurred after the incident at issue in this case and his related theories regarding retaliation by the Board.

In his exceptions, petitioner argues that all three elements of the HIB statute have been satisfied and that any credibility issues regarding the reported HIB incident should be resolved through a trial. He contends that the HIB incident in this case was motivated by O.F.'s perceived gender; that O.F.'s rights were substantially interfered with as he was physically assaulted at school, which impeded his ability to safely learn; and that a reasonable person should know that assaults on a child's genitals are physically or emotionally harmful to a student. He also asserts that the ALJ erred by ruling that the Board's determination is entitled to a presumption of correctness despite evidence demonstrating that he was subject to unlawful retaliation by the Board. In response, the Board requests that the Commissioner adopt the ALJ's Initial Decision and dismiss the petition. It argues that the ALJ's Initial Decision is supported by the appropriate record, which was agreed upon by the parties, and well-established case law.

Upon review, the Commissioner adopts the ALJ's Initial Decision as the final decision in this matter, as modified. While the Commissioner agrees that the Board's determination was not arbitrary, capricious, or unreasonable, the Commissioner rejects the ALJ's finding that the Board fully complied with the Act's procedural requirements. The evidence in the record demonstrates that the statutory timeframes set forth at *N.J.S.A.* 18A:37-15(b)(6) were not strictly adhered to by the Board. However, both petitioner and the Board contributed to the delays, and the delays alone do not render the Board's determination arbitrary, capricious, or unreasonable, for the reasons explained herein. In addition, the Commissioner finds that the ALJ properly rejected as beyond the scope of this proceeding petitioner's claims related to other HIB matters that occurred after the incident at issue in this case and his related theories regarding retaliation by the Board.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. Bd. of Educ. of W. Orange*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration," and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't of Env't Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff'd*, 131 *N.J. Super.* 37 (App. Div. 1974). Regarding HIB determinations, this standard has been explained as requiring a petitioner to "demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." *G.H. and E.H. o/b/o K.H. v. Bd. of Educ. of Borough of Franklin Lakes, Bergen Cnty.*, OAL Dkt. No. EDU 13204-13 (Initial Decision Feb. 24, 2014), *adopted*, Commissioner Decision No. 157-14 (Apr. 10, 2014).

As discussed in the ALJ's Initial Decision, the Act defines HIB as:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L. 2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

In summary, once the alleged written, verbal, or physical act, or any electronic communication is substantiated, a finding of HIB requires that three elements under the Act be satisfied. First, the substantiated conduct must be reasonably perceived as being motivated by any actual or perceived characteristic expressly identified in the statute, or by any other distinguishing characteristic. *Ibid.* Second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. *Ibid.* Third, one of the three conditions set forth in subsections (a), (b), and (c) must be satisfied. *Ibid.*; *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex Cnty.*, Commissioner Decision No. 510-20 (Feb. 4, 2020).

Here, the Board could not substantiate that any verbal or physical act occurred in the school bathroom, nor could it substantiate that O.F. was ever physically assaulted by the alleged offenders. Because the alleged acts could not be substantiated, it was not arbitrary, capricious, or unreasonable for the Board to conclude that no HIB incident occurred. The record reflects that the Board's

investigation was sufficiently thorough. The anti-bullying specialist (ABS) interviewed O.F. and the alleged offenders multiple times, and reopened the investigation after petitioner provided new information. The alleged offenders denied that they ever kicked O.F., and they denied playing a "husband and wife game" involving taunts or a song. The ABS determined that no one witnessed the alleged incidents. However, the ABS recognized that a social conflict existed between the boys—likely due to O.F. being new to the school. Administrators implemented mediation sessions and a safety plan so that O.F. could utilize a private bathroom near the nurse and main office.

Because the Board determined that the alleged acts could not be substantiated, it is not possible for any of the three requisite elements of the HIB statute to be satisfied. Even if the Commissioner would have decided the outcome differently, that is an insufficient reason to overturn the Board's decision so long as the Board has not acted dishonestly or in bad faith. *Bayshore Sewerage Co.,* 122 *N.J. Super.* at 199. Here, the record fails to support the conclusion that the Board acted dishonestly or in bad faith. The Board was confronted with a difficult situation wherein the alleged offenders denied that the incidents took place and no witnesses were identified. Thus, the Commissioner finds no reason to substitute his judgment for the Board's and concurs with the ALJ that the Board's determination declining to find that a HIB incident occurred as defined under the Act was not arbitrary, capricious, or unreasonable.

However, the Commissioner agrees with petitioner that the Board did not strictly adhere to the statutory timeframe mandated by the Act when conducting its HIB investigation. For instance, the Act requires that HIB investigations be completed within 10 school days of the initial HIB complaint. *N.J.S.A.* 18A:37-15(b)(6)(a). The results of the investigation must be reported to the school superintendent within two school days thereafter, and then to the Board no later than the date of its next meeting. *N.J.S.A.* 18A:37-15(b)(6)(b), (c). After the results of the investigation are

reported to the Board, parents shall be notified in writing of the outcome within 5 school days. *N.J.S.A.* 18A:37-15(b)(6)(d). If a parent requests a hearing before the Board upon receiving the results of the investigation, then that hearing must be held within 10 days of the request. *Ibid.*

In this case, petitioner reported the initial allegations to O.F.'s teacher on October 11, 2022, and the ABS began investigating the following day. Petitioner made additional reports on October 15, 2022, filed a formal HIB complaint on October 20, 2022, and the ABS continued investigating during this time. The ABS finalized the investigation on November 1, 2022, which was more than 10 school days following the initial report to O.F.'s teacher. However, the investigation was finalized within 10 school days of petitioner's filing of the formal HIB complaint. Because petitioner continued to email district staff about the allegations and criticized the nature of the Board's investigation, the Board appropriately reopened the investigation on November 22, 2022, and concluded it for the second time on November 28, 2022.

While the Board hearing was not held within 10 days of petitioner's request, both petitioner and the Board contributed to the delay. Petitioner retained counsel and requested discovery, which the Board provided. The Board retained an independent investigator and considered reopening the HIB investigation again, but ultimately declined to do so based upon petitioner's objection to same. These events resulted in adjournment of the hearing. The Commissioner finds that although the Board did not precisely adhere to the Act's mandated timeframes, it acted reasonably under the circumstances in the interest of conducting a thorough investigation and the delays did not interfere with the due process rights of O.F. or petitioner, who presented testimony and other evidence at the Board hearing. The Board is reminded to adhere to the Act's timeframes in the future.

Finally, the Commissioner agrees with the ALJ that petitioner's claims related to other HIB matters that occurred after the alleged conduct in this case, and his related theories regarding

retaliation by the Board, were beyond the scope of this proceeding and properly rejected. The subsequent petitions of appeal filed and pending before other ALJs have no bearing upon the legal issue in this case, i.e., whether the Board's determination that no HIB occurred in relation to the incidents reported on October 11, 2022, and reiterated in the formal HIB complaint filed on October 20, 2022, was arbitrary, capricious, or unreasonable. There was no need for the ALJ to delay adjudication of this matter until the other pending matters were decided.

Accordingly, the Initial Decision, as modified, is adopted as the Final Decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 10, 2024
Date of Mailing: October 11, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 09352-23
AGY. DKT. NO. 150-5/23

R.F. ON BEHALF OF O.F.,
Petitioner
vs.
BOARD OF EDUCATION OF THE TOWNSHIP OF MONTCLAIR, ESSEX COUNTY,
Respondent.

R.F., on behalf of **O.F.** petitioner, pro se

Alexander L. D'Jamoos, Esq., for respondent (Flanagan, Barone & O'Brien, LLC., attorneys)

Record Closed: August 19, 2024 Decided: September 4, 2024

BEFORE **THOMAS R. BETANCOURT,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a pro se petition of appeal with the Office of Controversies and Disputes, New Jersey Department of Education (NJDOE) challenging a Harassment, Intimidation and Bullying (HIB) determination by the respondent District regarding O.F.

Said petition was dated May 30, 2023. Said petition seeks the reversal of a non-HIB finding by the Respondent District regarding Case No. 140-101122-012(A)(B).

Petitioner then submitted a supplemental filing on July 13, 2023, regarding another HIB matter involving O.M. (Case No. 066) which is not before the undersigned.

Petitioner submitted another supplemental filing on August 7, 2023, in response to Respondent's Answer.[1]

Respondent filed its Amended Answer with the Commissioner on September 14, 2023. Petitioner filed a response thereto dated the same date.

The Department of Education transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative Law (OAL), where it was filed on September 18, 2023.

A prehearing conference was held on October 13, 2023, and a prehearing order was entered by the undersigned on October 16, 2023.

A motion to quash, dated March 20, 2024, was filed on behalf of a third party, J.K. on behalf of minor B.K. to quash a subpoena for B.K. to testify at the hearing for the within matter.

Respondent, who issued the subpoena to B.K., agreed by letter dated March 22, 2024, to accept the certification of B.K. in lieu of testimony.

Respondent, by motion dated April 12, 2024, sought to bar the testimony of Carlos Mora, M.D., or in the alternative to compel Dr. Mora to provide his medical records relative to O.F.

[1] Respondent's initial Answer to the Petition of Appeal was not included in the transmittal of this matter to the OAL.

Petitioner filed a reply letter brief, dated April 2, 2024, in opposition to Respondent's motion.

The genesis of the motion by Respondent to bar Dr. Mora's testimony, or in the alternative to compel Dr. Mora to produce his records, lies in a letter by Dr. Mora to Respondent's counsel, dated March 6, 2024, that he would not comply with a subpoena to produce his records.

By Order dated July 24, 2024, the motion to bar Dr. Mora's testimony was granted, and the motion to quash was deemed moot as the Respondent agreed to accept the affidavit of B.K. in lieu of testimony.

Respondent filed a motion for summary decision on July 19, 2024. Petitioner filed his response thereto on August 9, 2024. Respondent filed its reply thereto on August 19, 2024. Petitioner then submitted a sur reply and a brief filed in another HIB matter, EDU 01408-24, before the Honorable Patrice E. Hobbs, ALJ. Petitioner was advised that these additional filings would not be considered as they are not permitted pursuant to N.J.A.C. 1:1-12.5.

ISSUE

Petitioner seeks a reversal of a non-HIB finding by the Respondent Board regarding an allegation of HIB by R.F. on behalf of O.F. asserting that said decision was arbitrary, capricious or unreasonable.

JOINT STIPULATION OF FACTS

Introduction to the Parties and Witnesses

1. Respondent Montclair Board of Education is the public school district for the City of Montclair, New Jersey, with its central administrative offices located at 22 Valley Rd., Montclair, NJ, 07042.

2. Montclair Board of Education operates twelve (12) Montclair Public Schools including Pre-K programs, lower elementary schools, three middle schools, and one high school. Montclair Public Schools serves a diverse community and educates more than 6,100 students attending Pre-Kindergarten through 12th Grade.

3. Montclair Board of Education established District Policy 5512 - Harassment, Intimidation, and Bullying - beginning December 2016 in accordance with the New Jersey Anti Bullying Bill of Rights.

4. During the 2022-2023 school year, Dr. Jonathan Ponds served as the Superintendent of Schools as appointed by the Montclair Board of Education in 2020.

5. Montclair Board of Education operates Northeast Elementary School.

6. During the 2022-2023 school year, Dr. David Goldblatt, served as the Director of Pupil Services for Montclair Public Schools, a District-wide position.

7. During the 2022-2023 school year, Ms. Maggie Dock, served as the Mental Health Coordinator and Anti-Bullying Coordinator for Montclair Public Schools, a District-wide position.

8. Beginning September, 2022, Dr. Terence Somerville was hired by the Montclair Board of Education and assigned to serve as the Principal of Northeast Elementary School.

9. During the 2022-2023 school year, Ms. Danielle Kupperman, served as the School Social Worker and Anti-Bullying Specialist of Northeast Elementary School.

10. During the 2022-2023 school year, Ms. Kristen McCann, served as a 5th Grade Teacher of Northeast Elementary School.

11. During the 2022-2023 school year, Ms. Christie Rule, R.N., served as Nurse of Northeast Elementary School.

12. During the 2022-2023 school year, Ms. Donna Soprano, served as a Paraprofessional of Northeast Elementary School and was assigned to supervise and assist Ms. McCann's Fifth Grade classroom.

13. During the 2022-2023 school year, Petitioner O.F. attended Northeast Elementary School as a Fifth Grade Student in Ms. McCann's home room. This was his first year attending Northeast Elementary School.

14. O.F. was home schooled during the 2020 – 2022 period. (See Joint Ex. 3: 9/9/21 letter to R.F. from Asst. Superintendent of Montclair Public Schools confirming continued home schooling of O.F. for 2021-2022 school year.)

15. Petitioners R.F. and M.H.A. are O.F.'s parents/guardians, his father and mother, respectively.

16. During the 2022-2023 school year, B.K. and B.M., were also Fifth Grade students attending Northeast Elementary School and assigned to Ms. McCann's home room. Alleged Bullying Incident and Investigations

17. On October 11, 2022, R.F. sent an email to Ms. McCann to report that "O.F. had a problem today with Bodi and Benedict, who he said were looking at his private parts and taunting him when he was peeing in the bathroom causing him to rush to close his zipper and ended up peeing on his pants." "O.F. also said they kicked him from behind and said it was the second time this has happened." (Joint Ex. 5, 10/11/22 email exchange between R.F. and Ms. Kristen McCann.)

18. Ms. McCann forwarded this email to the school principal Dr. Somerville and responded to R.F. within 30 minutes of this report. (Joint Ex. 5).

19. On October 12, 2022, R.F. sent an email to Ms. Kupperman to follow up on the report to Ms. McCann. (Joint Ex. 6, 10/12/22 email exchange between R.F. and Ms. Danielle Kupperman re: "O.F. 5th Grade").

20. On October 12, Ms. Kupperman met with O.F. who advised her of playground incident with B.M. and bathroom incident with B.K., which he had not reported to an adult.

21. On October 14, Principal Somerville met with O.F., B.M. and B.K. to work on resolving the issue through mediation.

22. On Saturday, October 15, R.F. sent an email reporting an allegation that "these incidents with being beat up and kicked in his private parts happened, according to him, over 20 times." The allegations include other sexually explicit language, teasing and

harassment. (Joint Ex. 8, 10/12/22 – 10/18/22 R.F. email exchange between R.F., Principal Terrance Somerville and Ms. Danielle Kupperman re: "O.F. 5th Grade").

23. On October 18 and 19, Ms. Kupperman met with O.F. to investigate the allegations made in R.F.'s October 15 email. (Ex. 9, 10/18/22 & 10/19/22 handwritten notes of Ms. Danielle Kupperman).

24. On October 19, Principal Somerville and R.F. spoke on the phone confirming that HIB procedures will be initiated and to discuss what is being done to keep O.F. safe at school. (Ex. 10, 10/19/22 R.F. email to Terence Somerville re: "Concern"; Ex. 11, 10/19/22 R.F. emails with T. Somerville & D. Kupperman re: "O.F. (bullying)").

25. On October 19 at approximately 10 PM, R.F. advises of O.F.'s stress, request that he not be pulled out of class, and demand that the accused students apologize. (Ex. 12, 10/20/22 R.F. emails with T. Somerville & D. Kupperman re: "O.F. (bullying)").

26. On October 20 at approximately 11:30 PM, R.F. files the HIB Form 338 on behalf of O.F. against 2-3 students alleging that O.F. has been tormented and assaulted since the first week of school because "they do not like it that he answers questions in class or is good at math and science and because they know he was National Math Kangaroo champion two years in a row." The allegations include other sexually explicit language, teasing and harassment. (Ex. 14, HIB 338 Form completed by D.Kupperman).

27. On Friday, October 21, Ms. Kupperman met with B.K. to investigate the allegations in the HIB complaint.

28. On Friday, October 21 at approximately 11 PM, R.F. sent an email reporting that O.F. broke down in frustration, a discussion between Ms. Kupperman and M.H.A. at pick up after school, and allegations that O.F. continues to be emotionally harmed through a hostile educational environment by unidentified boys in his class. (Ex. 15, 10/20/22 – 10/21/220 emails re: O.F. HIB Form 338).

29. On October 24, R.F. sent an email providing additional detail to the allegations of bullying during the first three weeks of school. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: "O.F. HIB Form 338 O.F.").

30. On Tuesday, October 25, Ms. Dock and Ms. Kupperman continued the investigation of the HIB complaint by interviewing B.K. and B.M. (Ex. 17, 10/21/22 – 11/22/22 Investigation Notes of D. Kupperman).

31. On October 26, R.F. sent an email demanding that the accused students apologize to O.F.. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: "O.F. HIB Form 338 O.F.").

32. On October 27, R.F. sent an email confirming that the accused students apologized to O.F. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: "O.F. HIB Form 338 O.F.").

33. On November 1, 2022, Ms. Kupperman had completed the HIB investigation report and it was signed by Dr. Somerville. (Ex. 19, 10/26/2022 Genesis Portal and 11/1/22 Confidential HIB Investigation Report).

34. On November 7, R.F. sent an email advising of O.F.'s limp, subjecting complaints of pain, and referral to a psychiatrist. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: "O.F. HIB Form 338 O.F.").

35. On November 7, R.F. sent an email reported another incident in the bathroom when a 4th Grade student peeped into the stall while O.F. was urinating. R.F. demanded another HIB investigation. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: "O.F. HIB Form 338 O.F.").

36. On November 7 and 14, R.F. and Dr. Somerville correspond to schedule an in person meeting. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: "O.F. HIB Form 338 O.F.").

37. On November 15, R.F. and M.H.A. meet with Dr. Somerville. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: "O.F. HIB Form 338 O.F.").

38. On November 15 at 9:24 PM, R.F. sends an email criticizing the investigation, attaching O.F.'s hand written notes, and demanding an appeal. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: "O.F. HIB Form 338 O.F.").

39. On November 15 and 16, R.F. exchanges emails with Ms. Dock demanding the results of the investigation. (Ex. 22, 11/15/22 email from Maggie Dock to T. Somerville re: "HIB IMPORTANT" and 11/15/22 – 11/16/22 email exchange between R.F., Maggie Dock, D. Kupperman, and T. Somerville re: "Northeast Meeting Questions.")

40. On November 17, R.F. participated in a phone call with Ms. Dock adding allegations of race and gender expression discrimination. (Ex. 23, 11/17/22 – M. Dock notes re: 012-Re-opened / phone contact to father R.F.).

41. On November 22, Ms. Kupperman and Ms. Dock interview O.F. to conduct the re-opened investigation. (Ex. 27, 11/22/22 – Investigation Notes of D. Kupperman).

42. On November 22, O.F. was seen at the Nurse's Office for evaluation of a purported injury to his wrist. (Ex 25, 11/22/22 Nurse visit, Nurse Turnstile Records, O.F. Attendance Calendar).

43. On November 22, R.F.'s email speculating about the potential discrimination theories under which O.F.'s alleged bullying could have been motivated. (Ex. 24, 11/15/22 – 11/22/22 email re: Case Reopened NE O.F.).

44. On November 28, 2022, Ms. Dock had completed the HIB Investigation Report of the re-opened allegations. The report was reviewed and signed by Dr. Somerville on November 30. (Ex. 39, Confidential HIB Investigation Report Case # 140-101122-012).

45. On December 5, 2022, Superintendent Ponds affirmed the HIB Investigation Report following the re-investigation of the re-opened allegations based on alternative theories of motivating characteristics. (Ex. 39, Confidential HIB Investigation Report Case # 140-101122- 012).

46. Ms. Dock and her supervisor Dr. David Goldblatt, Director of Pupil Services, reported the results of this investigation to the Board of Education on December 21, 2022.

47. On January 3, 2022, the district issues a letter to R.F. advising of that the investigation concluded and there was insufficient evidence to meet the criteria of HIB. (Ex. 29, 1/3/23 letter M. Dock to R.F. re: Notification of Alleged Incident Ruling NON-HIB). Petitioner's Appeal of HIB Ruling).

48. On January 10, 2023, R.F. sent an email submitting his appeal brief. (Ex. 30, 1/10/23 R.F. email to T. Somerville with O.F. handwritten notes).

49. On January 20, 2023, R.F. was sent a letter by the district scheduling the appeal hearing on January 31, 2023. (Ex. 34, 1/20/23 Dr. Jonathan Ponds letter to R.F. re: Appeal hearing).

50. On January 20, R.F. confirms attendance at the hearing and advising that O.F. and Dr. Mora may also attend. (Ex. 35, 1/20/23 R.F. email to Nina DeRosa re: "Northeast R.F. HIB hearing 2/1/23 and Mental Health Evaluation Matter").

51. R.F. advised the district of his new counsel attending the hearing, now scheduled for February 1, (Ex. 37, 1/26/22 - 1/28/23 email from R.F. to M. Dock re: O.F. (Board Appeal Meeting/Document Request/New Counsel).

52. The hearing was then adjourned to February 22, 2023.

53. On February 28, 2023, the district's attorney issued a letter advising R.F. of the appointment of an independent investigator and adjourning the hearing scheduled on February 22. (Ex. 39, 2/28/23 letter from Christine M. Martinez, Esq.re: Independent Investigator and redacted HIB documents and Confidential HIB Investigation Report Case # 140-101122-012).

54. On March 1, 2023, during Executive Session, the Montclair Board of Education heard Petitioner's appeal affirming that an HIB did not occur. (Ex. 40, 3/7/23 letter from Board Secretary re: Board Affirmed NON-HIB incident on 3/1/23).

55. On May 30, 2023, Petitioner filed the instant Petition of Appeal. (Ex. 41, 5/30/23 Pro Se Petition of Appeal re: Addendum to Case# 10122-012(A)(B)).

56. On February 7, 2024, Petitioner served its answers to Respondent's discovery demands. (Ex 42, 2/7/24 – Petitioner's Discovery Responses).

57. On January 23, 2024, Respondent served its answers to Petitioner's discovery demands. (Ex 43, 1/23/24 – Respondent's Discovery Responses)

FACTUAL DISCUSSION

The Joint Exhibits and Stipulated Facts clearly establish that the Respondent undertook an investigation into the allegations made by Petitioner that O.F. had been bullied in the bathroom on October 11, 2023. The email exchanges between Petitioner, Ms. McCann, Ms. Kuperman and Mr. Somerville during the month of October 2023 show that Respondent addressed the initial complaint set forth in the first R.F. email, and continued to follow up on the changing facts, as expressed by R.F., during the October email exchanges. (Joint Exhibits 5 through 15)

The result was that Respondent found the incident did not meet the criteria to be identified as an act of HIB. A review of Ms. Kupperman's investigative notes (Joint Exhibit 17) bear out this conclusion.

Petitioner alleged additional HIB violations, and the case was reopened in late November 2023. (Joint Exhibit 24)

Ms. Kupperman again investigated, and the matter was determined to not be a HIB violation. (Joint Exhibits 27 and 29)

Respondent responded to the allegations of R.F. on October 11, 2023, and the continued allegations set forth in the emails between the parties, in a prompt manner. Respondent reopened the matter based on more allegations in November 2023. In all instances Respondent concluded that there was not a HIB violation. Petitioner does not assert one material fact that alters the above. Petitioner merely disagrees with the finding.

There are no facts presented that would lead the undersigned to conclude that Respondent's decision was arbitrary, capricious or unreasonable.

LEGAL ANALYSIS AND CONCLUSION

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application,

show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must "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 alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536 (citation omitted).

The parties submitted a Joint Stipulation of Facts and Joint Exhibits. Those facts, as supported by the Joint Exhibits, demonstrate that no material fact is in dispute.

Having read the briefs and certification, and having reviewed the exhibits attached thereto, it is clear that there are no issues as to material fact and that the matter is ripe for summary decision.

The Anti-Bullying Bill of Rights Act ("Act"), N.J.S.A. 18A:37-13 et seq., is designed "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises." N.J.S.A. 18A:37-13.1.(f).

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due

consideration[,]" and the Commissioner will not substitute his judgment for that of the board. Bayshore Sewerage Co. v. Dep't. of Envtl. Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974).

The Act defines HIB as follows:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L. 2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
>
> N.J.S.A. 18A:37-14.

Therefore, a finding of HIB requires three elements. First, the conduct must be reasonably perceived as being motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic and, second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County, Commissioner Decision No. 51-20 (decided February 4, 2020).

The conduct must also take place on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in *N.J.S.A.* 18A:37-15.3.

Regarding the first element, in defining HIB as an action "that is *reasonably perceived* as being motivated either by any actual or perceived characteristic . . .", N.J.S.A. 18A:37-14 (emphasis added), the statute requires an analysis of how the actor's motivation is perceived and whether that perception is reasonable. It does not require an analysis of the actual motivation of the actor. Wehbeh, supra. Certainly, evidence that the actor was motivated by a distinguishing characteristic would meet the standard of this section of the Act, but evidence that the actor was not so motivated does not end the analysis. Here, it was not arbitrary, capricious, or unreasonable for the Board to conclude that this element was not found.

Regarding the second element, the investigation did not demonstrated the conduct substantially disrupt or interfere with the rights of other students or the orderly operation of the school. it was not arbitrary, capricious, or unreasonable for the Board that this element also was not found.

Regarding the third element, an act of HIB is one that "a reasonable person *should* know, under the circumstances, will have the effect of physically or emotionally harming a student," "*has the effect* of insulting or demeaning a student," or "*creates* a hostile educational environment . . .". N.J.S.A. 18A:37-14(a) (emphasis added). None of these criteria require the actor to have actual knowledge of the effect that her actions will have, or to specifically intend to bring about that effect. The first requires only that a reasonable person should know there would be a harmful effect, not that the actor knows there would be such an effect. The second two criteria address only the actual effect of the act, without any reference to what either the actor or a reasonable person does or should know. Wehbeh, supra. As such, a board of education can find that an individual committed an act of HIB even if the individual did not intend to cause harm.

In the instant matter the investigation did not conclude that an act of HIB occurred. Accordingly, there could be no determination that the alleged act or acts,

would have a harmful effect. It was not arbitrary, capricious, or unreasonable for the Board to reach that conclusion.

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A 18A:37-15. Once an alleged HIB incident is reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A. 18A:37-15(b)(6). The investigation shall be conducted by a school anti-bullying specialist and shall take no longer than ten school days to be completed. The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. The results shall also be reported to the board of education "no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent." Ibid.

Pursuant to the Act, the parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation and the result of the investigation. The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Any hearing shall be held in executive session to protect the identity of any students involved. The board may hear from the anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents. The board must issue a decision at the first meeting after its receipt of the investigation report. The board may affirm, reject, or modify the superintendent's decision. The board's decision may be appealed to the Commissioner of Education.

An action by a board of education "is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable." Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Thus, in order to prevail, those challenging an HIB decision made by a board of education "must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of the Bor. of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) (citation

omitted) <http://njlaw.rutgers.edu/collections/oal/>, adopted, Comm'r (April 10, 2014). Also, a board's decision may be overturned if its determination violates the legislative policies expressed or implied in the governing act. J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556 (1963), 562 (1963)), adopted, Comm'r (April 25, 2013) <http://njlaw.rutgers.edu/collections/oal/>.

There are reported cases in which HIB determinations by boards of education have been both affirmed and overturned. In R.G.B. v. Vill. of Ridgewood Bd. of Educ., EDU 14213-12, Initial Decision (May 15, 2013) <http://njlaw.rutgers.edu/collections/oal/>, adopted, Comm'r (June 24, 2013), the ALJ found that the Board did not act in an arbitrary, capricious, or unreasonable manner in determining that a student engaged in HIB when he repeatedly called a female student "fat," "fat ass," and "horse." According to the ALJ, such verbal statements satisfied all of the necessary elements under N.J.S.A. 18A:37-14. And, in G.H., supra, the ALJ also upheld a Board's finding that a white student who repeatedly called a black student "Kool-Aid" engaged in HIB. The ALJ found that the "use of the word 'kool-aid' was directed at [the other student] because of his race; insulted and demeaned [the other student]; and . . . interfered with [the other student's] education" because "[u]pset and embarrassed children are not fully available for learning." However, in J.A.H., supra, the Board's finding that an incident in which one student stuffed a crumbled piece of paper down the shirt of another student constituted an act of bullying was overturned as arbitrary, capricious, and unreasonable because the incident was merely a prank that was part of an ongoing, mutual conflict between the two boys and did not "contain the more serious and aggravating elements either 'expressed or implied' under [N.J.S.A. 18A:37-14.]" The ALJ found that the incident was not improperly motivated by a distinguishing characteristic and that the facts "only support[ed] a finding of ordinary student conflicts rather than the more serious behavior of bullying."

In the instant matter, the parties submitted a Joint Stipulation of Facts and Joint Exhibits supporting the stipulated facts. These facts are agreed upon and lead to the conclusion that the Respondent comported with the law, did a HIB investigation and concluded, twice, that an act of HIB was not substantiated.

Petitioner, in his reply brief, raises issues not before the undersigned. He refers to other HIB matters involving O.F. Indeed, most of Petitioner's argument is based upon other HIB matters. The basis of Petitioner's reference to other HIB matters involving O.F. is to raise the specter of retaliation. That argument fails as the matter before the undersigned predates the additional HIB matters. Further, there are no facts asserted by Petitioner that substantiate a claim of retaliation. None.

Petitioner asserts that Respondent's actions in the instant matter were arbitrary and capricious as it failed to conduct a prompt and thorough investigation and did not follow procedural and substantive HIB law. The Joint Stipulation of Facts and Joint Exhibits belie these assertions, as noted above.

Petitioner further argues that the undersigned should not decide this matter until a matter before ALJ Hobbs is resolved. That matter, while involving O.F., is not germane to the instant matter, notwithstanding Petitioner's repeated allegations of retaliation, none of which are supported by facts.

I agree with Respondent that Petitioner seeks to introduce matters not part of this case. Much of Petitioner's arguments, and statement of facts are not relevant to the instant matter. All that the undersigned need find is whether Respondent acted in an arbitrary, capricious or unreasonable manner. Respondent did not.

It is the obligation of Petitioner to assert a material fact in dispute that would require a hearing. This was not done.

Given the totality of the facts in the instant matter I cannot conclude that the Board acted in an arbitrary, capricious, or unreasonable manner in determining that an HIB incident did occur. See In Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965); R.G.B. v. Vill. of Ridgewood Bd. of Educ., EDU 14213-12, Initial Decision (May 15, 2013) <http://njlaw.rutgers.edu/collections/oal/>, adopted, Comm'r (June 24, 2013); and, J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556

(1963), 562 (1963)), adopted, Comm'r (April 25, 2013) <http://njlaw.rutgers.edu/collections/oal/>.

While the undersigned may have come to a different conclusion than Respondent in the instant matter, that does not mean that the Board acted in an arbitrary, capricious or unreasonable manner.

Accordingly, I **CONCLUDE** that Respondent's motion for summary decision must be **GRANTED**.

ORDER

Based upon the foregoing, it is **ORDERED** as follows:

Respondent's motion for summary decision is **GRANTED**; and, Petitioner's petition is dismissed, with prejudice.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

September 4, 2024
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: September 4, 2024

Date Mailed to Parties: September 4, 2024

db

APPENDIX

Moving papers:

For Respondent:

Motion for Summary Decision with Brief
Certification of Alexander L. D'Jamoos, Esq., with Joint Exhibits J1 through J45
Certification of Service
Reply Brief

For Petitioner:

Brief in Opposition to Motion for Summary Decision with Petitioner's
Exhibits A through Q
Certification of Service

Joint Exhibits:

1. September 2012 Guidance for Parents on the Anti-Bullying Bill of Rights.

2. District Policy 5512- Harassment, Intimidation, and Bullying.

3. 9/9/21 letter to R.F. from Asst. Superintendent of Montclair Public Schools re: confirming continued home schooling of O.F. for 2021-2022 school year, Montclair Local article on O.F. (p27-32), and CogAT Abilities Test, results where O.F. scored in the 98th percentile.

4. 9/29/22 Nurse Visit Summary Form and 9/30/22 Nurse Visit Summary Form.

5. email exchange between R.F. and Ms. Kristen McCann.

6. 10/12/22 email exchange between R.F. and Ms. Danielle Kupperman re: "O.F. 5th Grade."

7. 10/11/22 – 10/13/22 email exchange between Ms. Kristen McCann and Principal Terrance Somerville and Ms. Danielle Kupperman re "O.F."

8. 10/12/22 – 10/18/22 R.F. email exchange between R.F., Principal Terrance Somerville and Ms. Danielle Kupperman re: "O.F. 5th Grade."

9. 10/18/22 & 10/19/22 handwritten notes of Ms. Danielle Kupperman.

10. 10/19/22 R.F. email to Terence Somerville re: "Concern."

11. 10/19/22 R.F. emails with T. Somerville & D. Kupperman re: "O.F. (bullying)."

12. 10/20/22 R.F. emails with T. Somerville & D. Kupperman re: "O.F. (bullying)."

13. 10/19/22 - 10/20/22 R.F. emails with T. Somerville & D. Kupperman re: "O.F. (bullying)."

14. 10/20/22 R.F. email submitting HIB Form 338 O.F. dated 9/9/2022.

15. 10/20/22 – 10/21/220 emails re: O.F. HIB Form 338.

16. HIB 338 Form completed by D. Kupperman.

17. 10/21/22 – 11/22/22 Investigation Notes of D. Kupperman.

18. 10/26/22 Genesis Portal and 11/1/22 Confidential HIB Investigation Report.

19. 11/1/22 – Nurse Visit.

20. 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: "O.F. HIB Form 338 O.F.."

21. 10/27/22 letter from Dr. Li Zhang with medical records.

22. email from Maggie Dock to T. Somerville re: "HIB IMPORTANT" and 11/15/22 – 11/16/22 email exchange between R.F., Maggie Dock, D. Kupperman, and T.Somerville re: "Northeast Meeting Questions."

23. 11/17/22 – M. Dock notes re: 012-Re-opened / phone contact to father R.F.

24. 11/15/22 – 11/22/22 email re: Case Reopened NE O.F..

25. 11/16/22 – 11/21/22 emails between J.K. & D. Kupperman re: "HIB issue."

26. 11/22/22 Nurse visit, Nurse Turnstile Records, O.F. Attendance Calendar.

27. 11/22/22 – Investigation Notes of D. Kupperman.

28. 12/23/22 Fifth Grade Report Card of O.F.

29. 1/3/23 letter M. Dock to R.F. re: Notification of Alleged Incident Ruling NON-HIB.

30. 1/11/23 – Emails re: Appeal board of education and more instances of bullying (OF) enclosing Request for Appeal.

31. 1/10/23 R.F. email to T. Somerville with O.F. handwritten notes.

32. 1/12/23-1/14/22 emails re: "OF HIB matter."

33. 1/19/23 R.F. email to T. Somerville re: "OF (Bullying)."

34. Joint Exhibit 34 is a true and accurate copy of the 1/20/23 Dr. Jonathan Ponds letter to R.F. re: Appeal hearing.

35. 1/20/23 R.F. email to Nina DeRosa re: "Northeast O.F. HIB hearing 2/1/23 and Mental Health Evaluation Matter."

36. 1/22/23 - 1/26/23 email from M. Dock to R.F. re: O.F. NE update.

37. 1/26/22 - 1/28/23 email from R.F. to M. Dock re: O.F. (Board Appeal Meeting/Document Request/New Counsel).

38. Undated letter from Dr. Mora to Superintendent Pond re: Confirming attendance at 2/1/23 HIB Appeal meeting.

39. 2/28/23 letter from Christine M. Martinez, Esq. re: Independent Investigator and redacted HIB documents.

40. 3/7/23 letter from Board Secretary re: Board Affirmed NON-HIB incident on 3/1/23.

41. 5/30/23 Pro Se Petition of Appeal re: Addendum to Case# 10122-012(A)(B).

42. 2/7/24 – Petitioner's Discovery Responses.

43. 1/23/24 – Respondent's Discovery Responses.

44. the Genesis HIB Data.

45. Program for May 4, 2023, 2022-2023 National PTA Reflections Art Program National Winner O.F., Northeast for Intermediate Visual Arts-"Stop Bullying"; Leaflet for May 21, 2023 NJ PTA Reflections Student Art and Award's Showcase; Show Your Voice! National PTA Reflections 2022-2023 Award Presented to O.F., Outstanding Interpretation-Visual Arts.

Petitioner's Exhibits:

A. Affidavit of R.F.
B. email dated February 16, 2023 from R.F. to Ms. Kupperman
C. email dated February 17, 2023 from R.F. to Ms. Dock
D. email dated March 6, 2023 from Ms. Dock to R.F.
E. email dated March 10, 2023 from R.F. to Ms. Dock
F. email dated March 25, 2023 from R.F. to Ms. Dock
G. email dated March 31, 2023 from R.F. to Jonathan Irizarry, Esq.
H. email from Jonathan Irizarry, Esq. to R.F.
I. Initial HIB determination against O.F. dated May 22, 2023; and HIB investigation form
J. email dated July 23, 2023 from R.F. to Ms. Dock

K. email dated June 20, 2023 from R.F. to Ms. Dock
L. email dated July 13, 2023 from David Goldblatt to R.F.
M. email dated August 3, 2023 from Christine Martinez, Esq. to R.F.
N. letter dated August 23, 2023 from Cristina Hunt to R.F.
O. letter dated September 1, 2023 from Cristina Hunt to R.F.
P. email dated September 1, 2023 from R.F. to Ms. Hunt
Q. Respondent Answer to Petition in HIB matter pending before ALJ Hobbs

383-24R

New Jersey Commissioner of Education

Final Decision

J.W., on behalf of minor child, J.W.,

Petitioner,

v.

Board of Education of the Borough of Upper Saddle River, Bergen County, Brad Siegal, and Dana Imbasciani,

Respondents.

Synopsis

Petitioner appealed the finding of the respondent Board that his son was not the victim of harassment, intimidation, and bullying (HIB) pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 *et seq.* Petitioner alleged that J.W. was bullied on March 30, 2023 when classmate, I.T., told J.W. that his "skin looks like poop because of the color of it." Petitioner further alleged that J.W. has been a target of ongoing HIB by I.T., contending, *inter alia*, that I.T. had: rammed J.W., knocking him to the ground; tackled him without provocation; stabbed J.W. in the ribs with pencils; threatened to stab him in the eye with a sharpened pencil; and made a colorist comment to J.W. about having a black eye. The Board's HIB investigation yielded an inconclusive finding, as I.T. was absent from school on the date of the alleged incident and witnesses could not corroborate that J.W. was the victim of HIB on March 30, 2023. The Board filed a motion for summary decision. Petitioner filed a motion to dismiss.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioner's claims that the Board did not comply with the Act in regard to alleged HIB acts by I.T. against J.W. that predate the March 30, 2023 incident are precluded herein, since the Board did not investigate these earlier allegations, nor rule on them in the June 26, 2023 decision that forms the basis of the within appeal; the Board's argument that J.W. is precluded from alleging HIB acts by I.T. towards J.W. that predate March 30, 2023, is limited solely to the within petition and does not extend to other petitions petitioner may file; further, school attendance records show that I.T. was absent on March 30 and March 31, 2023. The ALJ concluded that it was not arbitrary, capricious or unreasonable for the Board to determine that the March 30th incident could not be considered an HIB qualifying event. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner, *inter alia,* concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination, but found that the Board was not entitled to summary decision regarding the uninvestigated HIB allegations predating March 30, 2023, as disputed issues of fact remain about what occurred regarding the other alleged HIB incidents. Accordingly, the Commissioner remanded this matter to the OAL for additional proceedings to bring this matter to closure.

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.

383-24R
OAL Dkt. No. 10912-23
Agency Dkt. No. 255-9/23

New Jersey Commissioner of Education

Final Decision

J.W., on behalf of minor child, J.W.,

Petitioner,

v.

Board of Education of the Borough of Upper Saddle River, Bergen County, Brad Siegal, and Dana Imbasciani,

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.

Petitioner alleged that his child, J.W.,[1] was bullied when, on March 30, 2023, a fellow third grader, I.T., told J.W. that his "skin looks like poop because of the color of it." Petitioner further alleged that J.W. has been a target of ongoing harassment, intimidation, and bullying (HIB) by I.T., with incidents going back to 2019. Specifically, petitioner alleges that I.T.: lowered his shoulder and rammed into J.W., knocking him to the ground on his back; tackled J.W. without provocation; stabbed J.W. in the ribs with pencils; threatened to stab J.W. in the eye while holding a sharpened pencil near J.W.'s eye; verbally harassed J.W. during the after-school

[1] Because petitioner and his child share the same initials, petitioner will be referred to herein as "petitioner," and his child will be referred to herein as "J.W." However, the Commissioner notes that J.W. is referred to as "J.J." by parents and in the submitted exhibits.

program; and made a colorist comment to J.W. about having a black eye. Respondent (Board) commenced an HIB investigation regarding the March 30 incident and referred the matter to the District's Anti-Bullying Specialist, Sara Senger.

In her investigative report, Senger notes that she met with and interviewed J.W. and I.T., as well as six staff witnesses and three student witnesses. The student witnesses were chosen because they were in J.W.'s After Care Experience (ACE) group; in addition, J.W. said that two of these students were present at his table after the alleged incident occurred. None of the student witnesses recalled the alleged incident. Further, the adult witnesses noted that no incident between J.W. and I.T. was reported, either by J.W. or by others, on March 30 or on the days prior or after. Upon reviewing attendance records, I.T. was shown to be absent on March 30, and Senger confirmed that I.T. was absent from school from March 29 to March 31, 2023. Senger's final investigation report notes that there have been documented reports from the victim's family since 2022 through ACE. The final report also lists the factors Senger considered in reaching her recommendation, such as J.W.'s report, I.T.'s report, petitioner's email, reports from the staff witnesses, the ACE attendance reports, and the social histories of I.T. and J.W.

Senger presented her final investigation report to the Superintendent, and the Board affirmed the Superintendent's determination that the incident is not an HIB qualifying event. Petitioner appealed to the Board, and a hearing was held on June 12, 2023. Both J.W.'s and I.T.'s families appeared. Petitioner explained his understanding of the Anti-Bullying Bill of Rights Act (the Act), discussed I.T.'s alleged HIB towards J.W., and shared how the alleged HIB is affecting J.W. I.T.'s family stated that the date of the alleged conduct occurred when I.T. was absent from school and out of the country from March 29 through April 10, 2023. The Board issued a

determination on June 26, 2023, in a letter affirming the district's decision that the investigation yielded an inconclusive finding. Further, the letter notes that the decision came down to a review of the students' statements, as there was no direct evidence of I.T. making the statement to J.W., directly or in passing, on or near the supposed date of the alleged conduct.

On September 21, 2023, petitioner appealed the Board's decision to the Commissioner, claiming that the Board's determination regarding the alleged March 30 incident is incorrect and that the Board's reliance on I.T.'s absence on specific dates does not accurately reflect the broader context of persistent bullying and harassment J.W. has endured. The Board filed a response on October 6, 2023. After the matter was transmitted to the OAL, the Board filed a Motion for Summary Decision, and the petitioner filed opposition. The Board then filed its reply brief.

After reviewing the written submissions, the ALJ found that the Board's June 26, 2023 determination only addresses the March 30 incident. Accordingly, the ALJ concluded that petitioner is precluded from making any claims regarding earlier incidents as a part of this matter. However, the ALJ noted that this conclusion did not extend to other petitions petitioner may file. The ALJ rejected the Board's argument that claims regarding any earlier incidents are untimely, reasoning that the 90-day period to file a petition is triggered only after the Board issues a written decision; since the Board has not issued a written decision on the alleged HIB claims predating March 30, the 90-day countdown has not begun.

Next, the ALJ determined that the evidence[2] the Board submitted in support of its motion for summary decision dispels any factual dispute that J.W. has raised in support of its motion to

[2] I.T.'s March 2023 attendance record and Senger's final investigation report.

dismiss regarding the March 30 incident. In addition, the ALJ concluded that the final investigation report contained sufficient evidence to support a finding that the Board's decision on the March 30 incident was not arbitrary, capricious, or unreasonable. Lastly, the ALJ determined that the Board did not improperly rely on Senger's final investigation report and granted the Board's motion for summary decision.

Upon a comprehensive review of the record, the Commissioner agrees with the ALJ that petitioner did not establish that the Board's decision regarding the March 30 incident was arbitrary, capricious, or unreasonable. When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. W. Orange Bd. of Educ.*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]" and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't. of Envtl. Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff'd*, 131 *N.J. Super.* 37 (App. Div. 1974).

The Act defines HIB as:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off

> school grounds as provided for in section 16 of P.L. 2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

In summary, once the alleged written, verbal, or physical act, or any electronic communication is substantiated, a finding of HIB requires that three elements under the Act be satisfied. First, the substantiated conduct must be reasonably perceived as being motivated by any actual or perceived characteristic expressly identified in the statute, or by any other distinguishing characteristic. *Ibid.* Second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. *Ibid.* Third, one of the three conditions set forth in subsections (a), (b), and (c) must be satisfied. *Ibid.*; *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex Cnty.*, Commissioner Decision No. 510-20 (Feb. 4, 2020).

Here, the Board commenced an HIB investigation regarding I.T.'s alleged comment on March 30, 2023, following petitioner's complaint on April 17, 2023. Senger's final investigation report indicates the methodology utilized in reaching her decision, including (1) listing her interview questions; (2) meeting with and interviewing J.W. twice and I.T. once; (3) meeting with and interviewing six adult witnesses and three student witnesses from J.W.'s ACE group, two of whom J.W. said were at his table after the alleged incident; and (4) considering petitioner's email, the social histories of I.T. and J.W., the ACE attendance reports, and the reports of J.W., I.T., and

the adult witnesses. None of the witnesses recalled the incident, and the adult witnesses noted that no one made reports regarding I.T. on March 30, or in the days prior or after. Further, Senger's review of the attendance records showed that I.T. was absent from school from March 29 to March 31. Given the witness statements and the attendance report, the Commissioner concurs with the ALJ that the final investigation report contains sufficient evidence to support a finding that the Board's decision regarding the March 30 incident was not arbitrary, capricious, and unreasonable.

Petitioner argues that the Board failed to consider that although J.W. might have provided the incorrect date, J.W. and I.T. were both at school on March 27 and March 28 and, given I.T.'s past behavior towards J.W., the incident could have easily taken place on either of those dates. In addition, petitioner contends that the Board failed to consider the possibility that I.T. may have been in aftercare on March 30, despite being absent from school. However, these possibilities would – at most – balance the other evidence on the record that neither J.W., nor others, made reports regarding I.T. on March 30, or on the days prior. While the evidence may leave room for two opinions regarding whether I.T. made the statement, it is insufficient to overturn the Board's decision, since it does not demonstrate that the Board's decision was arbitrary, capricious, or unreasonable.

Petitioner also contends that the Board's investigation was inadequate because they had access to video camera footage, which, if used, could have either captured more witnesses or captured the exchange between I.T. and J.W. Petitioner further argues that based on the seriousness of the HIB activity, the Board's failure to utilize information they had sole control over and access to led them to reach a decision that is arbitrary, capricious, and unreasonable.

However, for the Commissioner to hold that a review of the video evidence is more reasonable than the investigative steps the Board has taken would require the Commissioner to substitute his judgment for that of the Board's, which is impermissible. Thus, the Commissioner agrees with the ALJ that the Board did not improperly rely on Senger's final investigation report in reaching its decision regarding the March 30 incident. Accordingly, the ALJ correctly granted the Board's motion for summary decision with regard to the March 30, 2023 incident.

The Commissioner concurs with the ALJ in rejecting the Board's argument that J.W. is time-barred from making any HIB claims concerning incidents that predate March 30, 2023. A written board decision triggers the 90-day limit to file a petition under *N.J.S.A.* 18A:37-15(b)(6)(e). The record indicates that the Board has not issued a written decision on petitioner's other HIB allegations. With no event triggering the start of the 90-day limit, any argument made by the Board as to lack of timeliness of these claims must fail.[3]

In contrast, however, the Commissioner disagrees with the ALJ that petitioner is precluded from making claims in this matter regarding the Board's handling of alleged HIB acts by I.T. against J.W. on dates other than March 30, 2023. The petition of appeal argues that the Board has ignored and failed to investigate prior complaints. Accordingly, the Commissioner concludes that the earlier incidents are within the scope of the petition filed in this matter, and petitioner is not precluded from making these additional HIB claims as part of the current petition.

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[3] Alternatively, the Commissioner finds that the Board's June 26, 2023 letter would appropriately be considered as the triggering event for petitioner's time to appeal the Board's inaction regarding the other HIB complaints, as the letter functioned as the Board's notice to petitioner that no decision was being made regarding the other incidents. Accordingly, petitioner's appeal on September 21, 2023 was within 90 days of the decision and therefore timely.

The Commissioner concludes that the Board is not entitled to summary decision on petitioner's claims regarding the HIB allegations on dates other than March 30, 2023. Disputed issues of fact remain about what occurred regarding the other HIB incidents, and the record does not contain sufficient information to determine whether the Board's actions with regard to these complaints violate the Act as alleged by petitioner.

Accordingly, the Initial Decision is adopted in part and modified in part. This matter is remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 10, 2024
Date of Mailing: October 11, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
MOTION SUMMARY DECISION
OAL DKT. NO. EDU 10912-23
AGENCY DKT. NO. 255-9/33

J.W. ON BEHALF OF MINOR CHILD J.W.,
Petitioners,
v.
BOARD OF EDUCATION OF THE BOROUGH OF UPPER SADDLE RIVER, BERGEN COUNTY, BRAD SIEGAL, Ed. D AND DANA IMBASCIANI,
Respondents.

Jorge Luis Vasquez, Jr. Esq., for petitioners, (Vasquez Segarra, LLP, attorneys)

Arsen Zartarian, Esq., for respondents (Cleary Giacobbe Alfieri Jacobs, LLC, attorneys)

BEFORE **JULIO C. MOREJON**, ALJ:

Record Closed: July 15, 2024 Decided: August 27, 2024

STATEMENT OF THE CASE

The matter was referred to the school's Anti-Bullying Specialist after petitioner J.W. reported an incident of harassment, intimidation, and bullying (HIB) by student, I.T., who on March 30, 2023, allegedly told the minor child J.W. that his "skin looks like poop

because of the color of it". Said incident prompted an HIB investigation by the Anti-Bullying Specialist, pursuant to N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7, resulting in an inconclusive finding by the Board of Education. Did the Anti-Bullying Specialist properly investigate the HIB allegations in accordance with the procedural safeguards laid out the in the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13 et seq., that resulted in the Board's determination that the incident not be considered an HIB qualifying event? Yes.

PROCEDURAL HISTORY

Petitioner, J.W. on behalf of the minor child , J.W., (referred to by the parents and in the submitted exhibits as "J.J.") a third grade student at Edith A. Bogert Elementary School (the School), which is part of Respondent Upper Saddle River Board of Education (the Board), reported an incident of harassment, intimidation, and bullying (HIB) to the School that allegedly occurred during the 2022-2023 school year. Specifically, J.W. alleges that on or about March 30, 2023, I.T. another student in J.J. 's third-grade class allegedly told J.J. that his "skin looks like poop because of the color of it." During the School's spring recess from April 3-April 7, 2023, the student told his parents what I.T. had told him about the color of his skin. On April 10, 2023, the School resumed classes.

On or about April 17, 2023, J.W. reported the incident to the School. Sara Senger (Senger) the School's Anti-Bullying Specialist, investigated the incident, pursuant to N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7. Senger's Final Investigation Report was presented to Superintendent Brad Siegel, Ed. D., (Superintendent), on May 1, 2023, and the Board affirmed the Superintendent's recommendation that this incident not be considered an HIB qualifying event.

Thereafter, this matter was appealed to the Board for a hearing pursuant to N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7, which was held on June 12, 2023. Following the hearing, the Board affirmed that the alleged incident not be considered an HIB qualifying event and notified the parents of this action by way of letter from the Board Secretary/School Business Administrator dated June 26, 2023. In the June 26, 2023, letter, the Board concluded:

> After a careful and thorough deliberation, and application of the HIB definition to the information presented, [the Board] determined to affirm the district's determination that the investigation yielded an inconclusive finding. The decision came down to a review of the [students'] statements, as there was no direct evidence of the accused student making the statement to [J.W.], directly or in passing, on the date or near the dates surrounding the alleged conduct. . . a finding of HIB solely applies where the conduct matches the precise definition of HIB that the State created.

On September 21, 2023, J.W. filed an appeal of the Board's June 26, 2023 determinations of an "inconclusive" finding of HIB to the Commissioner of Education (Commissioner). In their appeal, petitioner requested the Commissioner (1) to perform "a comprehensive review of all incidents of harassment, intimidation, and bullying involving [J.W.]; (2) to reconsider HIB classification of the "skin looks like poop because of the color of it" verbal insult; (3) to hold accountable the Board's administrators for their failure to appropriately address petitioners' complaints; (4) to implement corrective measures to prevent future incidents of HIB; (5) to provide protection and support for [J.J.]; and (6) to implement a monitoring and reporting system to track respondent's progress in addressing HIB complaints.

The Board filed its response on October 6, 2023. This matter was then transmitted to the Office of Administrative Law as a contested matter on or about October 17, 2023.

On March 8, 202, the Board filed the within motion for summary decision. On April 8, 2024, petitioners filed its opposition to the MSD. On April 14, 2023, respondent filed its reply brief. I closed the record on July 15, 2024.

Issue

The issue before this tribunal is whether, based on the available evidence, the Board's reliance on the investigation into the alleged verbal incident on March 30, 2023,

between J.J. and I.T. and the Board's determination that the investigation yielded a finding that there was no HIB violation was arbitrary, capricious, or unreasonable.

Arguments

The Board:

The Board argues that as a board of education, its actions are "entitled to a presumption of correctness" and should not be upset unless there is an affirmative showing that the decision was arbitrary, capricious, or unreasonable. The Board contends that this matter is limited to the appeal of the Board's June 26, 2023 determination. The Board further argues that its investigation of the incident between J.J. and I.T. was prompt and "appropriate." In that regard, the Board contends that Senger "identified all appropriate student and adult witnesses and none of [those] individuals were aware of any. . . incident." The Board also reiterates that I.T. was out of the country on the date of the alleged incident with J.J.

As for petitioners' allegations that the Board failed to address all the allegations of HIB between I.T. and J.J., the Board argues that J.W. is "conflating prior complaints/investigations" and those matters are time-barred pursuant to N.J.S.A. 18A:37-15(e).

J.W.

J.W. contends that the Board failed to investigate all the allegations of HIB they raised against I.T. J.W. asserts that the Board improperly conducted its investigation into the "skin looks like poop because of the color of it" verbal insult. First, J.W. argues that Senger failed to identify and interview all appropriate student and staff witnesses. Second, J.W. asserts the Board improperly relied "on a single date", ignoring a seven-year-old's limited grasp of time and days of the week. Third, J.W. states that the Board ignored all of J.W.'s other allegations of HIB by I.T. toward J.J. over the course of four years. Finally, J.W. argues the Board failed to access all available evidence, like video recordings. Based on the foregoing, J.W. posits that the Board's failure to investigate

thoroughly all the HIB claims against I.T., is arbitrary, capricious, and unreasonable, and creates a genuine issue of material fact.

FINDINGS OF FACT

Based upon the documents submitted in support of and in opposition to the motion for summary decision, I **FIND** the following as **FACT**:

J.J., was a third-grade student attending the School in the Board's school system in the spring of the 2022-23 school year when he claimed to have been involved in an HIB incident. Specifically, that I.T. told J.J. that his "skin looks like poop because of the color of it." Although the incident allegedly occurred on March 30, 2023, it was not reported to school officials until on or about April 18, 2023, which prompted an HIB investigation, pursuant to N.J.S.A. 18A:37-15. The matter was referred to Senger, the District's Anti-Bullying Specialist, to conduct an investigation in accordance with N.J.A.C. 6A:16-7.7.

As part of her HIB investigation, Senger's investigation shows that she met with and interviewed J.J., I.T., six (6) staff witnesses and three (3) student witnesses. The student witnesses, including two students whom J.J. said were present at his table after the alleged incident occurred, were chosen because they were in the same After Care Experience group as J.J. Senger's investigation reveals that none of the student witnesses recalled the alleged incident. Further, the adult witnesses noted that neither J.J., nor others, made reports regarding I.T. on March 30, 2023, the date of the alleged incident, or the days prior or after. The adult witnesses also noted that an incident between J.J. and I.T. was never reported. Upon reviewing attendance records, I.T. was shown to be absent on March 30, 2023. Senger confirmed that I.T. was absent from school from March 29, 2023 to March 31, 2023.

Senger's final investigation discloses factors that she considered in considering the circumstances. Including prior documented reports, J.J. and I.T.'s prior relationship, and the facts that were relevant to her determination. See, Exhibit B, Certification of Sara Senger. Further at the HIB hearing before the Board, I.T.'s family appeared and stated

that the date of the alleged conduct occurred when I.T. was absent from school, and also out of the country with the family from March 29 through April 10, 2023.

LEGAL ANALYSIS AND CONCLUSIONS

A party may move for summary decision upon any or all substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. Ibid. "The decision sought may 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." N.J.A.C. 1:1-12.5(b). As set forth more fully below, the Board's motion for summary decision establishes that there is no genuine issue of any material fact as to the Board's decision concerning the March 30, 2023 incident, and the Board is entitled to prevail as a matter of law because its investigation discloses that no violation of the Anti-Bullying Bill of Rights Act occurred on the date of the alleged incident on March 30, 2023.

In their petition of appeal, J.W. asks for a comprehensive review of all incidents of harassment, intimidation, and bullying involving J.J. and I.T. since 2022 through and including March 30, 2023, the date of the alleged incident herein. The record reveals that Senger's Final Investigation Report indicates that there were documented reports from J.J.'s family since 2022 through March 2023, regarding alleged HIB conduct by I.T. towards J.J., and that no prior actions were taken by the School. However, the record also reveals that the Board's decision of June 26, 2023, only addressed J.W.'s complaint made on April 18, 2023, concerning the March 2023 incident, which petitioner now appeals.

In response to J.W.'s petition and his arguments in defense of the underlying motion, the Board asserts that J.W. is precluded from making these additional claims herein as they have not complied with the ninety-day rule for filing an appeal before the Commissioner from a Board's action as set forth in N.J.S.A. 18A:37-15(b)(6)(e). N.J.S.A. 18A:37-15(b)(6)(e) provides, in relevant part, "the board's decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and

regulation, no later than 90 days after the issuance of the board's decision. (emphasis added).

To the extent that J.W. argues that the Board is not in compliance with the requirements of the Anti-Bullying Act concerning any alleged HIB acts by I.T. toward J.J., that pre-date the March 30, 2023, incident, which were not investigated, I **CONCLUDE** that J.W. is precluded from making these additional claims herein, as they are claims that the Board did not rule upon on June 26, 2023, pursuant to N.J.S.A. 18A:37-15(b)(6)(e) which forms the basis of J.W.'s petition herein.

I **CONCLUDE** that the Board's argument that J.W. is precluded from making any alleged HIB complaints by I.T. toward J.J. that predate March 30, 2023, under N.J.S.A. 18A:37-15(e), is solely limited to the petition filed herein and no other petitions that maybe filed by J.W., as the ninety-day rule to file a petition under said statute is triggered after the Board has issued a written decision, which did not occur herein for the reasons stated.[1]

The Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13 to -32.1 and N.J.S.A. 37-37.1 to -37.5 (Anti-Bullying Act), is designed "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises." N.J.S.A. 18A:37-13.1(f). Under the act, HIB is defined as:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus,

[1] If J.W. believes that the Board did not comply with the Anti-Bullying Act's provision regarding an investigation of an HIB allegation, they may consider filing their complaint(s) with the Executive County Superintendent of Schools, who is responsible for ensuring that districts within its county abide by the mandates of the Anti-Bullying Act under N.J.S.A. 18A:37-25.

> or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
>
> [N.J.S.A. 18A:37-14].[2]

Under the Anti-Bullying Act, parents or guardians of a student who is the subject of a HIB investigation are "entitled to receive information about the investigation . . . including the nature of the investigation, whether the district found evidence of [HIB], or whether discipline was imposed or services provided to address the incident of [HIB]" and "may request a hearing before the [school] board after receiving the information, and the hearing shall be held within 10 days of the request." N.J.S.A. 18A:37-15(b)(6)(d).

School administrators must investigate HIB allegations in accordance with the procedural safeguards laid out the Anti-Bullying Act. See N.J.S.A. 18A:37-15(b)(6)(a) through (f) and 16.d. Under the 2022 amendments, school districts were permitted the use of a "preliminary determination" for reports of HIB. N.J.A.C. 6A:16-7.7(a)(2)(ix)(1).

It is well settled that an action by a local board of education "is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing

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[2] Although a school district has "local control over the content" of their HIB policy, the definition of HIB shall be "no less inclusive" than that set forth in N.J.S.A. 18A:37-15. Respondent's HIB policy, which was recently amended in January 2023 and appears on respondent's website, mirrors the language of the Anti-Bullying Act.

that such decision was arbitrary, capricious or unreasonable." Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App.Div.1965). Thus, to prevail, those challenging a HIB decision made by a board of education "must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of the Bor. of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) (citation omitted), adopted, Comm'r (April 10, 2014), http://njlaw.rutgers.edu/collections/oal/. Also, a board's decision may be overturned if its determination violates the legislative policies expressed or implied in the governing act. J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)), adopted, Comm'r (April 25, 2013), http://njlaw.rutgers.edu/collections/oal/.

In the within matter, the Board determined that the comment to J.J. on March 30, 2023, that his "skin looks like poop because of the color of it" was not an HIB because there was not sufficient evidence, based on the investigation, to confirm whether incident occurred. The Board disqualified finding the incident occurred based on the required elements for an HIB. Currently, the issue before this tribunal is whether, based on the available evidence, the Board's reliance on the investigation into the verbal incident between J.J. and I.T. on or about March 30, 2023, was arbitrary, capricious, or unreasonable. In support of its motion, the Board attached (1) The School's attendance calendar for the month of March 2023 for I.T., (2) Senger's final investigation report, and (3) a copy of the June 26, 2023, letter which determined that the HIB investigation yielded an inconclusive finding.

I **CONCLUDE** that the evidence the Board submitted in support of its motion dispels any factual disputes that J.W. has raised in support of its motion to dismiss the motion for summary decision as to the March 30, 2023, incident, in accordance with N.J.A.C. 1:1-12.5(b). First, the attendance record of I.T., shows when I.T. was present, absent, or tardy from school on the date of the incident. Moreover, the Board's submission of the attendance document further strengthens its decision. Second, Senger's final investigation report provides a methodology as to how she would conduct her investigation and the results of the same after she considered the documentary proofs and witness statements- essential information necessary for her to render a decision.

As a result, I **CONCLUDE** that the final investigation report contains sufficient evidence to support a finding that the board's determination of the March 30, 2023, incident, was not arbitrary, capricious, or unreasonable. Further, I **CONCLUDE** that the Board did not improperly rely upon the Anti-Bullying Specialist's final investigation which did not find that an allegation of harassment, intimidation, or bullying occurred on March 30, 2023, in violation of the Anti-Bullying Act, and that the Board is entitled to summary decision as a matter of law.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Board's motion for summary decision is **GRANTED,** and J.W.'s petition be **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 case. 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 under 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.

August 27, 2024
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency: August 27, 2024

Date E-Mailed to Parties: August 27, 2024

lr

APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

None

EXHIBITS

For Petitioner:

Notice of Motion for Summary Decision; Letter Memorandum in Support of Motion for Summary Decision; Certification of Sara Senger in Support of Respondent's Motion for Summary Decision; Certification of Service, and Sur-reply.

For Respondent:

Notice of Opposition of Motion for Summary Decision; Letter Memorandum in Support of Petitioner's Opposition of Respondent's Motion for Summary Decision; Certification of Jason Wallace, Sr. in Support of Petitioners' Opposition of Respondent's Motion for Summary Decision; and Certification of Service.

384-24

New Jersey Commissioner of Education

Final Decision

Terrell Gilkey,

Petitioner,

v.

Board of Trustees of the Queen City Academy Charter School, Union County,

Respondent.

Synopsis

Petitioner appealed the decision of respondent, Board of Trustees of the Queen City Academy Charter School (Board), denying him streamline tenure under *N.J.A.C.* 6A:11-6.2. The Board informed petitioner by letter dated March 26, 2024 that he would not be recommended for streamline tenure and that his employment would be terminated on May 30, 2024—about a month before the end of the 2023-2024 academic year. Petitioner asserted, *inter alia,* that he was employed by the Board for more than the required five consecutive full academic years and therefore had already obtained streamline tenure when the Board terminated him. The Board filed a motion to dismiss which was converted to a motion for summary decision. Petitioner opposed the motion.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; the acquisition of streamline tenure for charter school employees is governed by *N.J.A.C.* 6A:11-6.2, which provides "[a]ll teaching staff members, ... shall acquire streamline tenure in a charter school after five consecutive full academic years of effective employment..."; petitioner began his employment with the Board in January 2019, in the middle of the 2018-2019 academic year, and thereafter only worked for the Board for four consecutive full academic years, 2019-2020, 2020-2021, 2021-2022, and 2022-2023. The ALJ concluded that petitioner was not employed for five consecutive academic years with respondent from school year 2018-2019 through 2022-2023, as required under *N.J.A.C.* 6A:11-6.2, and therefore did not acquire streamline tenure. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed petitioner's appeal.

Upon review, the Commissioner concurred with the ALJ that petitioner did not acquire streamline tenure because he was only employed for part of the 2018-2019 academic year, and for part of 2023-2024 academic year; as such, he could not have acquired streamline tenure prior to his termination on May 30, 2024. In so deciding, the Commissioner found petitioner's novel "semester theory" of acquisition of streamline tenure to be without merit. Accordingly, the Board's motion for summary decision was granted, and the petition of appeal was dismissed.

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.

384-24
OAL Dkt. No. EDU 06842-24
Agency Dkt. No. 112-4/24

New Jersey Commissioner of Education

Final Decision

Terrell Gilkey,

Petitioner,

v.

Board of Trustees of the Queen City Academy Charter School, Union County,

Respondent.

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

Petitioner challenges the Board's decision to deny him streamline tenure pursuant to *N.J.A.C.* 6A:11-6.2 on grounds that he was not employed by the Board for five consecutive full academic years. That regulation states, in relevant part:

> All teaching staff members . . . shall acquire streamline tenure in a charter school after five consecutive full academic years of effective employment as determined by the Department-approved educator evaluation system established by each charter school and in accordance with the charter school's uniform policies and procedures.
>
> [*N.J.A.C.* 6A:11-6.2(a).]

The relevant facts are uncontested. Petitioner began his employment with the Board in January 2019, in the middle of the 2018-2019 academic year. Thereafter, he worked for the Board

for four consecutive full academic years: 2019-2020, 2020-2021, 2021-2022, and 2022-2023. Via letter dated March 26, 2024, the Board informed petitioner that he would not be recommended for tenure and that his employment would be terminated on May 30, 2024—about a month before the end of the 2023-2024 academic year.

The Board filed a motion to dismiss the petition, which the Administrative Law Judge (ALJ) appropriately treated as a motion for summary decision. *K.L. v. Bd. of Educ. of Borough of Kinnelon*, Commissioner Decision No. 315-08 at 4 (July 23, 2008). Petitioner cross-moved for summary decision. The ALJ granted the Board's motion and dismissed the petition upon concluding that petitioner was not employed for five consecutive full academic years, as required by *N.J.A.C.* 6A:11-6.2, and therefore did not acquire streamline tenure.

In his exceptions, petitioner disputes the ALJ's legal conclusion that he did not acquire streamline tenure. He argues, as he did below, that because employment for 10 semesters is the functional equivalent of employment for five full consecutive academic years, and he was employed by the Board for more than 10 semesters, he achieved streamline tenure status. In response, the Board argues that petitioner's semester theory is unsupported by the regulation's plain language and regulatory history. The Board contends that had the Commissioner wanted eligibility for streamline tenure to be measured in semesters, the Commissioner would have stated so in the regulation.[1]

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[1] Additionally, the Board takes exception to the ALJ's factual finding that petitioner's employment was "effective" as the record lacks evidence to support such a finding. The Board also maintains that petitioner's effectiveness is immaterial as he did not qualify for streamline tenure in the first instance because he was not employed by the Board for five consecutive full academic years. Because the parties did not present evidence to the ALJ regarding petitioner's "effective employment," the Commissioner agrees with the Board that the ALJ's finding is unsupported by the record and rejects it. Accordingly, the Commissioner makes no finding herein as to whether petitioner's employment was effective or not effective.

Upon review, the Commissioner concurs with the ALJ that petitioner is ineligible for streamline tenure because he was not employed by the Board for five consecutive full academic years as is required by *N.J.A.C.* 6A:11-6.2. Regulations are interpreted in the same manner as statutes, meaning that the paramount goal of determining the drafter's intent is achieved by studying the regulation's plain language. *L.R. v. Camden City Pub. Sch. Dist.*, 238 *N.J.* 547, 558 (2019). One must not "presume that the drafter intended a meaning other than" that expressed by the regulation's plain language. *U.S. Bank v. Hough*, 210 *N.J.* 187, 199 (2012). Moreover, when interpreting statutes or regulations governing the same subject matter, they should be interpreted harmoniously. *L.R.*, 238 *N.J.* at 558.

By way of background, Title 18A instructs that charter school employees acquire streamline tenure "pursuant to guidelines promulgated by the commissioner . . . ." *N.J.S.A.* 18A:36A-14(e). *In re Susp. of Teaching Cert. of Van Pelt*, 414 *N.J. Super.* 440, 449 (App. Div. 2010). Those guidelines appear in Title 6A, Chapter 11, Subchapter 6 of the Administrative Code. *N.J.A.C.* 6A:11-6.2(a) requires teaching staff members to be employed for "five consecutive full academic years" to acquire streamline tenure. Notably, the phrase "academic year" has a specific meaning in the public education context. Although not defined in Title 6A, Chapter 11, *N.J.S.A.* 18A:1-1 defines "academic year" as "the period between the time school opens in any school district or under any board of education after the general summer vacation until the next succeeding summer vacation."

The Commissioner finds that the plain language of *N.J.A.C.* 6A:11-6.2(a) is clear and unambiguous and should be interpreted as written. Applying the definition of "academic year" found at *N.J.S.A.* 18A:1-1 to the facts at issue, it is undisputed that petitioner worked for the Board for four consecutive full academic years: 2019-2020, 2020-2021, 2021-2022, and 2022-2023. Because petitioner was only employed for part of academic year 2018-2019, and for part of academic year

2023-2024, he could not have acquired streamline tenure prior to his termination on May 30, 2024. Petitioner's novel semester theory of acquisition of streamline tenure is neither supported by the regulation's plain language, the regulatory history, or case law. The Commissioner is not permitted to disregard the current regulation's plain meaning to align it with petitioner's unique circumstances.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 10, 2024
Date of Mailing: October 11, 2024

[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
SUMMARY DECISON
OAL DKT. NO. EDU 06842-24
AGENCY DKT. NO. 112-4/24

TERREL GILKEY,
Petitioner,
v.
BOARD OF TRUSTEES OF THE QUEEN CITY ACADEMY CHARTER SCHOOL, UNION COUNTY
Respondent

Sanford R. Oxfeld, Esq., for petitioner, (Oxfeld Cohen, P.C., attorneys)

Lawrence M. Teijido, Esq., for respondent, (Antonelli, Kantor, Rivera, attorneys)

Record Closed: August 9, 2024 Decided: September 11, 2024

BEFORE **JULIO C. MOREJON**, ALJ:

SUMMARY OF THE CASE

Petitioner, Terrel Gilkey, appeals the decision of respondent, Board of Trustees of the Queen City Academy Charter School, denying him streamline tenure under N.J.A.C. 6A:11-6.2.

PROCEDURAL HISTORY

On April 24, 2024, petitioner, Terrel Gilkey, (petitioner) filed a Petition of Appeal with the Commissioner of the New Jersey Department of Education (Commissioner). The Petition of Appeal challenged the decision of respondent, Board of Trustees of the Queen City Academy Charter School, Union County (respondent), denying petitioner "streamline tenure."

Specifically, the Petition of Appeal states the following claim and relief sought:

1) Respondent did not comply with N.J.A.C. 6A:11-6.2 in denying petitioner tenure under the streamline tenure provision for Charter Schools, as petitioner has been employed by respondent for over five consecutive full academic years, and thus has acquired tenure.

2) Any attempt by respondent to terminate petitioner's employment without complying with the procedures set forth at N.J.A.C. 6A:11-6.2 is null and void and *ultra vires* as a matter of law.

3) Respondent's action in terminating him is motivated solely, not by any problem in his teaching performance or any other legitimate reason, but due his being the duly elected President of the Education Association at the School. [1]

4) Respondent's actions are violative of the PERC Act, and an Unfair Practice Charge is being filed at PERC concomitant with the filing of this Petition.

5) Petitioner requests that the Commissioner direct that he be rehired by the respondent forthwith, with tenure, and that he be awarded back pay and all other emoluments of employment for any time he has been wrongfully without pay. Petitioner also requests any other and further relief which the Commissioner deems just and equitable.

[1] The allegations contained in paragraphs 3 and 4 of the Petition of Appeal will not be addressed herein, as petitioner states that he has filed an Unfair Practice Charge with PERC.

On May 9, 2024, respondent filed a Notice of Motion to Dismiss with the Commissioner, as allowed by N.J.A.C. 6A:3-1.5 and N.J.A.C. 6A:3-1.10. Prior to ruling on respondent's motion for dismissal, on May 10, 2024, the Commissioner transmitted this matter to the Office of Administrative Law (OAL) as a contested case. Respondent's Notice of Motion to Dismiss originally filed with the Commissioner was converted to a motion for summary decision under N.J.A.C. 1:1-12.5. As a result of the same, on July 3, 2024, respondent filed an Answer and Affirmative Defenses.

On July 11, 2024, petitioner filed his opposition to respondent's motion, and a cross-motion for summary decision under N.J.A.C. 1:1-12.5. On August 8, 2024, respondent filed a reply to petitioner's opposition and cross-motion for summary decision. On August 9, 2024, the record was closed.

FACTUAL DISCUSSION

The following facts are derived from the motion pleadings submitted herein, which are not in dispute and are therefore deemed **FACT** herein.

Petitioner began employment as a teacher with respondent on January 29, 2019, mid-way through the academic year of 2018-2019, and for the full following academic years: 2019-20, 2020-21, 2021-22, and 2022-23. By letter dated March 26, 2024, respondent notified petitioner that he would not be recommended for tenure and that his last day of work would be May 30, 2024, which was petitioner's last day of employment with respondent. Petitioner provided effective employment during his time of employment as teacher with respondent.

ANALYSIS AND CONCLUSIONS OF LAW

Respondent argues that petitioner has not acquired streamline tenure because he has not been employed by respondent for five full consecutive academic years. Respondent cites to N.J.A.C. 6A:11-6.2, which states that the acquisition of streamline tenure for charter school employees is regulated as follows:

> (a) All teaching staff members, janitors, and secretaries shall acquire streamline tenure in a charter school after five consecutive full academic years of effective employment as determined by the Department-approved educator evaluation system established by each charter school and in accordance with the charter school's uniform policies and procedures.

N.J.A.C. 6A:11-6.2 expressly requires "five consecutive full academic years" of employment to acquire streamline tenure. Respondent posits that the Petition of Appeal affirms that petitioner worked four full academic years, 2019-20, 2020-21, 2021-22, and 2022-23, and one-half an academic year commencing January 29, 2019. Consequently, respondent argues, petitioner has not satisfied the requirements of N.J.A.C. 6A:11-6.2, which provides that streamline tenure in a charter school is acquired "after five consecutive full academic years of effective employment". Respondent requests that the Petition of Appeal be dismissed.

Petitioner's principal argument is that N.J.A.C. 6A:11-6.2 does not specifically dictate "how" the five consecutive full academic years are achieved. Petitioner avers that respondent erroneously states there is "only one manner" to achieve the time requirement under the regulations that is necessary to acquire streamline tenure in proclaiming that petitioner failed to complete the time requirement because he began his employment half-way through the school year in 2019. Petitioner offers an alternative example on how to compute the streamline tenure by arguing that five academic years are the "functional equivalent of ten semesters". Therefore, petitioner states the he has satisfied the streamline tenure requirements because he was employed for eleven consecutive semesters (January 29, 2019 through May 30, 2023), which is more than the ten semesters required for five consecutive academic.

In its reply respondent provides an explanation of the legislative history concerning N.J.A.C. 6A:11-6.2, and in so doing, argues that petitioner's "attempt to insert imaginary language" into N.J.A.C. 6A:11-6.2 by advocating for an interpretation of the regulation is simply unsupported by the "clear and unambiguous regulatory text." Respondent further argues that petitioner's attempt to read language referencing the completion of "semesters," instead of the "five consecutive full academic years of effective employment"

contained in N.J.A.C. 6A:11-6.2, is unsupported by the legislative history and actual language of said regulation.

A party may move for summary decision upon any or all substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. Ibid. "The decision sought may 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." N.J.A.C. 1:1-12.5(b).

As set forth more fully below, respondent's motion for summary decision and petitioner's cross- motion for summary decision establish no genuine issue of any material fact exists as to respondent's decision to deny petitioner tenure and terminate him on May 30, 2024. This matter is therefore ripe for summary decision.

The acquisition of streamline tenure for charter school employees is governed by N.J.A.C. 6A:11-6.2, as it provides "[a]ll teaching staff members, ... shall acquire streamline tenure in a charter school alter five consecutive full academic years of effective employment..." Respondent presents a discussion of the legislative history of N.J.A.C. 6A:11-6.2, which will be adopted herein.

The record reveals that petitioner was hired on January 29, 2019, and was terminated on May 30, 2023. Respondent argues that the 2018-2019 academic year does not count for purposes of acquiring streamline tenure because petitioner was not employed for a "full academic year." [2] Thereafter, petitioner was employed with respondent for full academic years in 2019-20, 2020-21, 2021-22, and 2022-23. As for petitioner providing "effective employment" during his term of employment with respondent, the record reflects that there were no negative evaluations of petitioner, as respondent did not present any evidence to the same, and respondent renewed petitioner's term of employment for the years at issue.

[2] Petitioner presents no pleadings or argument disputing that he was not employed for a full academic year in 2018-2019.

For the reasons stated herein, I **CONCLUDE** that respondent's motion for summary decision and petitioner's cross-motion for summary decision present no material issue of fact and this matter is ripe for summary decision under N.J.A.C. 1:1-12.5(a). I further **CONCLUDE** that petitioner was not employed for five consecutive academic years with respondent from school year 2018-2019 through 2022-2023, as required under N.J.A.C. 6A:11-6.2, and therefore did not acquire streamline tenure under said regulation. Consequently, I **CONCLUDE** that petitioner's Petition of Appeal is dismissed.

ORDER

IT IS **ORDERED** that respondent's motion for summary decision is **GRANTED** under N.J.A.C. 1:1-12.5(a), and that petitioner's Petition of Appeal is **DISMISSED.**

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.

September 11, 2024
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency: September 11, 2024

Date E-Mailed to Parties: September 11, 2024

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APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

None

EXHIBITS

For Petitioner:

Letter brief

For Respondent:

Notice of Motion for Summary Decision, Letter Brief, and Reply Brief

385-24

State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

KEVIN DEHMER
Acting Commissioner

October 10, 2024

Israel Torres
53 Virginia Avenue
Vineland, NJ 08360

Michael Lombardi
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, New Jersey 08625

Re: ***Israel Torres v. New Jersey Department of Education, Office of Student Protection, Agency Dkt. No. 90-4/24, Commissioner Decision No. 308-24***

Dear Parties,

I have reviewed the materials filed in connection with petitioners' Motion for Reconsideration of the Commissioner's decision of August 23, 2024.

Pursuant to *N.J.A.C.* 6A:3-1.15(b)(2), a motion for reconsideration shall be determined based upon the following:

i. claim(s) of mistake, provided, however, that disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute "mistake" for purposes of this section;
ii. newly discovered evidence likely to alter the outcome of a matter, where such evidence could not have been previously discovered by due diligence;
iii. newly ascertained misrepresentation or other misconduct of an adverse party, where such misrepresentation could not have been previously known; or
iv. reversal of a prior judgment on which the present matter is based.

Upon review and consideration of the submissions, I find that petitioner has failed to satisfy the factors set forth in *N.J.A.C.* 6A:3-1.15(b)(2). Petitioner argues that the unique circumstances of his bus route should warrant a different outcome. However, this argument was previously made by respondent and rejected. Respondent's disagreement with the outcome of the decision is not a sufficient basis for reconsideration.

Petitioner also requests leniency regarding the 6-month suspension of his "S" endorsement. Petitioner contends that he has not driven since April 3, 2024, when his employer informed him that he was suspended, effective immediately. Petitioner argues that the suspension was not his employer's decision, but the consequence imposed due to petitioner's violation. In addition, petitioner claims that he was told that he could not drive until either his suspension was completed, or his petition was heard and a decision rendered. Petitioner adds that both he and his employer expected the time that had passed since April to count towards his 6-month suspension. Given this, petitioner anticipated returning to work in October 2024, six months after the April 3rd conversation.

Petitioner misunderstands *N.J.S.A.* 18A:39-29(a). The statute reads, "[i]n the event that, *after* notice and opportunity to be heard, a school bus driver is found to have left a pupil on the school bus at the end of his route, his school bus endorsement shall be suspended for six months, for a first offense" (emphasis added). Further, *N.J.A.C.* 6A:3-12.1(c)1 dictates that "where a petitioner does not prevail before the Commissioner in demonstrating that the Department's determination was in error, the Department's Office of Student Protection will [n]otify the Motor Vehicle Commission of its obligation pursuant to *N.J.S.A.* 18A:39- 26 et seq., to suspend ... the driver's school bus endorsement." Both statutes indicate that petitioner's suspension begins once the Commissioner issues his decision.

Petitioner received notice and had an opportunity to be heard; he filed a petition challenging the Office of Student Protection's determination on April 4, 2024. The ALJ concluded that petitioner violated *N.J.S.A.* 18A:39-28, and the Commissioner upheld that determination in his August 23, 2024, decision. Therefore, petitioner's suspension began on August 23, 2024.

Accordingly, the Motion for Reconsideration is hereby DENIED.[1]

Sincerely,

Kevin Dehmer
Acting Commissioner

385-24L

[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.

392-24
OAL Dkt. No. EDU 00234-23
Agency Dkt. No. 367-12/22

New Jersey Commissioner of Education

Final Decision

Patricia Iannacone and Margarita Medina,

Petitioners,

v.

Board of Education of the City of Hackensack, Bergen County,

Respondent.

The record of this matter, the proposed Stipulation of Dismissal with Prejudice (Settlement), and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Settlement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Settlement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 21, 2024
Date of Mailing: October 23, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
DISMISSAL
OAL DKT. NO. EDU 00234-23
AGENCY DKT. NO. 367-12/22

PATRICIA IANNACONE AND
MARGARITA MEDINA,
Petitioners,
v.
BOARD OF EDUCATION OF THE CITY OF
HACKENSACK, BERGEN COUNTY,
Respondents.

Patricia Iannacone and Margarita Medina, petitioners pro se

John Regina, Esq., (Anderson and Shah attorneys) for respondents

Record Closed: September 4, 2024 Decided: September 4, 2024

BEFORE **JoAnn LaSala Candido,** ALJ[1]:

On January 9, 2023, the matter was transmitted to the Office of Administrative Law for determination as a contested case.

[1] Originally, this case was assigned to Gail M. Cookson, ALJ, she retired in April 2024.

The parties have agreed to an amicable resolution of the matter. The respondent's attorney sent signed Stipulation of Dismissal With Prejudice via e-mail on September 4, 2024, for petitioner, Patricia Iannacone and for petitioner, Margarita Medina on August 29, 2024.

Having reviewed the Dismissal terms, I **FIND** as follows:

1. The parties have voluntarily agreed to the terms of the Stipulation of Dismissal With Prejudice as evidenced by their signatures or the signatures of their representatives.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

Therefore, I **CONCLUDE** that the agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. Accordingly, it is **ORDERED** that the parties comply with the settlement terms, and it is **FURTHER ORDERED** that the proceedings in this matter be concluded.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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.

September 4, 2024

DATE

JoAnn LaSala Candido

JoAnn LaSala Candido., ALJ

Date Received at Agency: September 5, 2024

Date Mailed to Parties: September 5, 2024

id

JOHN REGINA, ESQ. (016262010)
ANDERSON & SHAH, LLC
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Telephone: (732) 398-6545
Facsimile: (732) 576-0027
Attorneys for Respondent, Hackensack Board of Education

PATRICA IANNACONE, Petitioner, v. HACKENSACK BOARD OF EDUCATION, Respondent.	STATE OF NEW JERSEY – DEPT. OF EDUCATION **OFFICE OF CONTROVERSIES AND DISPUTES** AGENCY DOCKET NO.: 367-12/22 OAL DOCKET NO.: EDU-234-2023N ADMINISTRATIVE ACTION BEFORE THE COMMISSIONER OF EDUCATION **STIPULATION OF DISMISSAL WITH PREJUDICE**

THIS MATTER, having been amicably resolved between Petitioner Patricia Iannacone and Respondent Hackensack Board of Education, it is hereby stipulated and agreed that Petitioner's petition in the above-reference Petition before the Commissioner of Education is dismissed with prejudice and without costs.

PETITIONER

Patricia Iannacone
PATRICIA IANNACONE

ANDERSON & SHAH, LLC
Attorneys for Respondents,
Hackensack Board of Education

by/ _____
JOHN REGINA, ESQ.

At September 4, 2024

JOHN REGINA, ESQ. (016262010)
ANDERSON & SHAH, LLC
ATTORNEYS AT LAW
1040 Broad Street, Suite 304
Shrewsbury, NJ 07702
Telephone: (732) 398-6545
Facsimile: (732) 576-0027
Attorneys for Respondent, Hackensack Board of Education

MARGARITA MEDINA, Petitioner, v. HACKENSACK BOARD OF EDUCATION, Respondent.	STATE OF NEW JERSEY – DEPT. OF EDUCATION **OFFICE OF CONTROVERSIES AND DISPUTES** AGENCY DOCKET NO.: 367-12/22 OAL DOCKET NO.: EDU-234-2023N ADMINISTRATIVE ACTION BEFORE THE COMMISSIONER OF EDUCATION **STIPULATION OF DISMISSAL WITH PREJUDICE**

THIS MATTER, having been amicably resolved between Petitioner Margarita Medina and Respondent Hackensack Board of Education, it is hereby stipulated and agreed that Petitioner's petition in the above-reference Petition before the Commissioner of Education is dismissed with prejudice and without costs.

PETITTIONER

Margarita Medina
MARGARITA MEDINA

ANDERSON & SHAH, LLC
Attorneys for Respondents,
Hackensack Board of Education

by: _____
JOHN REGINA, ESQ.

August 29, 2024

393-24
OAL Dkt. No. EDU 13280-23
Agency Dkt. No. 300-11/23

New Jersey Commissioner of Education

Final Decision

G.Z., on behalf of minor children, A.Z. and L.Z.,

Petitioner,

v.

Board of Education of the Borough of Hawthorne, Passaic County.

Respondent.

The record of this matter, the proposed Settlement Agreement and Release (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraph 1 of the Agreement references actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 21, 2024
Date of Mailing: October 23, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 13280-23
AGENCY DKT. NO. 300-11/23

G.Z. ON BEHALF OF MINOR CHILDREN
A.Z. AND L.Z.,
Petitioner,
v.
BOARD OF EDUCATION OF THE BOROUGH
OF HAWTHORNE, PASSAIC COUNTY,
Respondent.

Richard Kaplow, Esq., for petitioner (Richard Kaplow, attorneys)

Victoria Acevedo, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: August 13, 2024 Decided: September 4, 2024

BEFORE **PATRICE E. HOBBS**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle this case and have entered into an agreement. Their settlement agreement is attached to this decision.

Having reviewed the terms of their agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this case. If the ACTING COMMISIONER 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 become a final decision in accordance with N.J.S.A. 52:14B-10.

Patrice E Hobbs

September 4, 2024
DATE

PATRICE E. HOBBS, ALJ

lsr

Date Received at Agency: September 4, 2024

Date Mailed to Parties: September 4, 2024

FOGARTY & HARA
COUNSELLORS AT LAW

RODNEY T. HARA
STEPHEN R. FOGARTY
VITTORIO S. LAPIRA
STACEY THERESE CHERRY
ROBERT D. LORFINK

JANET L. FIKE
SEAN W. FOGARTY
VERONICA A. ACEVEDO

21-00 ROUTE 208 SOUTH
FAIR LAWN, NEW JERSEY 07410

(201) 791-3340
TELECOPIER (201) 791-3432

August 28, 2024

VIA EMAIL

The Honorable Patrice E. Hobbs, ALJ
Office of Administrative law
33 Washington Street
Newark, NJ 07102

Re: G.Z. o/b/o A.Z. and L.Z. v. Hawthorne Board of Education
OAL Docket No.: EDU 13280-2023
Agency Ref. No.: 300-11/23
Our File No. 63/132

Dear Judge Hobbs:

This office represents the Hawthorne Board of Education ("Board") in the above captioned matter. We are pleased to advise Your Honor that the parties have reached a settlement. Therefore, attached please find a fully executed Settlement Agreement and Release between the Parties, together with the Board' s Resolution approving same. If this document meets with Your Honor' s approval, it is respectfully requested that Your Honor incorporate same into a final Order and cancel the telephone conference call scheduled for August 30, 2024 at 1:30pm.

Respectfully Submitted,
Fogarty & Hara, Esqs.

By: /s/ Veronica A. Acevedo
Veronica A. Acevedo

VAA:dh
cc: Richard Kaplow, Esq. - via Email
Attorney for Petitioner
Dr. Richard A. Spirito- via Email
Superintendent of Schools

(F&H00181705.DOCX/1)

EXTRACT FROM THE MINUTES OF A MEETING OF THE HAWTHORNE BOARD OF EDUCATION OF HAWTHORNE SCHOOL DISTRICT, PASSAIC COUNTY, NEW JERSEY, AS RECORDED IN THE OFFICIAL MINUTE BOOK

The Board of Education of Hawthorne School District, in the County of Passaic, New Jersey, Tuesday, August 13, 2024 in a Regular Public Meeting at 445 Lafayette Avenue, Hawthorne, New Jersey

The following members of the Board of Education were present:

Ms. Ehrentraut, Mr. Puluse, Mr. Shortway, Mr. Totaro, Mr. Clavijo, Mr. Doyle, Ms. Goff

A-3. BE IT RESOLVED by the Hawthorne Township Board of Education (hereinafter referred to as the "Board") that the terms, stipulations and conditions as established in the Settlement Agreement and Release (hereinafter referred to as "Agreement") between the Board and the Parent of the students whose names are on file in the Superintendent's office, are hereby adopted and approved by the Board. The Board President and Business Administrator/Board Secretary are hereby authorized and directed to execute the Settlement Agreement and Release, and any other documents necessary to effectuate the settlement.

F-1-6, A-1–3 – Moved by Mr. Clavijo, seconded by Mr. Puluse

Ayes -	**Ms. Ehrentraut, Mr. Puluse, Mr. Shortway, Mr. Totaro, Mr. Clavijo, Mr. Doyle, Ms. Goff**
Nays -	**None**
Abstain -	**None**
Absent -	**Mr. Carr, Ms. Mulkey-Koltzan**

I, Jenine M. Murray, Business Administrator of the Hawthorne School District, in the County of Passaic, State of New Jersey, hereby certify that the foregoing extract from the minutes of the Regular Meeting of the Board of Education of said district, duly called and held on August 13, 2024 has been compared by me with the original minutes as officially recorded in my office in the minute book of said Hawthorne School District Board of Education this 28th day of August, 2024.

Jenine M. Murray
Business Administrator/Board Secretary

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release made this _____ day of June, 2024 between the Hawthorne Board of Education, which has offices located at 445 Lafayette Avenue, Hawthorne, New Jersey 07506 (hereinafter referred to as the "Board"), and GULSHAN ZEJNEL (hereinafter referred to as "Parent"), on behalf of her children, A.Z. and L.Z., (hereinafter collectively referred to as the "Parties") (hereinafter referred to as the "Agreement").

WHEREAS, A.Z. is a kindergarten student and L.Z. is a first-grade student attending the Washington Elementary School within the Hawthorne School District (hereinafter referred to as the "District"), a public school district operated by the Board; and

WHEREAS, the Board received information in September 2023 that revealed that the parent of A.Z. and L.Z. did not live within the District which prompted the Board's investigation into A.Z. and L.Z.'s residency;

WHEREAS, the Board's investigation determined that A.Z. and L.Z. were not domiciled in the District and did not meet the requirements for residency under *N.J.S.A.* 18A:38-1 and *N.J.A.C.* 6A:22-3.1; and

WHEREAS, the Board issued their notice of eligibility determination on October 31, 2023; and

WHEREAS, it is the Board's position that A.Z and L.Z. were not entitled to a free public education from the District because the parent whom the children resided with during the entire period of disputed residency, was domiciled at 111 N. 17th Street, Prospect Park, New Jersey; and

WHEREAS, Parent disputed the Board determination of eligibility and filed the action captioned G.Z. o/b/o A.Z. and L.Z. v. Borough of Hawthorne BOE, OAL Docket No. EDU 13280-2023, Agency Ref. No. 300-11/23 on November 2, 2023; and

WHEREAS, the Board filed a Counterclaim against Parent seeking tuition reimbursement for A.Z. and L.Z. for the 2023-2024 school year on November 21, 2023; and

WHEREAS, the Parties are desirous of resolving the issues in dispute thereby avoiding the time and expense associated with litigation.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. The Parent agrees to reimburse the Board in the amount of $5,133.30 equivalent to 19 days for September 2023, and 11 days for October 2023 of tuition reimbursement for A.Z. and L.Z.'s period of disputed residency pursuant to *N.J.A.C.* 6A:22-6.2. This amount shall be paid to the Board via certified check within 10 days of execution of this Settlement Agreement and Release. All payments shall be made

via check payable to "Hawthorne Board of Education," and delivered to:

Hawthorne Board of Education
Attn: Ms. Jenine Murray
Business Administrator/Board Secretary
445 Lafayette Avenue
Hawthorne, New Jersey 07506

2. The Parent agrees that she will be in default of this Settlement Agreement and Release if payment is not received by the Board in the amount, and on or before the date specified herein. In the event of default, back tuition in the amount of $5,133.30, shall be due and payable, with credit given for any sums paid pursuant to the terms of this Settlement Agreement and Release. If the Parent fails to pay the back tuition within thirty (30) days of default, the Parent consents to the entry of default judgment, and agrees that the Board may proceed by summary action to execute on the judgment for the back tuition owed by the Parent, less credit for any sums paid to the Board pursuant to this Settlement Agreement and Release.

3. Upon receipt of payment in accordance with the terms of this Settlement Agreement and Release, the Parent shall be released from any and all claims, causes of action, suits, actions at law and in equity, administrative proceedings and judicial and quasi-judicial proceedings, which have been brought or could have been brought, relating to the payment of tuition for A.Z and L.Z. set forth in the Board's counterclaim.

4. It is expressly understood that the enrollment of A.Z. and L.Z. in the District is expressly conditioned upon A.Z. and L.Z. being domiciled in the District. In the future, if it is determined that A.Z. and L.Z. are not domiciled within the District, the Board will initiate disenrollment procedures in accordance with *N.J.S.A.* 18A:38-1.

5. The Parent and A.Z. and L.Z., or any persons or entity acting on their behalf, agree not to file any suit, or cause any suit, demand, administrative, judicial or other proceeding, claim, complaint or other action of any kind against the Board or its officers, agents, employees or assigns for so long as the Parties abide by the terms of this Settlement Agreement and Release. It is expressly understood, however, that either party may bring an action to enforce the terms of the within Settlement Agreement and Release. It is further understood and agreed that all parties shall bear their own attorneys fees and costs in connection with this matter, except that in the event an action is brought by the Board to enforce this Settlement Agreement and Release, the Board shall be entitled to attorneys' fees and costs in connection therewith.

6. The Parties' signature on this Agreement shall serve as their request to withdraw their claims with prejudice. Petitioner withdraws her Petition of Appeal to the Commissioner which was assigned Agency Reference No. 300-11/23 and OAL Docket No. EDU 13280-2023. Any Party may submit a fully executed copy of this

Agreement to the Commissioner of Education and/or the Office of Administrative Law as notification in accordance with N.J.A.C. 1:1-10.2 that Petitioner withdrew with prejudice her petition of appeal. It is expressly understood, however, that the Parties retain the right to enforce any provision of this Agreement

7. The terms of this Settlement Agreement and Release represent the compromise of disputed claims between the Parties. This Settlement Agreement and Release shall not constitute, be interpreted, construed, or used as evidence of any admission of fact, law, responsibility, or liability on the part of any party.

8. The Parties may execute this Settlement Agreement and Release in counterparts, each of which is deemed an original and all of which only constitute one original.

9. This Settlement Agreement and Release constitutes the entire understanding of the Parties hereto and shall supersede any prior agreements between the Parties with respect to its subject matter. Further, there are no representations, warranties, covenants or undertakings other than those expressly set forth herein. The parties acknowledge and agree that they are not relying upon any oral statements, representations, promises, or expectations which are not expressly and explicitly set forth in this Settlement Agreement and Release, which alone fully and completely expresses all agreements between the Parties.

10. A modification or waiver of any of the provisions of this Settlement Agreement and Agreement shall be effective and enforceable, only if made in writing and executed by both Parties with the same formality as the Settlement Agreement and Release.

11. The terms and conditions set forth herein shall be deemed severable. If any clause or provision contained herein shall be held unenforceable by a court of competent jurisdiction, it shall not affect the validity of any other clause or provision, all of which shall continue in full force and effect.

12. The Parties have had the opportunity to be represented by an attorney of their own choice throughout this proceeding. Each party acknowledges that they have signed this Settlement Agreement and Release knowingly, voluntarily and of their own free will, with the full understanding of their duties and obligations contained therein.

13. This Settlement Agreement and Release shall be construed and enforced in accordance with the laws of the State of New Jersey.

14. The undersigned represent that they have the requisite authority to sign this Settlement Agreement and Release on behalf of the respective party.

PURPOSEFULLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the date and year set forth below.

WITNESS:

JENNINE MURRAY
Board Secretary/Business Administrator

DATED: 8/13/2024

HAWTHORNE BOARD OF EDUCATION

BY: ABIGAIL GOFF
Board President

DATED: 8/13/2024

WITNESS:

DATED: 07/22/24

GULSHAN ZEJNEL

DATED: 7/22/24

394-24
OAL Dkt. No. EDU 04130-23
Agency Dkt. No. 46-2/24

New Jersey Commissioner of Education

Final Decision

S.O. on behalf of minor child, A.O.,

Petitioner,

v.

Board of Education of the Freehold Regional High School District, Monmouth County.

Respondent.

The record of this matter, the proposed Settlement Agreement and General Release (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraphs 1 and 2 of the Agreement reference actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 21, 2024
Date of Mailing: October 23, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 04130-24
AGENCY DKT. NO. 46-2/24

S.O., ON BEHALF OF MINOR CHILD, A.O.,
Petitioner,
v.
FREEHOLD REGIONAL HIGH SCHOOL BOARD OF EDUCATION, MONMOUTH COUNTY,
Respondent.

S.O., petitioner pro se

Jacob K. Mintun, Esq., for respondent (Comegno Law Group, P.C., attorneys)

Record Closed: September 4, 2024 Decided: September 13, 2024

BEFORE **MARY ANN BOGAN**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle this case and have entered into an agreement. Their settlement agreement is attached to this decision.

Having reviewed the terms of their agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

I **FILE** my decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration. This recommended decision may be adopted, modified, or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is empowered by law to make a final decision in this case. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not so act within 45 days, and unless such time limit is otherwise extended, this recommended decision becomes a final decision in accordance with N.J.S.A. 52:14B-10.

September 13, 2024
DATE

MARY ANN BOGAN, ALJ

Date Received at Agency: September 16, 2024

Date Mailed to Parties: September 16, 2024

MAB/nn

COMEGNO LAW GROUP, P.C.
521 Pleasant Valley Avenue
Moorestown, New Jersey 08057
(856) 234-4114
(856) 234-4262 Fax
Attorneys for the Freehold Regional High School District Board of Education
(*improperly pleaded as the "Freehold Regional High School District"*)

BY: JACOB K. MINTUN, ESQ.

S.O. on behalf of A.O., **Petitioner,** **v.** **FREEHOLD REGIONAL HIGH SCHOOL DISTRICT,** **Respondent.**	**STATE OF NEW JERSEY** **OFFICE OF ADMINISTRATIVE LAW** **OAL DOCKET NO. EDU 04130-2024 S** **AGENCY REF. NO. 46-2/24** **SETTLEMENT AGREEMENT AND** **GENERAL RELEASE**

SETTLEMENT AGREEMENT AND GENERAL RELEASE

WHEREAS, A.O. is a student that is enrolled in one of the high schools in the Freehold Regional High School District ("District");

WHEREAS, the Freehold Regional High School District Board of Education ("Board") is the local educational authority with the responsibility of providing a thorough and efficient public education to A.O.; and

WHEREAS, a Discipline Hearing was held before a Committee of the Board in connection with certain conduct by A.O.;

WHEREAS, the full Board adopted the recommendations of the Committee and Administration for A.O.;

WHEREAS, on February 24, 2024, Petitioner filed a Pro Se Petition of Appeal in connection with the Board's findings and determinations for A.O.;

WHEREAS, on March 21, 24, the Board filed its response to Petitioner's Pro Se Petition of Appeal;

WHEREAS, the Parties began negotiations towards a possible global resolution of the issues in this matter, as well as any other administrative or legal proceedings or challenges that Petitioner and/or A.O. could bring against the Board, its employees, staff, administrators, agents, contractors or assigns; and

WHEREAS, Petitioner agrees, in consideration of the Board providing the services identified herein, to withdraw its Petition of Appeal, and to withdraw A.O. from the District prior to the start of the 2024 – 2025 school year, as well as to waive and release all legal and/or equitable claims he has or may have against the Board under state and/or federal law now through and including end of the 2023 - 2024 school year, with the exception of any claims for enforcement of this Agreement; and

WHEREAS, the parties having a desire to settle the above matters in an amicable way, hereby agree in this Settlement Agreement and General Release ("Agreement") as follows:

1. In exchange for the mutual covenants set forth herein, Petitioner shall immediately take whatever action is required to withdraw its Petition of Appeal, and to cease any and all legal or administrative proceedings against the Board or any of its employees, agents, contractors, or assigns.

2. Petitioner further agrees that prior to the beginning of the 2024 - 2025 school year, A.O. shall be considered withdrawn from the District. Petitioner also agrees that they will

execute and/or provide any other paperwork that the District deems necessary in order to finalize the withdrawal of A.O. from the District, as well as return any and all Board property, material or equipment (i.e., textbooks) that has been issued or provided to A.O.

3. Upon adoption and incorporation of this Agreement into a Final Order by the Office of Administrative Law, the Board agrees that it will amend the notation on A.O.'s discipline record for the incident that occurred on August 28, 2023 to *only* reflect a single instance of "Disrespect to a Student", and that it will provide a copy of any student records, including discipline records *excluding* the above referenced incident, of A.O. that are requested and disclosed to any third party in connection with any application for enrollment in another secondary institution (public or private). The Parties agree that A.O.'s student records shall be maintained in accordance with the law, including N.J.A.C. 6A:32-7.1, et. seq., 34 C.F.R. § 99, and 20 U.S.C. § 1232g (Family Educational Rights and Privacy Act of 1974).

4. In consideration of the Board's provision of services as noted herein, Petitioner and A.O. hereby forever waive and fully and completely releases the Board from any and all claims they have or may have, of any kind whether contractual, tort, common law or statutory, including, but not limited to, all claims for any alleged violations of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.§794(a), as well as recovery for damages, costs and attorneys fees under the Family Education Rights and Privacy Act, 20 U.S.C. §1232g, *et seq.*, 29 U.S.C. §794(a), 42 U.S.C. §1983, 42 U.S.C. §1988, 29 U.S.C. §705(20), N.J.A.C. 6A:14-1.1 *et seq.*, all as amended, any statutes of New Jersey including but not limited to the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, or any other claims which have been or could have been asserted by Petitioner and/or A.O. in any form arising out of or connected with A.O.'s

education with the District, and from all liability whatsoever, whether known or unknown, or to the extent permitted by applicable law. Nothing in this Agreement shall preclude Petitioner and/or A.O., from asserting any claims against the Board that may arise in the future, after the date of this Agreement, as well as any claims to enforce the terms and conditions noted in this Agreement.

5. Each party shall be responsible for their own attorneys' fees and expert costs incurred in connection with the matter pending in the Office of Administrative Law, as well as any other administrative or legal proceeding previously brought by Petitioner against the Board.

6. The Board and Petitioner each hereby verify, affirm and represent that they have each had the opportunity to seek legal counsel to discuss the terms of this Agreement, that they understand its contents and are entering into this Agreement voluntarily and with a full understanding of its meaning.

7. The Parties agree and acknowledge that this Agreement is subject to approval by the Board during its next regularly scheduled meeting following the execution of this Agreement.

8. This Agreement contains the entire agreement between the Parties and is intended to resolve all disputes and issues between them as of the date of execution of this Agreement.

9. This Agreement may be signed in counterparts, and facsimile signatures shall be deemed effective for the purposes of this Agreement.

10. The parties agree that the terms and conditions of this Agreement shall remain confidential and that neither party may disclose its terms and conditions to a third party except to enforce this Agreement or if required to do so by court order issued from a court of competent jurisdiction.

THE PARTIES HEREBY AGREE WITH THE TERMS OF THIS AGREEMENT:

S.O. on behalf of A.O.

BY: _____

BY: _____

FREEHOLD REGIONAL HIGH SCHOOL DISTRICT BOARD OF EDUCATION

BY: _____
Nicole P. Hazel, Superintendent

BY: _____

FREEHOLD REGIONAL HIGH SCHOOL DISTRICT

Sean P. Boyce, CPA
Assistant Superintendent for
Business Administration/
Board Secretary

11 Pine Street
Englishtown, NJ 07726
(732) 792-7300 ext. 8519
Fax: (732) 446-5192

September 3, 2024

Mr. Mark Toscano
521 Pleasant Valley Avenue
Moorestown, New Jersey 08057

Dear Mr. Toscano:

At a meeting of the Freehold Regional High School District Board of Education, the below listed motion was adopted and is referred to you for your information and/or action:

J. Educational Programs

Motion by D. Cappiello, seconded by A. McCobb and carried by unanimous roll call vote to adopt the following resolution:

21. Approval of Settlement Agreement

BE IT RESOLVED, that the Freehold Regional High School District approves Settlement Agreement #2024-001 on file in the Office of Student Services.

I, Sean P. Boyce, Board Secretary of the Freehold Regional High School District Board of Education, in the county of Monmouth, State of New Jersey, HEREBY CERTIFY that the foregoing/annexed extract is a true, complete and correct copy of the original minutes of a meeting of the Board of Education held on August 28, 2024.

Sean Boyce, CPA
Assistant Superintendent for Business
Freehold Regional High School District

SPB/CC

395-24
OAL Dkt. No. EDU 06751-24
Agency Dkt. No. 120-4/24

New Jersey Commissioner of Education

Final Decision

Anthony Gaetano,

Petitioner,

v.

Board of Education of the Borough of Eatontown, Monmouth County,

Respondent.

The record of this matter, the proposed Settlement Agreement (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 21, 2024
Date of Mailing: October 23, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 06751-24
AGENCY DKT. NO. 120-4-24

ANTHONY GAETANO,

Petitioner,

v.

BOROUGH OF EATONTOWN BOARD OF EDUCATION, MONMOUTH COUNTY,

Respondent.

James J. Uliano, Esq., for petitioner (Charles Uliano & Walsh, attorneys)

Douglas J. Kovats, Esq., for respondent (Kenny, Gross, Kovats & Parton, attorneys)

Record Closed: August 27, 2024 Decided: September 9, 2024

BEFORE **MAMTA PATEL,** ALJ:

Petitioner Anthony Gaetano filed an appeal on or about April 30, 2024, with the Department of Education. On May 15, 2024, the Department of Education Office of Controversies and Disputes transmitted this case as a contested matter to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -

21.6. The parties have agreed to settle this case and have entered into an agreement. The settlement agreement is attached to this decision.

I have reviewed the terms of the Settlement Agreement, and I **FIND:**

1. The parties have voluntarily agreed to the settlement, as evidenced by their signatures on the Settlement Agreement.

2. The Settlement Agreement is fully dispositive of all issues in controversy between the parties in this case.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1, and I **ORDER** that the settlement agreement is **APPROVED**, its terms are **INCORPORATED** into this decision, and this case is **CONCLUDED**.

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.

September 9, 2024
DATE

MAMTA PATEL, ALJ

Date Received at Agency: 9/11/2024

Date Mailed to Parties: 9/11/2024

MP/dw

SETTLEMENT AGREEMENT

IN THE MATTER OF ANTHONY GAETANO
and
THE EATONTOWN BOARD OF EDUCATION

OAL Docket No.: EDU06751-2024S
Agency Reference Number: 120-4/24

The parties in this appeal have voluntarily resolved all disputed matters and enter into the following settlement, which fully disposes of all issues in controversy between them.

A. Re: HIB Incident # 2611299 MS 02202024:

1. During the 2024-2025 school year, Anthony Gaetano will seek additional training in Harassment, Intimidation and Bullying policy, procedures and interventions beyond the mandated District training offered each year.

2. A letter of apology signed by Anthony Gaetano is acknowledged and will be shared with the student and the student's parents.

B. Re: Classroom Instruction Incident, meeting with Building Principal, Thursday, March 21, 2024, display of inappropriate video during instructional period:

1. Letter of reprimand to be placed in Anthony Gaetano's personnel file.

C. With regard to each of the incidents described above, recommendation will be made to withhold Anthony Gaetano's employment and adjustment increment for the 2024-2025 school year:

1. The Board, upon recommendation of the Superintendent, will consider reinstatement of the employment and adjustment for the 2026-2027 school year provided there are no other disciplinary incidents and provided further the reinstatement will not result in repayment of the increment values withheld.

D. Eatontown Board of Education (Board) shall amend Anthony Gaetano's personnel records to conform to the terms of the settlement. All internal records of the Board will be kept intact.

E. Nothing herein shall preclude the Board from releasing information on this matter to anyone who has a release executed by Anthony Gaetano or as consistent with the law.

F. Any information regarding the underlying charges will be provided to the Public Employees Retirement System pursuant to *N.J.S.A.* 43:1-3.3, as amended effective April 14, 2007.

G. Appellant waives all other claims against Board with regard to this matter, including any award of back pay, counsel fees or other monetary relief, except as may otherwise be provided herein.

H. This agreement shall not constitute a precedent in matters involving other employees.

I. Appellant waives all claims, suits or actions, whether known, unknown, vested or contingent, civil, criminal or administrative, in law or equity against the Board, their employees, agents, or assigns, including, but not limited to, those which have been or could have been made or prosecuted on account of any conduct of any party occurring at any time with respect to the events, information or disputes giving rise to this action up to the date of this agreement, including, but not limited to, all claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Family Leave Act, the Family and Medical Leave Act, the New Jersey Law Against Discrimination, the Equal Pay Act, the Conscientious Employee Protection Act, the Age Discrimination in Employment Act, Title 11 A - the Civil Service Act, the Older Workers Benefits Protection Act, the Occupational Safety and Health Act, the Public Employee Occupational Safety and Health Act, the New Jersey Smoking Act, New Jersey wages and hours law, public works statutes, unemployment compensation laws, disability benefits laws, the United States Constitution, the New Jersey Constitution, any workers compensation or common law claims and any contract express or implied. This waiver includes all claims involving any continuing effects of actions or practices which arose prior to the date of this Settlement Agreement and bars the use in any way of any past action or practice in any subsequent claims, except pending workers compensation claims.

J. The parties agree that if any portion of this Settlement Agreement is deemed unenforceable, the remainder of this Settlement Agreement shall be fully enforceable.

K. This agreement will become effective only if approved by The Hon. Mamta Patel, A.L.J. and the Department of Education. Any disapproval by the Department of Education shall not interfere with the rights of either party to pursue the matter further.

Douglas J. Kovats, Esq.
o/b/o Eatontown Board of Education

James J. Uliano, Esq.
o/b/o Anthony Gaetano

CERTIFICATION

I, Anthony Gaetano, being the moving party in this matter, hereby certify that I have reviewed this Settlement Agreement and fully understand its meaning and terms. I acknowledge my understanding and verify my acceptance of the terms of this Settlement Agreement. I acknowledge that my representative questioned my understanding, verified my acceptance of the terms of this Settlement Agreement and answered all my questions regarding this settlement to my satisfaction I am satisfied with my representation, and I enter into this Settlement Agreement voluntarily.

I also understand that if this Settlement Agreement is approved by the Department of Education, my claim against the Eatontown Board of Education will terminate.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date:

Ant ony Gaetano

EATONTOWN BOARD OF EDUCATION
ADMINISTRATIVE OFFICES
5 GRANT AVENUE
EATONTOWN, NJ 07724
TEL. (732) 935-3302
FAX (732) 542-1700

LORI YOUNGCLAUS
BUSINESS ADMINISTRATOR
BOARD SECRETARY

Eatontown Board of Education
Eatontown, New Jersey 07724
Minutes
August 26, 2024

Ms. Connelley moved the following Resolutions, seconded by Mrs. Kopach.

WHEREAS, in the matter of OAL Dkt. No. EDU 06751-24 Anthony Gaetano v. Borough of Eatontown BOE, Monmouth County, an appeal of the Eatontown Board of Education's (Board) action was taken; and

WHEREAS, the parties have reached a settlement of all issues outstanding by and between the parties; and

WHEREAS, in accordance with the direction of the Board, counsel o/b/o the Board has signed and submitted the settlement agreement (incorporated by reference as if fully set forth herein) to Mamta Patel, ALJ of the Office of Administrative Law.

NOW, THEREFORE, BE IT RESOLVED that the Board approves the settlement agreement aforementioned and ratifies counsel's signing of the same.

Aye: Connelley, Kopach, Murphy, Ortiz, Phipps, Ragucci, and Seaman.
Nay: None.
Absent: Rogers.
Abstain: Cherry.

I hereby certify this is to be a true and correct copy of the Eatontown Board of Education Minutes of August 26, 2024.

L Youngclaus

Lori Youngclaus
Board Secretary

397-24

New Jersey Commissioner of Education

Final Decision

C.W.,

Petitioner,

v.

New Jersey State Interscholastic Athletic Association,

Respondent.

Synopsis

Petitioner appealed the decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying C.W.'s request for a waiver to allow him to participate in interscholastic sports at Hackettstown High School. C.W. is a sophomore at the Netherlands Reformed Christian School (NRCS), a nonpublic religious school that is not a member of the NJSIAA and does not provide an athletic program for its students; if C.W. attended public school, he would do so at Hackettstown High School, which is a member of the NJSIAA. The NJSIAA twice denied requests for a waiver in this case, explaining in both instances that its rules do not allow students who choose to attend a private school to participate in interscholastic sports at their local public high school, and that NJSIAA cannot grant a waiver or exception to the rule. C.W. subsequently filed a motion for emergent relief.

Upon careful review and consideration, the Commissioner upheld the NJSIAA's decision and dismissed the petition. In so doing, the Commissioner explained that he may not overturn an action by the NJSIAA in applying its rules, absent a demonstration by the petitioner that it applied such rules in a patently arbitrary, capricious, or unreasonable manner. The Commissioner concluded, *inter alia*, that the NJSIAA's application of the Enrollment Rule to C.W. is neither arbitrary nor discriminatory; NJSIAA presented sound reasons for precluding students attending nonmember schools from participating in sports at their local public schools, even though homeschooled students are afforded that opportunity if local board of education policy provides for it; further, the Commissioner concluded that the Enrollment Rule is not discriminatory and does not infringe on C.W.'s religious freedom. Accordingly, the Commissioner affirmed the NJSIAA's decision. Petitioner's motion for emergent relief was denied, and the petition of appeal was dismissed.

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.

397-24
Agency Dkt. No. 310-9/24

New Jersey Commissioner of Education

Final Decision

A.W., on behalf of minor child, C.W.,

Petitioner,

v.

New Jersey State Interscholastic Athletic Association,

Respondent.

For Petitioner, Thomas J. Vargo, Esq.

For Respondent, Steven P. Goodell, Esq.

This case involves an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying petitioner's request for a waiver to allow his child, C.W., to participate in interscholastic sports at Hackettstown High School.

Athletic competition in New Jersey's schools is overseen by respondent, NJSIAA, a voluntary association of public and nonpublic schools, organized – pursuant to *N.J.S.A.* 18A:11-3 – to oversee athletics for its member schools in accordance with a constitution, bylaws, rules, and regulations approved by the Commissioner of Education and adopted annually by member schools, for which they become school policy enforceable by the NJSIAA. The NJSIAA's Enrollment Rule requires that "a student, to be eligible for participation in the interscholastic

athletic program of a member school, must be enrolled in that school."[1] NJSIAA Bylaws, Article V, Eligibility of Athletes.

The material facts in this case do not appear to be in dispute. C.W. is a sophomore at the Netherlands Reformed Christian School (NRCS), a nonpublic religious school. NRCS is not a member of the NJSIAA, and it does not provide any athletics. If C.W. attended public school, he would do so at Hackettstown High School, which is a member of the NJSIAA.

On July 25, 2024, petitioner wrote to NJSIAA Executive Director, Colleen Maguire, requesting that she use her authority to make an exception to the Enrollment Rule to allow C.W. to play basketball at Hackettstown High School. On July 29, 2024, Ms. Maguire denied petitioner's request, stating that the NJSIAA rules do not allow students who choose to attend a private school to participate in interscholastic sports at their local public high school, and that she does not have the authority to grant a waiver or exception to the rule. On August 24, 2024, petitioner again requested an authorization or waiver to allow C.W. to participate. On September 13, 2024, the NJSIAA issued a response, stating that the NJSIAA cannot grant the request for a waiver.

On September 23, 2024, petitioner filed an appeal with the Commissioner of Education challenging the decision of the NJSIAA. On September 30, 2024, petitioner filed an application for emergent relief. On October 4, 2024, the NJSIAA filed its answer and opposition to the application for emergent relief.

[1] The student must also meet all of the other eligibility requirements of the NJSIAA's Constitution, Bylaws, and Rules and Regulations.

Petitioner argues that the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution requires similarly situated persons to be treated alike. According to petitioner, homeschooled students – who do not have access to interscholastic sports – are permitted to participate in interscholastic athletics at their local high school, and because C.W. likewise has no access to interscholastic athletic sports, there is no legitimate reason to deny him the same opportunity, when the only difference between C.W. and homeschooled students is C.W.'s choice to attend a religious school.

Petitioner asserts that he is likely to succeed on the merits of his claim for these reasons, and that he meets the other criteria for emergent relief because C.W. will miss out on the start of the basketball season if this matter is not resolved quickly, causing irreparable harm; C.W.'s right to religious freedom and the prohibition against disparate treatment are well-settled; and the equities are in C.W.'s favor because the NJSIAA has not shown it will be burdened by C.W.'s participation.

In reply, the NJSIAA argues that there is no law or NJSIAA rule that supports petitioner's request. The NJSIAA contends that although some of its eligibility rules can be waived, there is no such provision for a waiver of the Enrollment Rule; even if there were, C.W. has not been prevented from playing sports due to circumstances beyond his control – which is typically required for a waiver – as his choice to attend NRCS is a voluntary one. Additionally, the NJSIAA asserts that the Executive Director has no authority to dictate to a member school that it must allow a student who is not enrolled at the school to participate on its sports teams, when there is no rule allowing for same.

The NJSIAA argues that its rules are neutral on their face and do not prevent C.W. from playing basketball at Hackettstown based on his religion, noting that some religious schools are members of the NJSIAA and offer sports, and that any student who attends a non-religious nonmember school is also precluded from participating in sports at a member school. The NJSIAA also contends that while Department of Education policy allows homeschooled students to participate in extracurricular activities if the local board of education has a policy permitting it, the NJSIAA has no authority to extend that policy to students who are not homeschooled.

The NJSIAA contends that, for these reasons, petitioner has failed to establish a settled legal right or a likelihood of success on the merits. The NJSIAA also argues that petitioner has failed to satisfy the other requirements for emergent relief, because there is no fundamental right to participate in high school athletics and therefore C.W. will not suffer irreparable harm if he does not participate. The NJSIAA also claims that the equities are in its favor because of its interest in enforcing its rules for all member schools and students.

Upon careful review and consideration, the Commissioner determines to uphold the decision of the NJSIAA and dismiss petitioner's appeal. It is well-established that the Commissioner's scope of review in matters involving NJSIAA decisions is appellate in nature. *N.J.S.A.* 18A:11-3; *Board of Education of the City of Camden v. NJSIAA*, 92 *N.J.A.R.* 2d (EDU) 182, 188. That is, the Commissioner may not overturn an action by the NJSIAA in applying its rules, absent a demonstration by the petitioner that it applied such rules in a patently arbitrary, capricious, or unreasonable manner. *N.J.A.C.* 6A:3-7.5(a)(2); *B.C. v. Cumberland Regional School District*, 220 *N.J. Super.* 214, 231-232 (App. Div. 1987); *Kopera v. West Orange Board of Education*, 60 *N.J. Super.* 288, 297 (App. Div. 1960).

The New Jersey courts have spoken as to the narrow scope of "arbitrary, capricious, or unreasonable" in the context of challenges such as that of petitioner:

> In the law, "arbitrary" and "capricious" means having no rational basis. *** Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.*** (citations omitted) *Bayshore Sew. Co. v. Dep't of Envt. Protection*, 122 *N.J. Super.* 184, 199-200 (Ch. Div. 1973), *aff'd* 131 *N.J. Super.* 37 (App. Div. 1974).

Petitioners seeking to overturn decisions of the NJSIAA therefore bear a heavy burden, and – considering the record of this matter in light of the prescribed standard of review – the Commissioner cannot find that petitioner herein has met his burden so as to entitle him to prevail on appeal. More specifically, considering its duty to ensure fairness and integrity in athletic competition statewide, the Commissioner cannot find that the NJSIAA applied its rules in a patently arbitrary or unreasonable manner.

"It is well-settled that participation in interscholastic sports is a privilege, rather than a right. As such, participation may not be denied for arbitrary and capricious reasons, nor may any participant be discriminated against in his application for such privilege." *E.L. and N.L., o/b/o R.L. v. NJSIAA*, Commissioner Decision No. 382-98 (decided Aug. 31, 2008) (internal citation omitted). The Commissioner concludes that the NJSIAA's application of the Enrollment Rule to C.W. is neither arbitrary nor discriminatory. The NJSIAA has presented sound reasons for precluding students attending nonmember schools from participating in sports at their local public schools, even though homeschooled students are afforded that opportunity if local board of education policy provides for it. Additionally, the Commissioner concludes that the Enrollment Rule is not discriminatory and does not infringe on C.W.'s religious freedom. The Commissioner finds that

C.W., who has chosen to attend NRCS, is not similarly situated to homeschooled students for purposes of participating in sports. Furthermore, the Enrollment Rule is applied equally to all students who attend nonmember schools – religious and non-religious alike. Finally, C.W. and his family have made a voluntary choice for him to attend NRCS. This choice "does not elevate their claim to one of prejudicial or unjust treatment; indeed, many parents are similarly faced with having to weigh the varied components of a private or parochial education against those of a public school education." *Ibid.*

Because the Commissioner has determined to affirm the NJSIAA's decision on its merits, the request for emergent relief is moot.

Accordingly, the Commissioner affirms the NJSIAA's decision. Petitioner's motion for emergent relief is denied, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 25, 2024
Date of Mailing: October 28, 2024

[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.

398-24

New Jersey Commissioner of Education

Final Decision

Willingboro Education Association, individually and on behalf of member Sabrina Austin,

Petitioner,

v.

Board of Education of the Township of Willingboro, Burlington County,

Respondent.

Synopsis

Petitioner, a tenured teacher employed since 2004 by the Willingboro Board of Education (Board or respondent), asserted that the respondent abolished her position as Reading Specialist, created the substantially similar position of Literary Learning Specialist (LLS), and failed to appoint the petitioner to the newly created position in violation of her tenure and seniority rights. Petitioner holds a Teacher of the Handicapped certificate and earned a Master's degree in Curriculum and Instruction with an emphasis in Reading as well as a Master's degree in Special Education. The Board hired a non-tenured teacher for the LLS position, transferring petitioner to the position of Special Education Pre-K teacher—a transfer that did not result in a reduction of petitioner's salary or benefits. The respondent denied violating the petitioner's rights, contending that she was appropriately transferred when her position was abolished. Respondent further argued that petitioner is not qualified for the LLS position because she does not hold the necessary certifications. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case and the matter is ripe for summary decision; the Board did not violate petitioner's tenure or seniority rights when it abolished the Reading Specialist position, declined to hire her for the substantially similar LLS position, and transferred her to a position within her certification that did not result in any reduction of her salary or benefits; petitioner does not meet the eligibility requirements for the LLS position, as she does not have a Reading Specialist, Teacher of Reading, or Teacher of Supplemental Reading and Math certificate; further, petitioner failed to present evidence that the Board acted in bad faith or for an unlawful purpose. Accordingly, the ALJ granted the Board's cross-motion for summary decision and dismissed the petition.

Upon review, the Commissioner, *inter alia,* rejected the ALJ's findings that the LLS position required dual certification, and that petitioner was not qualified for the position. However, the Commissioner noted that school boards have the managerial prerogative to transfer teaching staff members pursuant to *N.J.S.A.* 18A:25-1. Accordingly, the Commissioner adopted the Initial Decision of the OAL as modified and dismissed the petition.

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.

398-24
OAL Dkt. No. EDU 08364-23
Agency Dkt. No. 210-8/23

New Jersey Commissioner of Education

Final Decision

Willingboro Education Association, individually and on behalf of member Sabrina Austin,

Petitioner,

v.

Board of Education of the Township of Willingboro, Burlington County,

Respondent.

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

Petitioner, a tenured teacher who holds a Teacher of the Handicapped certificate, began working for the Board in 2004.[1] She earned a Master's degree in Curriculum and Instruction with an emphasis in Reading as well as a Master's degree in Special Education. During the 2021-2022 and 2022-2023 school years, she worked as a Reading Specialist. In April 2023, the Board

[1] More accurately, "Teacher of the Handicapped" is an endorsement issued with an instructional certificate. *See, e.g., Melnyk v. Bd. of Educ. of Delsea Reg'l High Sch. Dist.*, 241 *N.J.* 31, 36 (2020). An "instructional certificate" is the certificate category that permits an individual to teach in a classroom setting. *N.J.A.C. 6A:9-2.1.* An "endorsement" is an authorization allowing a certificate holder to teach one or more specific subject areas or to serve in one or more specific teaching staff roles. *Ibid.*

abolished the Reading Specialist position effective June 30, 2023, along with ten other positions. The Board then created a new position, Literacy Learning Specialist (LLS), which petitioner applied for but did not obtain. The Board hired a non-tenured teacher for the LLS position and transferred petitioner to a different position, Special Education Pre-K teacher, effective September 1, 2023. The transfer did not result in a reduction of petitioner's salary or benefits, and she has remained continuously employed with the district. However, petitioner alleges that the Board violated her tenure and seniority rights when it hired a non-tenured teacher for the LLS position and bypassed her. She asserts that she was qualified for the LLS position, which is substantially similar to her prior position of Reading Specialist.

The parties cross-moved for summary decision. At oral argument on July 15, 2024, it appears that the ALJ sought clarification regarding the certification requirements for the LLS position, which resulted in the parties' submission of additional information. The Board submitted a certification dated July 22, 2024, from Dr. Malcolm X. Outlaw, Superintendent, stating that the LLS job description stipulated to in the record contained a typographical error. Outlaw's certification explains that the job description incorrectly stated that candidates must possess a "New Jersey Department of Education Permanent Teacher's Certificate," a "New Jersey Special Education Teaching Certificate and/or Reading Specialists Certificate, Teacher of Reading, or Teacher of Supplemental Reading and Math Certificate." According to Outlaw, the LLS position "requires dual certification, therefore possession of a New Jersey Special Education Teaching Certificate and an additional Certification is required," and because petitioner only possesses a Teacher of the Handicapped certificate, she is not qualified for the LLS position.

In response, petitioner submitted a certification also dated July 22, 2024, from Nadine Tribbett, Interim Superintendent, which was filed on behalf of the Board in a related PERC matter. There, Tribbett certified that the LLS job description was accurate and that candidates for the position must possess a "New Jersey Department of Education Permanent Teacher's Certificate," a "New Jersey Special Education Teaching Certificate and/or Reading Specialists Certificate, Teacher of Reading, or Teacher of Supplemental Reading and Math Certificate." According to Tribbett, petitioner is not qualified for the LLS position because she "does not possess a New Jersey Department of Education Permanent Teacher's Certificate."[2]

Relying primarily upon *Carpenito v. Board of Education of the Borough of Rumson*, 322 *N.J. Super.* 522, 529 (App. Div. 1999), the Administrative Law Judge (ALJ) concluded that the Board did not violate petitioner's tenure or seniority rights when it abolished the Reading Specialist position, declined to hire her for the substantially similar LLS position, and transferred her to a position within her certification that did not result in any reduction of her salary or benefits. Citing Outlaw's certification, the ALJ further concluded that petitioner does not meet the eligibility requirements for the LLS position, as she does not have a Reading Specialist, Teacher of Reading, or Teacher of Supplemental Reading and Math certificate. The ALJ also concluded that petitioner failed to present evidence that the Board acted in bad faith or for an unlawful purpose. Thus, the ALJ granted the Board's cross-motion for summary decision and dismissed the petition.

[2] Petitioner disputes this. A "standard certificate" is a permanent certificate issued to a person who has met all certification requirements. *N.J.A.C.* 6A:9-3.1. "Provisional" and "emergency" certificates are temporary. *Ibid.*

Petitioner takes exception to the ALJ's finding that candidates for the LLS position must hold dual certification—*i.e.*, a Teacher of the Handicapped certificate and a Reading Specialist, Teacher of Reading, or Teacher of Supplemental Reading and Math certificate—to qualify. She notes that the Board did not previously allege a typographical error in the LLS job description. She points out that Tribbett's certification, which is not mentioned in the ALJ's Initial Decision, makes no reference to a typographical error in the LLS job description and confusingly claims that petitioner is not permanently certified as a teacher. She contends that the Board's newly raised argument that she was not qualified further supports the conclusion that she was singled out for a transfer on a prohibited basis. Along those lines, petitioner also takes exception to the ALJ's conclusion that she failed to prove that she was qualified for the LLS position and failed to prove that the Board acted in bad faith, or arbitrarily or capriciously, when it bypassed her for the position.

Teaching staff members who have acquired tenure "shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause . . . ." *N.J.S.A.* 18A:28-5. However, "[a] school board has the managerial prerogative to transfer teaching staff members by a majority vote of the board." *N.J.S.A.* 18A:25-1. "Seniority is a by-product of tenure and comes into play only if tenure rights are reduced by way of dismissal or reduction in tangible employment benefits." *Carpenito*, 322 *N.J. Super.* at 531. "[A]bsent allegations of bad faith or unlawful purpose, a tenured teacher's seniority rights are not triggered when a school board abolishes the teacher's position and assigns the teacher to teach different subjects within his or her certification without reducing the

teacher's salary or other employment benefit" so long as "the teacher is not singled out for the transfer on a prohibited basis." *Id.* at 528-29.

Upon review, the Commissioner adopts the ALJ's Initial Decision, as modified. The Commissioner concurs with the ALJ that Board did not violate petitioner's tenure or seniority rights when it abolished the Reading Specialist position, declined to hire her for the LLS position, and transferred her to a position within the scope of her certification that did not result in any reduction of her salary or benefits. Like the appellant in *Carpenito*, petitioner has not suffered a loss of employment. The Board was within its rights to transfer her to a different position, so long as it did not reduce her salary or benefits. Petitioner admits that she has remained continuously employed by the district and her salary and benefits have not decreased. The Commissioner also concurs with the ALJ that petitioner failed to demonstrate that the Board acted in bad faith or for an unlawful purpose. The record reflects that the Board eliminated ten other positions when it abolished the Reading Specialist position. Thus, the Board's apparent reorganization did not solely affect petitioner, and the evidence fails to establish that she was singled out for a transfer on a prohibited basis.

However, the Commissioner rejects the ALJ's finding that the LLS position requires dual certification, and that petitioner was not qualified for the LLS position. As petitioner explains in her exceptions, the current record contains conflicting evidence regarding the certification requirements for the LLS position. Tribbett's certification—which does not appear to have been considered by the ALJ—makes no reference to a typographical error and recites the certificate requirements for the LLS position exactly as they appear in the job description. Furthermore, Tribbett's certification and Outlaw's certification are both dated July 22, 2024, yet proffer two

different reasons as to why petitioner is not qualified. In any event, the Commissioner holds that it is unnecessary to make findings regarding whether the LLS position requires dual certification, or whether petitioner was qualified for the LLS position, because petitioner's tenure and seniority rights were not violated by the Board. Although she may prefer the LLS position over a Pre-K position, an employee's desires for a particular position cannot "subvert a school board's managerial authority to lawfully assign and transfer its staff within the scope of their certification, absent disciplinary reasons or bad faith." *Carpenito*, 322 *N.J. Super.* at 534.

Additionally, the Commissioner rejects the ALJ's conclusion that the Reading Specialist and LLS positions are substantially similar because the ALJ did not render any findings regarding the duties of either position, whether they overlap, or whether they differ. Moreover, since petitioner's tenure and seniority rights were not violated, the Commissioner holds that it is unnecessary to determine whether the Reading Specialist and LLS positions are substantially similar and, therefore, makes no findings on that issue. This matter is distinguishable from *Dennery v. Board of Education of Passaic County Regional High School District #1*, 131 *N.J.* 626 (1993), where the Court analyzed whether the terminated employee's abolished position was substantially similar to a newly created position she sought. There, the employee's termination triggered the protections afforded by her tenure and seniority rights. *See Dennery*, 131 *N.J.* at 639-40 (holding that "[w]hen the duties of the position in which a teaching-staff member has acquired tenure are substantially identical to those of the position that the person seeks, a local school board may not sidestep an educator's tenure rights by simply renaming the position or taking on additional meaningless requirements" but "[i]f a newly-created position is similar to a tenure holder's abolished position but also requires additional duties or different responsibilities,

then the newly-created position is not considered to be substantially similar to the former position"). In contrast, here, petitioner was not terminated and did not suffer a reduction in salary or compensation. Therefore, the "substantially similar" analysis is unnecessary.

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

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 25, 2024
Date of Mailing: October 28, 2024

[3] 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 08364-23
AGENCY DKT. NO. 210-8/23

WILLINGBORO EDUCATION ASSOCIATION, INDIVIDUALLY AND ON BEHALF OF MEMBER SABRINA AUSTIN,
Petitioner,
v.
TOWNSHIP OF WILLINGBORO, BOARD OF EDUCATION,
Respondent.

Amy L. Gillette, Esq., for petitioner (Zeller & Wieliczko, LLP, attorneys)

Patrick Carrigg, Esq., for respondent (Lenox, Socey, Formidoni, Giordano, Lang, Carrigg & Casey, LLC, attorneys)

Record Closed: July 29, 2024 Decided: September 12, 2024

BEFORE **NICOLE T. MINUTOLI**, ALJ:

STATEMENT OF THE CASE

The petitioner, Sabrina Austin (Austin or petitioner), a tenured teacher employed by the respondent, Township of Willingboro Board of Education (respondent), asserts that the respondent abolished her position, created a substantially similar and newly titled position, and failed to appoint the petitioner to the newly created position in violation of her tenure and seniority rights. The respondent denies violating the petitioner's tenure or seniority rights, contending that after the petitioner's position was abolished, she was appropriately transferred with no reduction in salary or benefits. Additionally, the respondent argues that the petitioner is not qualified for the Literacy Learning Specialist position because she does not hold the necessary certifications.

PROCEDURAL HISTORY

On August 2, 2023, Austin filed a petition with the Department of Education, Office of Controversies and Disputes (DOE), alleging that the respondent violated her tenure and seniority rights by bypassing her for the newly created Literacy Learning Specialist position. The DOE transmitted this matter to the Office of Administrative Law (OAL), where it was filed on August 29, 2023, for determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A prehearing conference was held on November 11, 2023; however, the respondent failed to appear. The parties appeared for prehearing conferences on December 11, 2023, and January 23, 2024. On April 22, 2024, the parties filed individual motions for summary decision. On May 6, 2024, the respondent filed a letter brief responding to the petitioner's motion for summary decision. On June 7, 2024, the parties appeared via Zoom for an oral argument on the motion. On July 23, 2024, the respondent submitted supplemental documentation; on July 29, 2024, the petitioner also submitted supplemental documentation. Upon receipt of all further submissions, the record closed on July 29, 2024.

FINDINGS OF FACT

The parties submitted a Joint Stipulation of Facts and Joint Exhibits. Based upon a review of the documentary evidence presented, I **FIND** the following undisputed **FACTS**:

The petitioner began employment with the respondent in April 2004. Petitioner holds a Special Education Teacher of the Handicapped Certification. Petitioner has a master's degree in curriculum and instruction with an emphasis in reading, a master's degree in special education, and is certified in the Wilson Reading Program. She obtained tenure with the respondent under her special education certification. Joint Stipulation of Facts and Exhibits (March 8, 2024) (Joint Stip) at 1.

During the 2021–2022 and 2022–2023 school years, the petitioner held the position of Reading Specialist. This position integrated all reading instructional programs. Ibid.

On or about April 24, 2023, the respondent abolished the petitioner's Reading Specialist position as of June 30, 2023. Ibid.

The petitioner was directed to apply for and interview for the newly created and substantially similar position of Literacy Learning Specialist. Joint Stip at 2. To be qualified for this position, the candidate must hold dual certification—a New Jersey Special Education Teaching Certificate **and** a Reading Specialist Certificate, Teacher of Reading Certificate, or Teacher of Supplemental Reading and Math Certificate. Respondent's July 23, 2024, Letter Br. in opposition of motion for summary decision, Certification of Dr. Malcolm X. Outlaw (Outlaw Cert.) at ¶ 4.

On June 22, 2023, the petitioner received a letter notifying her of the transfer from her current position as a Reading Specialist at the Country Club Administrative Building to the role of Special Education Pre-K teacher at J. Cresswell Stuart Early Childhood Development Center (ECDC), effective September 1, 2023. Joint Stip at 2.

Petitioner's transfer did not result in any change in salary or benefits, and she has remained continuously employed with the respondent. Ibid.

The respondent hired a non-tenured staff member subjected to a reduction in force to the newly created Literacy Learning Specialist position. Ibid.

Under the Willingboro Educational Association Collective Bargaining Agreement Article XII, section D, 1–2, the petitioner met with Ca'Meshia L. Mitchell, director of Human Resources, to discuss the involuntary transfer on Monday, June 26, 2023. Ms. Mitchell told the petitioner she was new to the director of Human Resources position and following directives. The petitioner received no further information regarding why she was not entitled to the newly entitled position. Ibid.

On July 10, 2023, the Board approved the petitioner's transfer from Pre-K–K Teacher at ECDC to Special Education Science Teacher at Memorial Middle School, effective September 1, 2023. Ibid.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Summary decision may be granted when "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 rule further provides that an adverse party must respond by affidavit setting forth specific facts showing that there is a genuine issue which can only be determined at an evidentiary hearing. Ibid. The OAL rule is modeled on New Jersey Court Rule 4:46-2. The New Jersey Supreme Court has explained that when deciding a motion for summary judgment under R. 4:46-2,

> 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.
>
> [Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).]

Accordingly, the undisputed facts will determine whether the petitioner has met her burden of proving that the respondent's decision to bypass her for the Literary Learning Specialist position violated her tenure rights and was arbitrary, unreasonable, or capricious. The petitioner has the burden of proving a tenure right. Canfield v. Bd. of Educ. of Pine Hill, 51 N.J. 400 (1968).

According to N.J.S.A. 18A:28-1 to -18, tenure laws define the conditions under which teaching staff members are entitled to job security. Tenure has been described as a "statutory right" imposed upon a teaching staff member's contractual employment status. Zimmerman v. Newark Bd. of Educ., 38 N.J. 65, 72 (1962), cert. denied, 371 U.S. 956 (1963). The tenure laws create exceptions to the protections afforded to tenured teaching staff members. A school board has the managerial prerogative to transfer teaching staff members by a majority vote of the board. N.J.S.A. 18A:25-1.

A transfer refers to a school board's right to assign a teacher to a position within their certification scope. A tenured teacher may be involuntarily transferred to another position within his or her certification where no loss of salary or other reduction in employment is suffered, and the teacher is not singled out for the transfer on a prohibited basis. Carpenito v. Rumson Bd. of Educ., 322 N.J. Super. 522, 529 (App. Div. 1999). In Carpenito, a tenured teacher was transferred after his position was eliminated, but he did not suffer any pay discrepancy or loss of benefits. Several years later, when his previous position reopened, he applied for it, but it was given to a non-tenured teacher. He alleged that the school acted improperly and violated his seniority rights. Id. at 526. However, the court agreed with the board, ruling that his seniority rights were not violated when the board transferred its tenured staff to other positions within their certification. Id. at 534. The Appellate Division agreed that the board could transfer a teaching staff member between appropriate assignments if the transfer aligns with the teacher's instructional

certificate and subject-area endorsements unless allegations of bad faith or unlawful purpose exist. Id. at 533–34.

When a school board deems it necessary to eliminate a position, "seniority" is a right afforded to tenured employees entitling the employee to either continue in an existing job opening based on their longevity of employment or be placed on an eligible list for reemployment when a new position becomes available. Id. at 531. Seniority is a by-product of tenure and comes into play only if tenure rights are reduced by way of dismissal or reduction in tangible employment benefits. Ibid.

The petitioner claims that her seniority and tenure rights were violated when a non-tenured teacher was appointed to the Literacy Learning Specialist position instead of her, despite her being qualified for the position and its substantial similarity to a position she previously held. The petitioner alleges that the respondent bypassed her tenure rights by renaming the position, appointing a non-tenured employee, and moving her to different positions.

On the other hand, the respondent argues that it had the authority to transfer teaching staff members and that the petitioner was appropriately transferred. It claims that her seniority and tenure rights were not violated, so she had no entitlement to the Literacy Learning Specialist position.

First, like the petitioner in Carpenito, the petitioner was neither dismissed, nor was her salary reduced due to the respondent's decision to assign her to a different position; she suffered no loss of employment. Her employment was continued within the scope of her certification. Her seniority relative to non-tenured or tenured employees is irrelevant. Seniority rights are not triggered when a school board merely transfers or assigns a tenured teaching staff member to another position within the teacher's appropriate certification.

Second, the evidence presented establishes that the petitioner is not qualified for the Literacy Learning Specialist position. She does not possess a Reading Specialist

Certificate, a Teacher of Reading Certificate, or a Teacher of Supplemental Reading and Math Certificate—a requirement for the position.

Last, the petitioner did not present evidence that the respondent's actions were motivated by bad faith or an unlawful purpose.

Based on the above, I **CONCLUDE** that the respondent's action in abolishing the petitioner's Reading Specialist position and transferring her to a position within her certification did not violate the petitioner's tenure or seniority rights and that it was not arbitrary, unreasonable, or capricious.

I further **CONCLUDE** that the petitioner has failed to prove, by a preponderance of the evidence, that she was qualified for and entitled to the Literary Learning Specialist position and that the respondent acted in bad faith or was arbitrary and capricious in bypassing her for the position.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the petitioner's motion for summary decision is **DENIED**. I further **ORDER** that the respondent's motion for summary decision is **GRANTED**, and the petitioner's appeal is **DISMISSED**.

I hereby **FILE** this Initial Decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

September 12, 2024

DATE

NICOLE T. MINUTOLI, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

NTM/dw

APPENDIX

Witnesses

For petitioner:

None

For respondent:

None

Exhibits

Joint:

Stipulated Facts and Exhibits

For petitioner:

April 22, 2024, Motion for Summary Decision

July 29, 2024, letter

For respondent:

May 6, 2024, Opposition to Summary Decision

July 23, 2024, letter attaching the July 22, 2024, certification of Dr. Malcolm X. Outlaw

400-24

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

State of New Jersey
DEPARTMENT OF EDUCATION
PO BOX 500
TRENTON, NJ 08625-0500

KEVIN DEHMER
Acting Commissioner

October 28, 2024

Alexander R. Desevo, Esq.
Falcon Law Firm, L.L.C.
714 West Park Avenue
Oakhurst, NJ 07755

Re: In the Matter of Anthony Remy, Asbury Park Board of Education, Monmouth County, Agency Dkt. No. 235-7/24, Commissioner Decision No. 317-24SEC

Dear Mr. Desevo,

I have reviewed the materials filed in connection with respondent's Motion for Reconsideration of the Commissioner's decision of September 4, 2024.

Pursuant to N.J.A.C. 6A:3-1.15(b), a motion for reconsideration must be filed within 10 days of the filing of the Commissioner's decision. Here, the Commissioner's decision was emailed to the parties on September 5, 2024, making any motion for reconsideration due on September 16, 2024. However, respondent's Motion was not received until October 11, 2024, nearly a month after the due date. For this reason, respondent's Motion for Reconsideration is denied as untimely.

Furthermore, even if the Motion were to be accepted, upon review and consideration of the submissions, I find that respondent has failed to satisfy the factors set forth in N.J.A.C. 6A:3-1.15(b)(2). Pursuant to N.J.A.C. 6A:3-1.15(b)(2), a motion for reconsideration shall be determined based upon the following:

i. claim(s) of mistake, provided, however, that disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute "mistake" for purposes of this section;
ii. newly discovered evidence likely to alter the outcome of a matter, where such evidence could not have been previously discovered by due diligence;
iii. newly ascertained misrepresentation or other misconduct of an adverse party, where such misrepresentation could not have been previously known; or
iv. reversal of a prior judgment on which the present matter is based.

Respondent's sole basis for requesting reconsideration is that he has "now completed the required training." Although his submission indicates that he has "enclosed same," the submission does not include any proof that the training has been completed, but rather only includes copies of respondent's Personal/Relative Disclosure Statement, which is required by a different provision of the School Ethics Act than the training requirement. Therefore, the Commissioner cannot conclude that the training has been completed.

Moreover, even accepting for purposes of this motion that respondent has completed the training, respondent provides no explanation for his failure to complete the training by the statutory deadline of December 31, 2023, or by the deadline of June 13, 2024 set by the School Ethics Commission (SEC) to avoid the issuance of an Order to Show Cause (OTSC) for non-compliance. The record reflects that respondent received notice from the New Jersey School Boards Association regarding mandated training, as well as three separate warnings from the SEC that non-compliance would result in the issuance of an OTSC. Respondent did not complete the training after receiving any of these notices, or after receiving the OTSC, or after receiving the SEC's final decision.

Pursuant to N.J.A.C. 6A:28-4.3, the SEC shall recommend to the Commissioner that a board member who fails to complete training after the SEC issues its decision, and after the Commissioner issues a final decision, be removed from his position. Even if respondent has "now" completed the training, it was completed after the Commissioner's final decision and, therefore, removal is the appropriate penalty. The Commissioner finds that this penalty is particularly appropriate for respondent, who has already been reprimanded and suspended for two earlier failures to meet his obligations as a board member.

Accordingly, the Motion for Reconsideration is hereby DENIED.[1]

Sincerely,

Kevin Dehmer
Acting Commissioner

KD/JS
c: School Ethics Commission
400-24L

[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.

Before the School Ethics Commission
Docket No.: T10-24
Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner

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I/M/O Anthony Remy,
Asbury Park Board of Education, Monmouth County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its special meeting on June 17, 2024, directing Anthony Remy (Respondent), a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC that was served on June 17, 2024, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC. Respondent was further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC, and the Commission may take action on a summary basis, in accordance with *N.J.A.C.* 6A:28-1.6(c).

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Asbury Park Board of Education, located in Monmouth County. As a result of his position as a board of education member, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. According to NJSBA, Respondent was required to complete the Governance 3 training program by December 31, 2023.

On or about May 7, 2024, the NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2023, and the list provided included Respondent. Prior to that time, multiple communications about mandated training were sent to Respondent from the NJSBA through a variety of means, including a targeted e-mail message on January 4, 2023, as well as postings in *School Board Notes* on 19 occasions. Notwithstanding all of these communications, Respondent did not complete mandated training.

As a final warning, the Commission's staff sent e-mails to Respondent dated May 8, 2024, May 22, 2024, and June 5, 2024, advising Respondent that the Commission required completion of

the training by June 13, 2024, to avoid the issuance of an OTSC for non-compliance. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission at its special meeting on June 17, 2024.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2023, and did not complete the training prior to the Commission's final deadline of June 13, 2024, and therefore, the Commission issued an OTSC at its meeting on June 17, 2024. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, Respondent failed to complete training as required. Additionally, Respondent was previously issued a reprimand for failing to timely complete his mandatory training requirement in a timely fashion (T28-21), as well as a 60-day suspension for failing to timely file his 2023 Disclosure Statements (D06-23).

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-9.11. Specifically, unless good cause is shown or the school official previously has been the subject of an OTSC, "the Commission shall recommend that a board member or trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days." *N.J.A.C.* 6A:28-4.3(c). However, "the Commission will recommend this penalty only if the board member or the trustee provides to the [NJSBA] and the Commission written notice before the Commissioner issues a final decision." *Ibid.* If the board member or trustee fails to complete training as of the date the Commissioner issues its final decision, the Commission will recommend removal of the board member or trustee from his or her position. *N.J.A.C.* 6A:28-4.3(d).

Given that Respondent was previously the subject of two OTSC, the Commission recommends that the Commissioner of Education impose a penalty **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the

Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: July 23, 2024

Resolution Adopting Decision for Failure to Complete Mandatory Training Requirement in a Timely Manner Docket No.: T10-24

Whereas, Anthony Remy (Respondent) is a "board member" as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2023; and

Whereas, at its special meeting on June 17, 2024, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2023, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2023, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, Respondent was previously issued a reprimand for failing to timely complete his mandatory training requirement in a timely fashion, as well as a 60-day suspension for failing to timely file his 2023 Disclosure Statements; and

Whereas, at its meeting on July 23, 2024, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on July 23, 2024, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education because he was previously the subject of two OTSC; and

Whereas, at its meeting on July 23, 2024, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on July 23, 2024.

Brigid C. Martens, Director
School Ethics Commission

401-24

State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

KEVIN DEHMER
Acting Commissioner

October 28, 2024

Janelle Edwards-Stewart, Esq.
Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway
Morristown, NJ 07962

Re: In the Matter of Gisselle Bond, Roselle Board of Education, Union County, Agency Dkt. No. 239-7/24, Commissioner Decision No. 321-24SEC

Dear Ms. Edwards-Stewart,

I have reviewed the materials filed in connection with respondent's Motion for Reconsideration of the Commissioner's decision of September 4, 2024.

Pursuant to N.J.A.C. 6A:3-1.15(b)(2), a motion for reconsideration shall be determined based upon the following:

i. claim(s) of mistake, provided, however, that disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute "mistake" for purposes of this section;
ii. newly discovered evidence likely to alter the outcome of a matter, where such evidence could not have been previously discovered by due diligence;
iii. newly ascertained misrepresentation or other misconduct of an adverse party, where such misrepresentation could not have been previously known; or
iv. reversal of a prior judgment on which the present matter is based.

Upon review and consideration of the submissions, I find that respondent has failed to satisfy the factors set forth in N.J.A.C. 6A:3-1.15(b)(2).

Respondent first takes issue with the notices sent to her by the SEC regarding her training deficiency, contending that they were sent to her personal email address rather than her Roselle Board of Education (Board) email address "for some inexplicable reason." The Commissioner notes that all notices are sent to board members at the email address provided to the New Jersey School Boards

Association (NJSBA) by those board members or the secretaries of the boards on which they serve; the School Ethics Commission (SEC) then receives the email address from the NJSBA.

Respondent argues that contrary to the findings in the Commissioner's decision, the SEC sent its decision to her Board email address, not her personal email address, which was used for all earlier notices. However, this fact does not alter the Commissioner's conclusion. The record also contains information demonstrating that the personal email address was correct and active, given that respondent received emails confirming her completion of the training courses at that email address in July 2024, and subsequently used the same email address to forward those confirmations to her attorney. As the Commissioner already concluded in the September 4, 2024 decision, the fact that respondent did not check that personal email address is not a sufficient reason to reduce her penalty.

Respondent also provides what she contends is new evidence proving that she satisfied the mandatory training and obtained the related requisite knowledge prior to the December 2023 deadline and was only unable to obtain proof of her course completion due to technical issues beyond her control. In particular, respondent asserts her belief that there was a badge scanning error when she attended an in-person Governance III training, submitting a certification indicating that NJSBA staff indicated that such an error is possible. Even accepting respondent's assertion as true for purposes of this Motion, it does not explain her failure to complete the Governance II training. Respondent's argument that she only failed to complete the signature section, but had otherwise completed the course, was already considered and rejected by the Commissioner, and her disagreement with that outcome is not a sufficient basis to warrant reconsideration.

Accordingly, the Motion for Reconsideration is hereby DENIED.[1]

Sincerely,

Kevin Dehmer
Acting Commissioner

KD/JS
c: School Ethics Commission
401-24L

[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.

403-24

New Jersey Commissioner of Education

Final Decision

Robert Cauvin,

Petitioner,

v.

Board of Education of the Township of North Brunswick, Middlesex County, and New Jersey Department of Education, Office of Student Protection,

Respondent.

Synopsis

Petitioner, a tenured teacher, challenged the determination of the NJDOE, Office of Student Protection (OSP), to permanently disqualify him from employment in a public school pursuant to *N.J.S.A.* 18A:6-7.1(a) after a criminal history background check revealed that petitioner pled guilty in 1997 to lewdness, *N.J.S.A.* 2C:14-4, in North Brunswick Municipal Court. *N.J.S.A.* 18A:6-7.1(a) mandates that individuals convicted of an offense set forth in Chapter 14 of Title 2C are "permanently disqualified from employment" in public schools. Petitioner's offense was not detected by OSP until 2022, after he had worked for years as a teacher without his 1997 conviction coming to light. Petitioner contended that the Board violated his tenure rights by terminating him without the filing of tenure charges; he sought reinstatement of his employment and restoration of emoluments including pension contributions. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: the lewdness offense is not a disqualifying crime because under *State v. O.,* private consensual sexual activity does not constitute lewdness within the meaning of *N.J.S.A.* 2C:14-4; petitioner has not forfeited his tenure rights and is entitled to a hearing before an arbitrator regarding his employment; petitioner's termination is unwarranted given prior Commissioner decisions in tenure matters involving teachers found guilty of lewdness who were given lesser penalties, as well as prior decisions in TEACH NJ arbitration matters; and OSP was not barred under the doctrine of laches from asserting that petitioner's conviction was a disqualifying crime or offense. The ALJ granted petitioner's motion for summary decision and ordered his reinstatement effective May 3, 2022.

Upon review, the Commissioner, *inter alia*, rejected the Initial Decision and granted the respondents' motions for summary decision. In so doing, the Commissioner found that the ALJ committed several legal errors in summarily reversing petitioner's disqualification and ordering his reinstatement, including disregarding the plain language of the mandatory disqualification statute, *N.J.S.A.* 18A:6-7.1, and revisiting the propriety of the 1997 lewdness conviction entered following petitioner's guilty plea – for which the ALJ lacked jurisdiction. Accordingly, the petition was dismissed.

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.

403-24
OAL Dkt. No. EDU 06237-22
Agency Dkt. No. 195-7/22

New Jersey Commissioner of Education

Final Decision

Robert Cauvin,

Petitioner,

v.

Board of Education of the Township of North Brunswick, Middlesex County, and New Jersey Department of Education, Office of Student Protection,

Respondents.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent Board of Education of the Township of North Brunswick (Board) and respondent New Jersey Department of Education, Office of Student Protection (OSP) pursuant to *N.J.A.C.* 1:1-18.4, and petitioner's reply thereto, have been reviewed and considered.

The material facts are uncontested. In October 1997, petitioner pled guilty to lewdness, *N.J.S.A.* 2C:14-4, in North Brunswick Municipal Court. He maintains that he was charged with the offense after engaging in a consensual sexual act in a car parked in a very private area of North Brunswick. *N.J.S.A.* 18A:6-7.1(a) mandates that individuals convicted of "[a]n offense as set forth in Chapter 14 of Title 2C" are "permanently disqualified from employment" in public schools. For reasons not known from the record, petitioner's October 1997 lewdness offense was not detected by OSP during his long career as a teacher until 2022. He worked as a special education

teacher for the Scotch Plains-Fanwood Regional School District from 1998 until 2003, and for the North Brunswick Township School District from 2003 until May 3, 2022. In 2000 and 2003, he underwent criminal history record checks conducted by OSP which found no criminal record.

On May 3, 2022, OSP informed the Board's Superintendent via email that petitioner was permanently disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1(a) based upon a 1997 conviction in North Brunswick Municipal Court "for a disqualifying crime or offense." On that same date, the Board terminated his employment. At its next meeting on May 11, 2022, the Board adopted a resolution approving his termination. At the time of petitioner's termination, he was on paid administrative leave following an unrelated November 2021 arrest.

In his petition of appeal, petitioner contends that the Board violated his tenure rights when it terminated him without the filing of tenure charges and seeks reinstatement of his employment, retroactive to May 3, 2022, plus restoration of economic emoluments including pension contributions. Citing *State v. O.*, 69 *N.J.* 574 (1976), he further contends that OSP wrongly considered the lewdness offense to be a disqualifying offense.[1] Once the matter was transmitted to the Office of Administrative Law (OAL), the parties moved for summary decision. The ALJ granted petitioner's motion for summary decision and ordered his reinstatement effective May 3, 2022.

The ALJ found: (1) the lewdness offense is not a disqualifying crime or offense because under *State v. O.*, private consensual sexual activity does not constitute lewdness within the

[1] Petitioner also alleged that the Board violated the Open Public Meetings Act (OPMA), specifically *N.J.S.A.* 10:4-12(b)(8), by failing to provide him with a *Rice* notice to advise that his employment would be discussed by the Board at its May 11, 2022, meeting. The ALJ did not make findings on this issue in the Initial Decision, and petitioner has not filed exceptions thereto. Therefore, the Commissioner deems the issue waived and will not consider it.

meaning of *N.J.S.A.* 2C:14-4; (2) petitioner has not forfeited his tenure rights and is entitled to a hearing before an arbitrator regarding his employment; (3) petitioner's termination is unwarranted given prior Commissioner decisions in tenure matters involving teachers found guilty of lewdness who were given lesser penalties, and prior decisions in TEACH NJ arbitration matters; and (4) OSP was not barred under the doctrine of laches from asserting that petitioner's conviction was a disqualifying crime or offense. Initial Decision, at 9-13.

In its exceptions, the Board argues that the ALJ erred in summarily ordering the reversal of petitioner's disqualification and his reinstatement. It contends that the ALJ sought to analyze the propriety of the 1997 conviction, which is an overreach to a question not presented. It notes that petitioner is not challenging the accuracy of his criminal history record, and that the implications of the offense must be analyzed under the mandatory disqualification statute, *N.J.S.A.* 18A:6-7.1. It also contends that the ALJ's reliance on prior Commissioner tenure decisions is misplaced because the holdings in those cases, which concern whether lewd acts constituted "conduct unbecoming," cannot be extrapolated to disqualification cases. Regarding petitioner's reinstatement, the Board contends that the ALJ exceeded his authority because only the Board can re-employ petitioner, either on its own initiative or by order of the Commissioner. Furthermore, even if petitioner's reinstatement stands, the Board argues that it should not be compelled to bear the cost of his back pay and benefits because it had no choice under State law but to terminate petitioner.

OSP also takes exception to the ALJ's conclusion that the 1997 lewdness offense is not a disqualifying offense and requests that petitioner's disqualification from public school employment be upheld. It asserts that it is undisputed that petitioner was convicted of an

offense that automatically results in disqualification pursuant to *N.J.S.A.* 18A:6-7.1. It further argues that disqualification is mandatory regardless of when the conviction occurred. It also notes that petitioner does not challenge the accuracy of his criminal history record. It maintains that the ALJ did not have the authority to rule upon or revisit the merits of the underlying conviction, and that petitioner's opportunity to challenge the conviction occurred during the municipal court proceedings.

In response, petitioner continues to dispute the legality of his 1997 conviction, arguing that under *State v. O.*, decided in 1976, his actions did not constitute lewdness within the meaning of *N.J.S.A.* 2C:14-4. Consequently, he argues that the incident cannot serve as a basis for his disqualification and that *N.J.S.A.* 18A:6-7.1 is inapplicable. He reiterates his claim that his tenure rights were violated because the Board did not file tenure charges against him prior to terminating his employment. He repeats his assertion that any alleged disqualifying criminal misconduct must in some way involve his official employment duties for forfeiture of any vested tenure rights to occur. He again cites numerous prior Commissioner tenure decisions and TEACH NJ arbitration awards to support his position that his termination was unwarranted for committing a lewdness offense.

Upon review, the Commissioner concurs with respondents that the Initial Decision must be rejected because the ALJ erred by summarily reversing petitioner's disqualification and ordering his reinstatement. First, the ALJ committed legal error by disregarding the plain language of the mandatory disqualification statute, *N.J.S.A.* 18A:6-7.1. *N.J.S.A.* 18A:6-7.1(a) unambiguously states that individuals convicted of "[a]n offense as set forth in Chapter 14 of Title 2C" are "permanently disqualified from employment" in public schools. While *N.J.S.A.* 18A:6-

7.1(e) allows an individual "to challenge the accuracy of the disqualifying criminal history record," petitioner does not challenge the accuracy of his criminal history record.[2] It is uncontested that he pled guilty to lewdness, *N.J.S.A.* 2C:14-4, in 1997. Consequently, upon learning of same in May 2022, OSP notified petitioner and the Board that petitioner was permanently disqualified from public school employment. The Board was obligated as a matter of law to terminate petitioner's employment once he was permanently disqualified. *In the Matter of the Tenure Hearing of John Socrates*, Commissioner Decision No. 235-11 at 3 (June 24, 2011).

Second, the ALJ committed legal error when revisiting the propriety of the 1997 lewdness conviction entered following petitioner's guilty plea. The ALJ lacked jurisdiction to review the conviction, to decide that private consensual sexual activity does not constitute lewdness within the meaning of *N.J.S.A.* 2C:14-4, and to hold that, therefore, petitioner did not commit a disqualifying offense. The Commissioner has jurisdiction to determine "controversies and disputes arising under the school laws." *N.J.S.A.* 18A:6-9. *Bower v. Bd. of Educ. of E. Orange*, 149 *N.J.* 416, 420 (1997). *N.J.S.A.* 2C:14-4 is not a school law; it is part of the New Jersey Code of Criminal Justice. Neither the adjudication of crimes and offenses nor the appellate review of convictions falls within the Commissioner's purview. The ALJ's opinion regarding the factual basis for the conviction is irrelevant to the question of petitioner's disqualification from public school employment. As explained above, it is uncontested that petitioner pled guilty to a permanently disqualifying offense as per the plain language of *N.J.S.A.* 18A:6-7.1, and he does not challenge the accuracy of his criminal history record. The conviction stands and has not been expunged.

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[2] Since petitioner has repeatedly acknowledged that he does not challenge the accuracy of his criminal history record, the ALJ's determination that OSP did not provide him with an opportunity to challenge it is rejected as unsupported by the record.

Accordingly, OSP acted appropriately when it permanently disqualified petitioner from public school employment, and the Board acted appropriately when it terminated his employment.

Third, the ALJ committed legal error when holding that the Board violated petitioner's tenure rights by terminating his employment without the filing of tenure charges, and that he is entitled to a hearing before an arbitrator regarding his employment. In *Socrates*, which the ALJ did not consider, respondent, a tenured teacher, pled guilty to a Chapter 14, Title 2C lewdness offense in municipal court. *Socrates*, at 2. Although the Board had filed tenure charges against him that were stayed pending disposition of the criminal matter before he pled guilty, the Commissioner upheld his summary termination immediately following OSP's determination to permanently disqualify him from public school employment because he pled guilty to a permanently disqualifying offense as identified in *N.J.S.A.* 18A:6-7.1. *Id.* at 2-3.

The Commissioner held in *Socrates* that removal from his tenured teaching position did not occur as a consequence of the tenure charges filed against him, but rather was "obligatory as a matter of law" under *N.J.S.A.* 18A:6-7.1. *Id.* at 2. Thus, the Commissioner found no basis for a hearing or oral argument on the tenure charges, which were never adjudicated. *Id.* at 2-3. The same is true in this case. The Board had an obligation to terminate petitioner's employment upon notification from OSP that he was convicted of a permanently disqualifying offense. Tenure charges are unnecessary given the circumstances, and petitioner is not entitled to a hearing before an arbitrator.[3]

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[3] The ALJ's reliance upon *Caucino v. Board of Trustees, Teachers' Pension and Annuity Fund*, 475 *N.J. Super.* 405 (App. Div. 2023), in further support of his conclusion that petitioner is entitled to a tenure hearing is misplaced. The Commissioner rejects the ALJ's finding that under *Caucino*, "an individual cannot be presumed guilty of any form of 'unbecoming conduct' if they were not employed as a teacher" and that, therefore, petitioner has not forfeited his "vested tenure rights." Initial Decision, at 11. At the

Fourth, the ALJ committed legal error when holding that petitioner's termination is unwarranted given prior Commissioner decisions in tenure matters involving teachers found guilty of lewdness who were given lesser penalties, as well as TEACH NJ arbitration matters involving "sexual activities." Initial Decision, at 13. Apart from the fact that the instant case does not involve adjudication of tenure charges or a determination regarding whether petitioner's actions constitute unbecoming conduct, the tenure matters cited by the ALJ were decided in 1985 and 1988—many years before *N.J.S.A.* 18A:6-7.1 was amended in 1998 to mandate permanent disqualification from public school employment upon conviction of a lewdness offense. *See L.* 1998, *c.* 31, § 5 (amending *N.J.S.A.* 18A:6-7.1 to require permanent disqualification from employment if convicted of certain enumerated crimes and offenses, including offenses set forth in chapter 14 of Title 2C).

Thus, the fact that individuals in the 1980s tenure matters were not permanently disqualified or terminated from employment at the conclusion of tenure proceedings is neither dispositive nor controlling because, at that time, *N.J.S.A.* 18A:6-7.1 did not mandate permanent disqualification upon conviction of a lewdness offense as it does today. Similarly, the ALJ's reliance upon TEACH NJ arbitration matters to support the conclusion that petitioner is entitled to a tenure hearing ignores *N.J.S.A.* 18A:6-7.1 and its applicability to the facts of this case. That statute was not at issue in the TEACH NJ arbitration matters relied upon by petitioner and the

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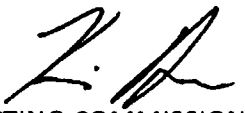
outset, *Caucino* concerned pension rights, not tenure rights. Moreover, neither the Commissioner nor the Board nor OSP has presumed petitioner guilty of "unbecoming conduct." A finding regarding whether petitioner's conviction constitutes unbecoming conduct is unnecessary given *N.J.S.A.* 18A:6-7.1's mandate that he be permanently disqualified from public school employment based upon his criminal history record. Any issues concerning forfeiture of vested rights under pension laws following permanent disqualification from employment pursuant to *N.J.S.A.* 18A:6-7.1—which is the focus of the *Caucino* opinion—are beyond the scope of this proceeding.

ALJ, and none of those individuals were convicted of a lewdness offense. Therefore, the TEACH NJ arbitration matters are distinguishable and fail to support the conclusion that petitioner is entitled to a tenure hearing.

Accordingly, the Initial Decision is rejected for the reasons explained herein. Respondents' motions for summary decision are granted, and the petition of appeal is hereby dismissed. Petitioner remains permanently disqualified from public school employment pursuant to *N.J.S.A.* 18A:6-7.1 as per OSP's May 2022 determination, and the Board's termination of petitioner's employment is upheld on that basis.

IT IS SO ORDERED.[4]



ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2024
Date of Mailing: November 6, 2024

[4] 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 06237-22
AGENCY DKT. NO. 195-7/22

ROBERT CAUVIN,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF NORTH BRUNSWICK, MIDDLESEX COUNTY,
Respondent.

Stephen Hunter, Esq., for petitioner Robert Cauvin (Detzky, Hunter & DeFillippo, LLC, attorneys)

Eric L. Harrison., Esq., for respondent Board of Education of the Township of North Brunswick, Middlesex County (Methfessel & Werbel, P.C., attorneys)

David L. Kalisky, Deputy Attorney General for respondent New Jersey Department of Education (Matthew Platkin, Attorney General of New Jersey, attorney)

Record Closed: February 26, 2024 Decided: August 26, 2024

BEFORE **CARL V. BUCK III,** ALJ:

STATEMENT OF THE CASE

This case was initially filed through an application for emergent relief pursuant to N.J.A.C. 6A:3-1.6, in which petitioner Robert Cauvin (Cauvin or petitioner) challenged termination of his employment as a tenured special education teacher by the North Brunswick Township Board of Education (Board), viz., the North Brunswick Township School District (District). Petitioner sought immediate reemployment retroactive to May 3, 2022. Petitioner's termination was based upon information provided to the District from the Office of Student Protection (OSP) (under the State of New Jersey, Department of Education (DOE)), dated May 3, 2022. This information stated that petitioner is permanently disqualified from serving in "any position, paid or unpaid, with any educational institution under the supervision of the Department of Education, or with a contracted service provider under contract with said school or educational facility." This disqualification was based on an arrest which occurred in North Brunswick on October 15, 1997 (arrest), and subsequent conviction.

On May 3, 2022 the Board hand delivered a letter (Letter) to petitioner, dated May 3, 2022, which stated, "as a result of a conviction stemming from an arrest in 1997, you are 'permanently disqualified from serving in any position, paid, or unpaid, with any education under the supervision of the Department of Education.'" The Letter further states petitioner is terminated "[a]s a result of the foregoing notification, and [his] disqualification from serving as a teacher." (Pet'r's Mot. Ex. B.) The District superintendent stated that she recommends the Board to retroactively approve same during its next meeting. The Board's public meeting notes of May 11, 2022 indicate that the Board adopted a resolution to approve the termination of [petitioner]. Id.

Petitioner seeks a determination that respondent erred in disqualifying him from employment due to the 1997 arrest, where petitioner did not know that:

1. Such arrest in 1997 would lead to a disqualification from employment; and

2. Such arrest never appeared on prior investigations performed for employment.

Petitioner challenges the action of OSP on the following bases:

1. The lack of a Rice Notice required by N.J.S.A. 10:4-6, the Open Public Meetings Act (OPMA), prior to public meeting where the Board voted to terminate him; and

2. The lack of providing a tenure proceeding prior to his termination;
3. The additional reasons detailed herein.

PROCEDURAL HISTORY AND FACTUAL FINDINGS

On July 21, 2022, petitioner appealed the action by the District and moved for emergent relief and alternatively for relief through a due process hearing.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on July 26, 2022, as a contested case. N.J.S.A. 52:14B-1 to –15; N.J.S.A. 52:14F-1 to –13. In an Order on the emergent matter issued by me on August 4, 2022, petitioner's request for emergent relief was denied. That denial was made without prejudice.

On or about August 21, 2023, petitioner filed a Motion for Summary Decision. Respondent filed a response to the Motion and Cross Motion on the same date. The parties filed joint stipulations on August 24, 2023. On September 22, 2023, petitioner filed a reply letter memorandum and supporting documentation. Oral argument on the motions was held on December 12, 2023. Final submissions were made, and the record was closed on February 26, 2024. Extensions for issuance of this Initial Decision were requested and granted.

The following **FACTS** have been agreed to by the parties and are submitted as joint exhibits and accordingly I **FIND** the following as **FACT:**

1. Robert Cauvin is the holder of a Teacher of Handicapped certificate.

2. On October 15, 1997, Robert Cauvin was arrested in New Brunswick, New Jersey and charged with N.J.S.A. 2C:14-4, Lewdness under complaint S-1997-534513.

3. On October 28, 1997, Robert Cauvin was found guilty and assessed fines for the Lewdness charge stemming from the October 15, 1997 arrest.

4. On October 28, 1997, Robert Cauvin completed all financial obligations related to the Lewdness charge stemming from the October 15, 1998 arrest (sic).

5. Robert Cauvin worked for the Scotch Plains-Fanwood School District from 1998 until 2003.

6. As an employee of the Scotch Plains-Fanwood School District, Robert Cauvin was required to undergo a background check.

7. Background checks for prospective public school employees are done by the New Jersey Department of Education, Office of Student Protection (OSP).

8. On July 24, 2000, a payment for a background check was requested for Robert Cauvin for purposes of employment with Scotch Plains-Fanwood School District.

9. The background check stemming from the July 24, 2000 payment found no criminal record for Robert Cauvin. Therefore, OSP did not disqualify Robert Cauvin from working for the Scotch Plains-Fanwood School District.

10. Robert Cauvin worked for the North Brunswick Township School District (District) from 2003 until May 3, 2022.

11. As an employee of the District, Robert Cauvin was required to undergo a background check.

12. On August 5, 2003, a check to pay for a background check was requested for Robert Cauvin for purposes of employment with the District.

13. The background check resulting from the August 5, 2003 payment found no criminal record for Robert Cauvin. Therefore, OSP did not disqualify Robert Cauvin from working for the District.

14. On May 3, 2022, OSP informed the District that Robert Cauvin was permanently disqualified from teaching based on the finding of guilty for the October 15, 1997 arrest for lewdness.

15. On May 3, 2022, based on the disqualification, the District terminated Robert Cauvin's employment.

16. The Lewdness charge stemming from the October 15, 1997 arrest has not been expunged.

17. Robert Cauvin has filed to expunge the Lewdness charge stemming from the October 15, 1997 arrest in Middlesex County Superior Court.

The following **FACTS** are not in dispute and accordingly I **FIND:**

On or about October 15, 1997, petitioner was arrested. (Pet'r's Cert. 2.[1]) The petitioner was ultimately convicted of the charge of with a violation of N.J.S.A. 2C:14-4[2], Lewdness under complaint S-1997-534513.

Beginning in 1998, petitioner was employed in two positions in two separate school districts; both of which required background checks. (Pet'r's Resp. 2-3.) The background check from July 24, 2000, revealed no criminal convictions. The background check from August 5, 2003, revealed no criminal convictions. Petitioner's second position was with the Board where he was a Special Education teacher from 2003 until his termination.

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[1] Petitioner states that he was arrested "for engaging in a consensual sexual act in [his] car that was parked in a very private area in North Brunswick." Pet'r's Resp. 2. Petitioner has not provided records of said arrest.

[2] N.J.S.A. 2C:14-4. Lewdness

a. A person commits a disorderly persons offense if he does any flagrantly lewd and offensive act which he knows **or reasonably expects is likely to be observed by other nonconsenting persons who would be affronted or alarmed.**

b. A person commits a crime of the fourth degree if:

(1) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances **where the actor knows or reasonably expects he is likely to be observed by a child who is less than 13 years of age where the actor is at least four years older than the child.**

(2) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances **where the actor knows or reasonably expects he is likely to be observed by a person who because of mental disease or defect is unable to understand the sexual nature of the actor's conduct.**

c. As used in this section:

"lewd acts" shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

L.1978, c.95; amended 1992,c.8,s.1.

(emphasis added)

(Pet'r's Cert. 1.) On May 3, 2022, petitioner was provided a letter from Board Superintendent Janet Ciarrocca (Ciarrocca) which stated Cauvin was terminated from his teaching position. (Pet'r's Mot. Ex. A.) Petitioner's medical benefits ended on May 22, 2022.

The Board cites a redacted email, dated May 3, 2022, in support of this termination from James C. Scaringelli (Scaringelli), Investigator with the OSP, which was sent to Ciarrocca and dated May 3, 2022. (Pet'r's Mot. Ex. A.) The email states that the OSP received documentation showing a conviction for a disqualifying crime or offense, and that "the applicant has been notified that he is permanently disqualified from serving in any position, paid or unpaid, with any educational institution under the supervision of the Department of Education . . ." The email asks the Board to advise the OSP of the status of the applicant's employment.

The Board hand delivered the Letter to petitioner, dated May 3, 2022 which stated, "as a result of a conviction stemming from an arrest in 1997, you are 'permanently disqualified from serving in any position, paid, or unpaid, with any education under the supervision of the Department of Education.'" The Letter further states petitioner is terminated "[a]s a result of the foregoing notification, and [his] disqualification from serving as a teacher." (Pet'r's Mot. Ex. B.) The superintendent further stated she recommends the Board to retroactively approve same during its next meeting. Ibid. The Public Meeting notes of May 11, 2022, indicate that the Board adopted a resolution to approve the termination of [petitioner]. Id.

ARGUMENTS OF THE PARTIES

Petitioner asserts that he is entitled to relief in the form of his motion for summary decision and provides the following five points in support of his claim:

POINT I:

The petitioner is entitled to the granting of his motion for summary decision and his reinstatement as a teacher within the North Brunswick School District since the New Jersey Supreme Court's 1976 decision in **State v. O.** mandates the conclusion that engaging in private consensual sexual activity is not within the ambit of New Jersey criminal statutes and did not represent a "disqualifying crime or offense" that could result in the termination of the petitioner's tenured employment.

POINT II:

The 2023 published Appellate Division decision, **Caucino v. Board of Trustees, Teachers' Pension and Annuity Fund**, supports the petitioner's legal argument that even any alleged disqualifying criminal misconduct must in some way involve an employee's official employment duties in order to qualify for the forfeiture of any vested rights under a New Jersey state statute.

POINT III:

Prior Commissioner of Education and judicial decisions that relate to either criminal acts of teaching staff members and other certificated personnel or "conduct unbecoming a teacher" involving impermissible contact or acts directed at students mandate the conclusion that petitioner's 1997 plea to lewdness in consideration of the **State v. O.** supreme court decision does not support a conclusion that the petitioner committed any "disqualifying crime or offense" to warrant his dismissal.

POINT IV:

Teacher NJ arbitration awards also substantiate petitioner Cauvin's legal argument that his involvement in consensual sexual contact on October 15, 1997, does not support a conclusion that petitioner committed any "disqualifying crime or offense" to warrant his termination.

POINT V:

The respondent OSP is equitably estopped and barred by the principle of laches from arguing that in 1997the petitioner committed a "disqualifying crime or offense" when the OSP, on two separate occasions in conducting criminal history background checks of petitioner, determined that there was no basis to conclude that the petitioner committed any disqualifying act that required his dismissal.

The first argument of petitioner relies on the New Jersey Supreme Court Decision in State v. O., 69 N.J. 574 (1976). This case found that the private consensual acts between adults are not within the ambient of State criminal statutes, and thus the Board violated petitioner's rights when it summarily terminated petitioner based upon his offense in 1976 without initiating tenure charge proceedings. (P-Mot. 1-2.)

The Board's response to this contention is that petitioner's tenure rights were not violated when the Board was directed by the NJ DOE to terminate him because he was convicted a crime that permanently disqualified him from serving in any position with any educational institution under the supervision of the NJ DOE, and the Board has no authority to reject these findings.

Considering the facts, circumstances and documentary evidence supplied by the parties, I **FIND** that State v. O. dictates that individuals engaged in private consensual sexual activity could not be found guilty of indecent exposure, or committing an act of open lewdness, within the meaning of N.J.S.A. 2C:14-4, and that private consensual acts between adults are not within the ambit of any State criminal statutes. Extending then, petitioner's engagement in a private act of "exposure" between consenting adults in October, 1997, did not represent any criminal activity within the meaning of the New Jersey Criminal Statutes, such as N.J.S.A. 2A:115-1 or N.J.S.A. 2C:14-4 and therefore was not a disqualifying crime. Therefore, petitioner prevails on this point.

Petitioner's second point is borne out in his citation to Caucino v. Board of Trustees, Teachers' Pension and Annuity Fund, 475 N.J. Super. 405 (App. Div. 2023), wherein the Appellate Division noted that Caucino had been a teacher employed by the Monmouth County Vocational School District (Monmouth) and a contributing member of

the Teachers' Pension and Annuity Fund (TPAF) during the time period between September 1993 until August 2004. He pled guilty in Federal District Court to bank fraud in 1995 and was sentenced in 1999. In June 2004, the New Jersey Board of Education notified Caucino that he was disqualified from employment as a teacher, pursuant to N.J.S.A. 18A:6-7.1, which permanently disqualifies teachers and other school employees who have been convicted of certain crimes from employment in all school systems under the supervision of the Department of Education.

The Appellate Division in Caucino found that in October 1999, six years after he was hired by the School District, Federal authorities advised the New Jersey Board of Education of Caucino's conviction and sentence, yet the New Jersey Board of Education took no action against Caucino's teaching certificate until five years later when a search conducted by the New Jersey Board of Education's Criminal History Review Unit confirmed Caucino's conviction and sentence.

The Appellate Division determined that any alleged disqualifying criminal misconduct must in some way involve an employee's official employment duties in order to qualify for the forfeiture of any vested rights under a New Jersey State Pension statute. Petitioner analogizes this to his case and states that there could not be the forfeiture of Cauvin's vested tenure rights based on any reliance that he had pled guilty to a violation of a statute determined by the New Jersey Supreme Court in 1976 to not encompass private consensual sexual activity, which the Supreme Court in State v. O. determined was not within the ambit of any criminal statute. Caucino holds that an individual cannot be presumed guilty of any form of "unbecoming conduct" if they were not employed as a teacher, especially in consideration of the significance of the State v. O.

The State counters that Cauvin's contention that he (Cauvin) cannot be disqualified because the act of lewdness for which he was arrested did not involve his employment. This is furthered in the State's brief that the disqualification statute is much more definitive and mandates that persons shall be permanently disqualified from service if that individual's criminal history check reveals a record of conviction for enumerated violations of N.J.S.A. 2C:14. N.J.S.A. 18A:6-7.1. The disqualification statute does not require that

the enumerated violations occur at a school, or that they touched upon an educator's employment, for action to be taken against them by OSP. In fact, to his detriment, Cauvin acknowledges this fact and provides support for his disqualification.

The State further argues that in Caucino, the court did not reverse the removal of Caucino from Monmouth, nor did it reverse his permanent disqualification and that Cauvin's disqualification was appropriate and actually supported by the case law cited by Cauvin. As in Caucino, Cauvin's disqualifying offense was found after he began teaching, and, despite the offense being unrelated to his employment as an educator, the court took no issue with Caucino's removal. As such, as in Caucino, Cauvin's removal, per N.J.S.A. 18A:6A-7.1, was appropriate and supported by the law.

Considering the facts, circumstances and documentary evidence supplied by the parties I **FIND** that Caucino holds that an individual cannot be presumed guilty of any form of "unbecoming conduct" if they were not employed as a teacher, especially in consideration of the significance of the State v. O. Therefore, petitioner prevails on this point.

Petitioner's third point cites a number of cases (and their respective penalties) in asserting that his termination is unwarranted. The most salient of these are Board of Education of the Township of Old Bridge v. Richard M. Pappa, 1988 S.L.D. 542, where a tenured teacher was accused of "conduct unbecoming" because of his open public lewdness conviction. Pappa was arrested in a rest area on the Garden State Parkway by undercover agents operating a "sting" operation. His conduct was described as "sitting on a picnic table bench with his pants open, exposing his genitals and masturbating in the presence of an undercover officer". Id. at 543. Pappa pled guilty to public lewdness (N.J.S.A. 2C:14-4) in Municipal Court. The ALJ and the Commissioner of Education imposed a penalty of 120-day salary forfeiture, and the withholding of salary increment for one year.

The second salient case is In Town of West Orange Board of Education v. Martin Lieb, 1985 S.L.D. 933, the Commissioner affirmed the findings of the ALJ that Lieb should

be reinstated as a school teacher following a public lewdness conviction. Lieb was originally charged with criminal sexual conduct in violation of N.J.S.A. 2C:14-3(b), but the offense was downgraded. Lieb had touched the "genital area" of an Essex County Police Officer in a secluded area of the South Mountain reservation.

The State counters that Cauvin's argument that he cannot be disqualified because the act of lewdness for which he was arrested did not involve his employment is erroneous. The State cites that in OSP's moving brief, the disqualification statute is much more definitive and mandates that persons shall be permanently disqualified from service if that individual's criminal history check reveals a record of conviction for enumerated violations of N.J.S.A. 2C:14. N.J.S.A. 18A:6-7.1. The disqualification statute does not require that the enumerated violations occur at a school, or that they touched upon an educator's employment, for action to be taken against them by OSP. In fact, to his detriment, Cauvin acknowledges this fact and provides support for his disqualification.

Considering the facts, circumstances and documentary evidence supplied by the parties I **FIND** the Pappa and Lieb cases persuasive. As a note, petitioner cites cases in which the "incidents" all occur during the pendency of teacher employment. The State cites, among other cases, the **Caucino** case noting that the bank robber Caucino was convicted of occurred in 1995 and Caucino taught from 1993 to 2004. It was not until 2004 that he was permanently disqualified from employment based on his conviction, and removed by Monmouth. Although the court took no issue of his removal from Monmouth for a crime that was wholly unrelated to his position as a teacher and which was discovered years after he began teaching. The court only reversed Caucino's deferred retirement benefits denial and did not reverse the removal of Caucino from Monmouth, nor did it reverse his permanent disqualification.

Considering the facts, circumstances and documentary evidence supplied by the parties I **FIND** that Caucino is not persuasive in that the category of the offense of bank robbery is not analogous to a conviction of lewdness. The dissimilar nature of the crime, and the caselaw provided shows that, petitioner prevails on this point.

Petitioner's fourth point is that Teacher NJ arbitration awards provide support of petitioner's arguments that teachers who were found guilty of "conduct unbecoming a teacher" because of sexual activities, while employed as certificated teachers, were not dismissed from their tenured employment, while petitioner was dismissed as a tenured teacher based on consensual, non-criminal sexual activity prior to the start of his teaching career. The caselaw cited by petitioner provides a variety of situations where teachers are entitled to an appropriate hearing before an arbitrator as called for.

The State's position on this issue is that Cauvin demonstrates a fundamental lack of understanding of the disqualification statute, and these proceedings. The State contents that the disqualification statute operates outside from, and independent of, employer-initiated tenure proceedings of a disciplinary nature, or actions against a teacher's certificates by the Board of Examiners. It is a mandatory, non-discretionary, absolute bar against employment if an individual has a disqualifying offense on their record. Tenure proceedings are wholly irrelevant to the inquiry in this matter.

Considering the facts, circumstances and documentary evidence supplied by the parties, I **FIND** that petitioner's argument on this point is persuasive and that the employer initiated tenure proceedings are precisely indicated here to avoid the summary dispensation which occurred to Cauvin. Petitioner prevails on this point.

The final point raised by petitioner is that OSP is equitably estopped and barred by the principal of laches from arguing that the 1997 action constituted a "Disqualifying Crime or Offense." On this point I **FIND** that OSP is not barred from the ability to make this finding; **HOWEVER**, the proper processes in this instance were not followed. Respondent prevails on this point.

LEGAL ANALYSIS AND CONCLUSIONS

A. Summary Decision Standard

Under N.J.A.C. 1:1-12.5(b) a "motion for summary decision shall be served with briefs and with or without supporting affidavits." N.J.A.C. 1:1-12.5(b). A summary

decision may 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." Ibid.

A court should grant summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-529 (1995). The Supreme Court of New Jersey has adopted a standard that requires judges to "engage in an analytical process to decide whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 533.

"When a motion for summary decision is made, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding . . .." N.J.A.C. 1:1-12.5(b). A court should deny a motion for summary decision when the party opposing the motion has produced evidence that creates a genuine issue as to any material fact challenged. Brill, 142 N.J. at 528-29. When making a summary decision, the "judge's function is not himself [or herself] to weigh the evidence." Id. at 540.

The petition filed by Cauvin, along with his certification, states that he engaged in a private consensual sexual act in October 1997, while in his parked car in a private unlit area. The arrest for this action and plea to a violation of N.J.S.A. 2C:14-4, was made before petitioner began teaching and twenty-five years before petitioner was first advised that the respondent OSP determined that he had committed a disqualifying "crime or offense" so as to mandate his dismissal as a public school teacher.

No testimony or documentation contravenes petitioner's statement as to the event and the fact that he was engaged in consensual sexual activity in a parked vehicle owned by the petitioner in a private area when discovered by local municipal police officers.

Cauvin challenges his procedural due process rights and right to be heard, which is a question of law.

B. The Employee Disqualification Statute:

A school or school system, under the supervision of the Department of Education and board of education which cares for or is involved in the education of children under the age of eighteen, shall not employ for pay or contract for the paid services of any custodian, school maintenance worker, or any other person serving in a position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or the State Bureau of Identification which would disqualify that individual from being employed or utilized in such capacity or position (N.J.S.A. 18A:6-7.1)

N.J.S.A. 18A:6-7.1(a) provides that "[a]n individual[] . . . shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or [a]n offense as set forth in chapter 14 of Title 2C of the New Jersey Statutes[.]"

An individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record (N.J.S.A. 18A:6-7(e). (emphasis added)

Cauvin does not deny the criminal conviction that resulted in his disqualification from employment. In addition, he does not challenge the "accuracy" of his criminal conviction. He states that he was not provided with an opportunity for appropriate hearing and opportunity to expunge his record considering that the event occurred before he began teaching, the lewdness conviction was inaccurate as material aspects of the statute were not present and the conviction for lewdness was never revealed in his prior

investigations. Specifically marked portions of the statute – pertaining to intention as to other uninterested parties – were not present in the 1997 action.

The statute provides that an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record (N.J.S.A. 18A:6-7(e). Said opportunity was not provided to Cauvin and he has challenged the disqualification process. He has also filed for expungement of the conviction.

Considering the facts and circumstances of the OSP in light of the history of investigations previously performed and the failure of the OSP to provide Cauvin with the opportunity to challenge the veracity, accuracy and impact of the disqualifying criminal history, the petitioner's motion for summary decision in lieu of an answer to dismiss the petition is **GRANTED**. The respondent's cross-motion for summary decision is **DENIED**.

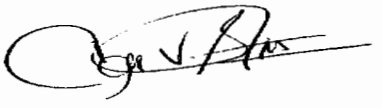
ORDER

It is hereby **ORDERED** that the petitioner's motion for summary decision in lieu of an answer to dismiss the petition is **GRANTED** and that petitioner is reinstated to his position effective May 3, 2022. It is further **ORDERED** that the respondent's motion for summary decision in lieu of an answer to dismiss the petition is **DENIED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.



August 26, 2024
DATE

CARL V. BUCK III, ALJ

Date Received at Agency:

Date Mailed to Parties:
CVB/lam

404-24
OAL Dkt. No. EDU 14386-23
Agency Dkt. No. 328-11/23

New Jersey Commissioner of Education

Final Decision

Shelly Lipka,

Petitioner,

v.

Board of Education of the Township of Livingston, Essex County,

Respondent.

The record of this matter, the proposed Settlement Agreement (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2024
Date of Mailing: November 6, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
APPROVING SETTLEMENT
OAL DKT. NO. EDU 14386-23
AGENCY DKT. NO. 328-11/23

SHELLY LIPKA,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF LIVINGSTON, ESSEX COUNTY,
Respondent.

Albert J. Leonardo, Esq., for petitioner, (Zazzali, P.C., attorneys)

Arsen Zartarian, Esq., for respondent (Cleary Giacobbe Alfieri Jacobs, LLC, attorneys)

Record Closed: September 26, 2024 Decided: September 26, 2024

BEFORE **PATRICE E. HOBBS, ALJ**

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle this case and have entered into an agreement. Their settlement agreement is attached to this decision.

Having reviewed the terms of their agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

I **FILE** my decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration. This recommended decision may be adopted, modified, or rejected by **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is empowered by law to make a final decision in this case. If the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not so act within 45 days, and unless such time limit is otherwise extended, this recommended decision becomes a final decision in accordance with N.J.S.A. 52:14B-10.

Patrice E. Hobbs

September 26, 2024
DATE

PATRICE E. HOBBS, ALJ

lsr

Date Received at Agency: September 27, 2024

Date Mailed to Parties: September 27, 2024

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into effective as of the 24th day of September, 2024 ("the Effective Date"), by and between SHELLY LIPKA ("Lipka") and the LIVINGSTON BOARD OF EDUCATION (the "Board").

WHEREAS, the Board is a body public and corporate, organized and existing by virtue of the laws of the State of New Jersey, N.J.S.A. 18A:11-1 which is entrusted with maintaining and governing the public schools of the Livingston School District;

WHEREAS, the Board has its administrative offices located at 11 Foxcroft Drive, Livingston, New Jersey 07039;

WHEREAS, Lipka is an employee of the Board;

WHEREAS, Lipka filed a Petition with the New Jersey Commissioner of Education, captioned Shelly Lipka v. Livingston Board of Education, Essex County, OAL Docket No. EDU 14386-2023N, Agency Docket No. 328-11/23, asserting that the Board unlawfully withheld her salary; (hereinafter "the Action");

WHEREAS, the parties desire to resolve and settle all outstanding matters between them pursuant to the terms and conditions set forth in this Agreement; and,

NOW, THEREFORE, intending to be legally bound hereby and in consideration of the mutual covenants and conditions set forth in this Agreement, the Parties agree as follows:

1. **Settlement Terms**

Lipka and the Board agree that the Board shall pay, as back pay minus mitigation, the gross amount of Two Hundred and Twenty-Five Thousand Dollars and No Cents ($225,000.00), minus usual and customary withholdings, including pension contributions, and other legally required deductions, in full satisfaction of all claims in the Action for claims for legal or equitable relief, reinstatement, back pay, lost benefits, statutory and contract claims. This sum shall be paid within thirty (30) calendar days of the date the Commissioner of Education approves this Agreement as follows:

a. The sum of Two Hundred and Twenty-Five Thousand Dollars and No Cents ($225,000.00), less usual and customary withholdings, including pension contributions, and other legally required deductions in the form of a check made payable to Lipka.

b. Any employer-side payroll taxes and/or penalties relating thereto, if any, are the sole

responsibility of the Board.

c. The gross amount of Two Hundred and Twenty-Five Thousand Dollars and No Cents ($225,000) constitutes full back pay minus mitigation due to Lipka for the time period July 15, 2018, through August 29, 2023. This sum constitutes a total amount of the full salaries and backpay that Lipka would have earned for the 2018-19, 2019-20, and 2020-21 school years, i.e., $77,427, $78,202, and $78,844, minus mitigation for salary.

d. The Board will deduct pension contributions from its payment to Lipka and remit them to the Division of Pensions and Benefits in the amount determined by the Division of Pensions and Benefits. The pension contributions shall be made for the 2018-19, 2019-20, and 2020-21 school years based upon the salaries set forth herein. Lipka will receive pension credit for those contributions in each of those school years in the Teachers' Pension and Annuity Fund, as determined by the Division of Pensions and Benefits and the Teachers' Pension and Annuity Fund. The Board will make all employer contributions as may be required by the Division of Pensions and Benefits and the Teachers' Pension and Annuity Fund.

e. The parties acknowledge and understand that the ultimate decision as to Lipka's eligibility for pension credit and benefits is made by the Division of Pensions and Benefits. The parties agree that this agreement is conditioned on the Division of Pension and Benefits' and Teachers' Pension and Annuity Fund's approval of pension credit for the school years above.

f. Upon approval of this agreement by the Division of Pensions and Benefits, the Teachers' Pension and Annuity Fund, and the Commissioner of Education, and the Board's payment of Lipka's backpay and pension contributions, Lipka will apply for retirement. Lipka's retirement effective date will be the first day of the month following the Board's payment of the back pay minus mitigation, and the crediting of her TPAF pension account with service credit for the time period from July 15, 2018 through August 30, 2021.

g. The Board agrees to cooperate fully with the New Jersey Division of Pensions and Benefits and the Teachers' Pension and Annuity Fund with respect to: (i) the processing of Lipka's pension credit for the time period from July 15, 2018, through August 30, 2021; and, (ii) Lipka's retirement application.

2. **Stipulation of Dismissal**

Lipka and the Board agree that by executing this Agreement, it (and a Board resolution) shall be submitted to the Administrative Law Judge for issuance of an Initial Decision approving the settlement. If the settlement is approved by the Administrative Law Judge, the Commissioner of Education, and, if the Division of Pensions and Benefits and Teachers' Pension and Annuity Fund processes and approves Lipka's pension credit for the backpay for the school years listed in Paragraph 1, above, Lipka's pending Petition will be dismissed with prejudice.

3. Complete Release

In consideration of this Agreement and the terms herein, Lipka, her heirs, assigns and agents (hereinafter referred to collectively as "Lipka") agrees to and hereby releases and gives up any and all claims and rights which she may have against the Board, including its former and current employees, elected officials, representatives, agents, and attorneys, and covenants not to sue the Board for anything that has happened arising out of Lipka's employment relationship with the Board. This releases all claims, including those of which Lipka is not aware, and those not expressly mentioned herein, up until and through the date of execution of this Agreement. Lipka further covenants that she voluntarily enters into this Agreement, and Lipka certifies that she has not been threatened or coerced into signing this Agreement

Lipka hereby releases, waives and discharges the Board, its affiliated departments, and its officers, trustees, agents, employees, successors and assigns (hereinafter collectively referred to as the "Releasees") from each and every claim, demand, cause of action, obligation, damage, complaint, or action or writ of any kind, nature, character or description that Lipka had, now has, or may in the future have against the Releasees on account of or arising out of any matter or thing that has happened, developed or occurred prior to the date of the complete execution of this Agreement including, but not limited to, the employment of Lipka. This Complete Release includes, but is not limited to, any claim, demand, cause of action, obligation, claim for damages of any kind, complaint, expense, compensation, or action or writ of any kind, nature, character or description arising out of or under Federal, State or municipal statute or ordinance and any other law (whether such be common law, decisional law or statutory law), rule, regulation, executive order or guideline, and any and all claims for attorney's fees and costs arising from the above acts including, but not limited to:

i. Any claim, cause of action, demand or complaint arising out of or under the New Jersey Law Against Discrimination (NJLAD) which, among other things, prohibits discrimination in employment on the basis of an individual's race, creed, color, religion, sex, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, handicap, atypical hereditary cellular or blood trait or liability for service in the Armed Forces of the United States.

ii. Any federal claim, cause of action demand or complaint arising out of or under the Federal Title VII of the Civil Rights Act of 1964 (Title VII) or the Civil Rights Act of 1991, as amended. which, among other things, prohibit discrimination in employment on account of a person's race, color, religion, sex or national origin.

iii. Any claim, cause of action, demand or complaint arising out of or under the New Jersey Conscientious Employee Protection Act (CEPA) (N.J.S.A. 34:19-1 et seq.), which, among other things, prohibits retaliation based on an employee engaging in protected conduct.

iv. Any claim, cause of action, demand or complaint arising out of or under the Federal Age Discrimination in Employment Act of 1967, as amended (ADEA), which among other things. prohibits discrimination in employment on account of a person's age.

v. Any claim, cause of action, demand or complaint arising out of or under the Federal Americans with Disabilities Act (ADA), which, among other things, prohibits discrimination in employment on account of a person's disability or handicap.

vi. Any claim, cause of action, demand or complaint arising out of or under the Federal Family and Medical Leave Act (FMLA) which, among other things, entitles an employee to take reasonable leave for medical reasons for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition and any claim, cause of action, demand or complaint arising out of under the New Jersey Family Leave Act (NJFLA).

vii. Any claim, cause of action demand or complaint arising out of or under the Federal Rehabilitation Act of 1973, as amended, which among other things, prohibits discrimination in employment by Federal contractors against individuals with disabilities.

viii. Any claim, cause of action, demand or complaint arising out of or under the Federal Employee Retirement Income Security Act of 1974, as amended (ERISA), which among other things, regulates pension and welfare plans and prohibits interference with individual rights protected under that statute.

ix. Any claim, cause of action, demand or complaint arising out of or under the Federal Older Workers Benefit Protection Act (OWBPA) which, among other things, amends provisions of ADEA and prohibits discrimination in employment and employment benefits on account of a person's age.

x. Any right to any money damages with respect to any claim, charge or complaint of any nature with the New Jersey Division on Civil Rights and the U.S. Equal Employment Opportunity Commission (EEOC). Lipka has not filed and shall not hereafter file any claim, charge or complaint of any nature with the New Jersey Public Employment Commission (PERC) or with any Federal, State or local court or agency against the Releasees.

xi. This release excludes any claims that by law cannot be waived, including any workers' compensation claims or statutorily indemnified claims brought pursuant to N.J.S.A. 18A:6-16

4. **Assent to Terms**

Lipka and the Board hereby acknowledge that they entered into this Agreement with a full understanding of their rights and that they were fully informed of the implications of this Agreement. Lipka has reviewed this Agreement with Albert J. Leonardo, Esq. and acknowledges she is satisfied with the quality of the services received The parties enter into this Agreement without duress and of their own free will and volition and acknowledge that they were given a full and fair opportunity to fully consider this Agreement. This Agreement must be formally approved by the Board and this Agreement will be deemed null and void without said approval. All reasonable efforts will be made to timely obtain approval from the Board

5. **Successors and Assignees**

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, assignees, heirs, officers, employees, officials and agents

6. Amendment; Severability; No Waiver

This Agreement shall not be amended, changed or modified except in a writing signed by all parties. The provisions of this Agreement are severable. If it is determined by a court or administrative agency of competent jurisdiction that a specific clause of this Agreement is illegal or unenforceable, the remainder of the Agreement shall not be affected by such a ruling and shall remain in full force and effect unless doing so would destroy the essential nature of this Agreement. Any failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or of any other provision.

7. No Further Consideration

Lipka and the Board each expressly acknowledge and represent that neither party will seek nor be entitled to any further consideration from the other in connection with this Agreement other than the consideration as detailed herein.

8. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matters herein, and supersedes and integrates any and all prior representations, negotiations, discussions, understandings and agreements, whether oral or written. Each party acknowledges that neither the other party, nor any agent or attorney of the other party, has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement to induce it to execute this Agreement.

9. Counterparts

This Agreement may be signed in counterparts and shall be binding as if all Parties executed the original thereof. A facsimile or electronically-transmitted signature shall have the same effect as an original signature

10. Law Governing

This Agreement shall be governed by the laws of the State of New Jersey

IN WITNESS WHEREOF, the parties have executed this agreement consisting of this and five (5) preceding pages on the dates set forth below.

Witness:

Shelly Lipka

Dated: 9/23/24

Witness:

Pam Lipka

Dated: 9/23/24

LIVINGSTON BOARD OF EDUCATION

Attest:

By: Pam Chirls
Pam Chirls, President

Dated: 9/24/24

Jessica Rapp, Board Secretary

Dated: 9/24/2024

LIVINGSTON BOARD OF EDUCATION
Livingston, New Jersey

The following was approved by the Livingston Board of Education at its September 24, 2024 meeting:

4.12 Settlement Agreement

Resolved, that the Livingston Board of Education approves the Settlement Agreement between itself and Employee #4470 dated September 24, 2024.

Certified to be a true copy of Resolution
approved on September 24, 2024

Jessica Rapin, Board Secretary

405-24
OAL Dkt. No. EDU 03838-24 and EDU 04923-24 (Consolidated)
Agency Dkt. No. 30-2/24 and 65-4/24

New Jersey Commissioner of Education

Final Decision

A.B. and L.B. on behalf of minor child, L.B.,

Petitioner,

v.

Board of Education of the City of East Orange, Essex County.

Respondent.

AND

Board of Education of the City of East Orange, Essex County,

Petitioner,

v.

A.B. and L.B., Individually and on Behalf of L.B. and Kipp TEAM Academy Charter School,

Respondents.

The record of this matter, the proposed Consent Order and Release (Agreement), and the Initial Decision issued by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed. Upon such review, the Commissioner notes that paragraphs 2 and 4 of the Agreement reference actions that preceded the consideration of the settlement by the Commissioner of Education. The parties are reminded that a settlement of litigation before the Commissioner is not binding until the Commissioner approves the settlement.

In light of the foregoing, the Commissioner adopts the Initial Decision as the final decision in this matter, provided that the parties have already implemented the settlement terms or have agreed upon mutually satisfactory alternate dates for the effectuation of the terms of the Agreement. Assuming same, the matter is hereby dismissed.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2024
Date of Mailing: November 6, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
APPROVING SETTLEMENT
(CONSOLIDATED)

A.B. AND L.B. ON BEHALF OF MINOR CHILD L.B.,
Petitioners,
v.
EAST ORANGE BOARD OF EDUCATION, ESSEX COUNTY,
Respondent.

OAL DKT. NO. EDU 03838-24
AGENCY DKT. NO. 30-2/24

CITY OF EAST ORANGE BOARD OF EDUCATION, ESSEX COUNTY,
Petitioner,
v.
A.B. AND L.B., INDIVIDUALLY AND ON BEHALF OF L.B. AND KIPP TEAM ACADEMY CHARTER SCHOOL,
Respondents.

OAL DKT. NO. EDU 04923-24
AGENCY DKT. NO. 65-4/24

Denise Verzella, Esq., for parents A.B. and L.B. (Manes & Weinberg, attorneys)

Nathanya Simon, Esq., for East Orange Board of Education (Scarinci & Hollenbeck, attorneys)

Thomas O. Johnston, Esq., for KIPP Team Academy Charter School (Johnston Law Firm, attorneys)

Record Closed: September 23, 2024 Decided: September 23, 2024

BEFORE **SUSANA E. GUERRERO**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle this case and have entered into an agreement. Their Consent Order and Release is attached to this decision.[1]

Having reviewed the terms of their agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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

[1] The submitted Consent Order and Release resolves the above matters I, therefore, **ORDER** that EDU 03838-24 and EDU 04923-24 be and hereby are consolidated

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.

9/23/24
DATE

SUSANA E. GUERRERO, ALJ

Date Received at Agency: September 24, 2024

Date Mailed to Parties: September 24, 2024

jb

SCARINCI HOLLENBECK, LLC
Attorneys at Law
150 Clove Road, 9th Floor
Little Falls, New Jersey 07424
Tel: 201-896-7223
Fax: 201-896-7224
Our File No.: 12671.9300
Attorneys for Respondent, East Orange Board of Education

A.B. and L.B. o/b/o L.B., Petitioners, vs. East Orange Board of Education, Respondent. & A.B. and L.B. o/b/o L.B., Petitioners, vs. East Orange Board of Education, Respondent. & East Orange Board of Education, Petitioners, vs. A.B. and L.B. o/b/o L.B. and TEAM Academy Charter School, Inc. (improperly plead as KIPP Team Academy Charter School),	STATE OF NEW JERSEY DEPARTMENT OF EDUCATION OAL DKT. NO.: EDU 03838-2024 AGENCY REF. NO.: 30-2/24 OAL DKT. NO.: EDS 00790-2024 AGENCY REF. NO.: 2024-36828 OAL DKT. NO.: EDU 04923-2024 AGENCY REF. NO.: 65-3/24 **CONSENT ORDER AND RELEASE**

Respondents.

This matter having been presented to the Court by Denise Verzella, Esq. of the firm Manes & Weinberg LLC, attorney for A.B. and L. B., parents of L.B. (hereinafter "Parents") and Nathanya Simon, Esq. of the firm Scarinci Hollenbeck LLC, attorney for East Orange Board of Education, (hereinafter the "Board") and Thomas Johnston, Esq. of the firm Johnston Law Firm LLC and Rita Barone, Esq. of the firm Flanagan, Barone, O'Brien LLC, attorneys representing TEAM Academy Charter School, Inc. (hereinafter "TEAM") These three matters meet the standards set forth in N.J.A.C. 1:1 -17. 3 such that it is advisable to dispose of all aspects of this controversy in a single proceeding and that consolidation would promote a prompt and fair resolution to all issues raised in the pleadings by the parties and would save the time, expense and duplication of effort, and avoid confusion, undue delay or inconsistency. Accordingly, with the consent of all parties, and the Court, these matters are ordered consolidated. Further, the Party Representatives above having conferenced with the Administrative Law Judge assigned to these matters, and the Judge having considered the issues in dispute, and based on the law, and for good cause shown,

IT IS ORDERED as follows.

1. The Parents shall assume fiscal responsibility for the tuition paid to Winston School for L.B.'s attendance from September 1 2022 to April 30, 2023.

2. East Orange shall assume fiscal responsibility for reimbursing the Parents for the tuition paid by the Parents to TEAM for L.B.'s attendance in the Winston School for the time period from May 1, 2023 through June 6, 2024 in the total amount of forty thousand one hundred and eighty three dollars ($40,183). Payments shall be processed within thirty (30) calendar days after receipt of supporting documentation (paid receipts, cancelled checks, invoices, etc.) from the

Parents to East Orange. Within 7 days of this Order, the District shall contact the Winston School to make arrangements for the payment of tuition for extended school year scheduled to start on June 17, 2024 and end August 1, 2024.

3. TEAM agrees to reimburse East Orange monies that were paid by East Orange to TEAM associated with L.B.'s enrollment in TEAM for the 2022-2023 school year. The amount to be reimbursed is five thousand two hundred and twelve dollars ($5,212.00). Reimburesement shall be within thirty (30) days of the signing of the Order Furthermore, no additional money or funding shall be paid to TEAM by East Orange for L.B. , while L.B.'s IEP placement is at the Winston School.

4. Effective with the 2024-2025 school year, including extended school year ("ESY") and for each school year thereafter that TEAM prepares an IEP for L.B. to continue in the Winston School, East Orange shall contract directly with the Winston School within 7 days of the signing of this Order, to pay the tuition costs for L.B. to continue to attend the Winston School, pursuant to *N.J.S.A.* 18A:36A-11(b) No monies shall be paid or credited to TEAM from East Orange for the student to continue to be on their rolls and for their staff to be responsible for the development of the IEP for L.B. each school year, as long as L. B continues to attend Winston School

5. TEAM shall remain L. B 's local education agency under the Individuals with Disabilities Education Act, while enrolled at TEAM, which shall include TEAM's continued provision of case management services to L.B. and Parents. Parents promise to notify TEAM before or immediately upon becoming domiciled in a school district other than East Orange. East Orange's obligations herein shall terminate upon L.B. no longer being domiciled in East Orange. Parents agree that, if L.B. is then attending the Winston School, the fiscal responsibility for such

costs shall be L.B.'s new district of residence, pursuant to *N.J.S.A.* 18A:36A-11(b). Parents and TEAM agree that the subject of L.B.'s program and placement shall be discussed no less than annually by way of IEP meetings. Should L.B.'s IEP team decide to place L.B. somewhere othar than Winston School, or if there is disagreement between members of the IEP Team, the parties retain and reserve all rights and responsibilities under *N.J.A.C.* 6A:14 et seq., *N.J.S.A.* 18A:36A-11(b) and *N.J.A.C.* 6A:23A-15.4. TEAM's responsibilities herein shall terminate upon L.B.'s disenrollment from TEAM.

6. Parents agree to provide L.B. transportation to and from home and the Winston School, without any reimbursement from either TEAM or East Orange for the entire time that L.B. continues to attend Winston School. The Parents remain eligible to apply for aide in lieu of transportation.

7. Parents expressly release and waive any and all claims that are known or should have been known against East Orange and TEAM, their employees, officers, board members, attorneys, management organizations or any other agents, associated with this matter including, but not limited to, any other fees and costs incurred, attorneys' fees, and claims for compensatory education. Further, provided East Orange and TEAM comply with the terms of this Consent Order the petition with docket number EDS 00790-2024, Agency Ref. No. 2024-36828 is withdrawn without prejudice as part of this Consent Order and Release. The remaining petitions with docket numbers EDU 03838-2024, Agency Ref. No. 30-2/24 and EDU 04923-2024, Agency Ref. 65 - 3/24 shall be subject to approval by the Administrative Law Judge and incorporated into an Initial Decision approving this Consent Order, Order of Consolidation and Release, and then Final approval by the Commissioner of Education.

8. East Orange expressly confirms that the person signing this Consent Order has the authority to bind the East Orange Board of Education to its terms absent a resolution and approval by the East Orange Board of Education.

9. In further consideration of these settlement terms, all parties hereby release, waive and discharge each other from any and all claims, causes of action, obligation or action of any kind that were known of could have been known that they each had, now has, or may in the future have arising out of these same facts.

10. This Consent Order can be signed in counterparts by the parties or their duly authorized representative(s).

11. This Consent Order shall be the Final Decision issued by the Administrative Law Judge for the above captioned matters

IN WITNESS WHEREOF, the Parties have signed this Agreement or caused their representative to sign this Agreement on the dates set forth below

Parents

A B., individually and on behalf of L B

Dated: 6/11/24

L B., individually and on behalf of L B

East Orange Board of Education

8. East Orange expressly confirms that the person signing this Consent Order has the authority to bind the East Orange Board of Education to its terms absent a resolution and approval by the East Orange Board of Education.

9. In further consideration of these settlement terms, all parties hereby release, waive and discharge each other from any and all claims, causes of action, obligation or action of any kind that were known of could have been known that they each had, now has, or may in the future have arising out of these same facts.

10. This Consent Order can be signed in counterparts by the parties or their duly authorized representative(s).

11. This Consent Order shall be the Final Decision issued by the Administrative Law Judge for the above captioned matters.

IN WITNESS WHEREOF, the Parties have signed this Agreement or caused their representative to sign this Agreement on the dates set forth below.

Parents

_____
A.B., individually and on behalf of L.B.

Dated:_____

_____
L.B., individually and on behalf of L.B.

East Orange Board of Education

_____
Superintendent of Schools

By: ABDULHAKEEM HASAN

Dated: 25 June 2024

TEAM Academy Charter School, Inc

_____

By:

Dated: _____

By:

Dated: _____

TEAM Academy Charter School, Inc.

DocuSigned by:
Tim Carden
0C260E1102F410A...

By: Tim Carden

Dated: 8/16/2024

EXTRACT FROM THE MINUTES OF A MEETING
OF THE BOARD OF EDUCATION OF THE CITY OF EAST ORANGE, NEW JERSEY
AS RECORDED IN THE OFFICIAL MINUTE BOOK

The Board of Education of the City of East Orange in the County of Essex, New Jersey convened a Regular Meeting on Monday, September 16, 2024 at 6:08 p.m.

The following members of the Board were present:

Ms. Darlene Clovis, Ms. Jamillah N. Lawson, Mr. Wayne R. Stackhouse, Jr., Dr. Kcyied Zahir, and Ms. Andrea McPhatter

The following resolution was offered by Dr. Kcyied Zahir, duly seconded by Mr. Wayne R. Stackhouse, Jr and adopted by the Board of Education

Resolution to approve Settlement Agreement in A.B. and L.B. o/b/o L.B. v. East Orange Board of Education

BE IT RESOLVED, that the Board hereby approves the Settlement Agreement in A.B. and L.B. o/b/o L.B. v. East Orange Board of Education OAL Dkt No. EDU 03838-2024 Agency Ref. No. 30-2/24 and OAL Dkt No. EDS 00790-2024 Agency Ref No. 2024-36828 East Orange Board of Education v. A.B. and L.B. o/b/o L.B. and Team Academy Charter School Inc. OAL Dkt No. EDU 04923 -2024 Agency Ref. No. 65-3/24.

ROLL CALL: AYES: 5
ABSENT: 2

STATE OF NEW JERSEY}
} ss
COUNTY OF ESSEX}

I, Tia Thomas, Interim School Business Administrator of the Board of Education, of the East Orange Board of Education, in the County of Essex, State of New Jersey, hereby certify that the foregoing extract from the minutes of the meeting of the Board of said district, fully called and held on Monday, September 16, 2024, has been compared by me with the original minutes as officially recorded in my office in the minute book of said East Orange Board of Education, original minutes so far as the same related to the subject matter referred to in said extract, in witness I have hereunto set my hand and affixed the corporate seal of said Board of Education this 18th day of September, 2024

Tia Thomas, Interim School Business Administrator / Board Secretary

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TEAM CHARTER SCHOOLS

60 Park Place, Suite 802, Newark, NJ 07102
(973) 622-0905 - Phone
(973) 556-1441 - Fax

RESOLUTION

Consent Order and Release (East Orange v. TEAM)

WHEREAS, East Orange Board of Education brought an administrative action against TEAM Academy Charter School under OAL docket no: EDU 04923-2024; and

WHEREAS, TEAM denies any and all allegations made in the action, and continues to deny any and all liability for all claims asserted by plaintiff; and

WHEREAS, in the interest of avoiding the continuing cost and expense of protracted litigation, the parties have agreed to resolve any all claims arising out of, or in connection with the claims in the action pursuant to the terms of the attached Consent Order and Release.

NOW, THEREFORE, BE IT RESOLVED that the **TEAM Academy Board of Trustees** approves the terms of the attached Consent Order and Release.

DATE: 8/16/2024

SIGNED BY:

DocuSigned by:
Tim Carden
CC258E413274434...
Tim Carden, President

Board of Trustees

August 13, 2024

Trustee		In Favor	Opposed	Abstain	Absent
Tim	Carden	X			
Julie	Keenan				X
Rasheen	Peppers	X (second)			
Kevin	Morrison	X (motion)			
Tafsheer	Cosby	X			
Vincent	Marigna	X			
Karen	Leach-Toomer				X

Adopted at the Board of Trustees Meeting on

Certification:

I certify that this is a true and correct excerpt from the TEAM Academy Charter School Board of Trustees meeting on August 13, 2024.

Signed by:
Steve Small
0E5D21BD3F0C4F0...
Steve Small, Board Secretary

406-24

New Jersey Commissioner of Education

Final Decision

Monica Osgood,

Petitioner,

v.

New Jersey Department of Education,
Office of Special Education,

Respondent.

Synopsis

Petitioner challenged the actions by the respondent Department of Education, Office of Special Education (NJDOE) in handling applications for approved private schools for students with disabilities. Petitioner, who was approved by the NJDOE in 2004 to open an Approved Private School for Students with Disabilities (APSSD), sought to establish a new APSSD and submitted an application in 2023. After her application was denied, petitioner submitted the within appeal. The NJDOE filed a motion to dismiss the petition in lieu of an answer.

The ALJ found, *inter alia*, that: petitioner challenged the NJDOE's application process for APSSDs, including its process of developing and mailing out the Needs Assessment forms directly to school districts and Local Education Agencies (LEAs) rather than allowing an applicant to develop and secure these forms directly from the districts/LEAs; petitioner challenged the wording used by the NJDOE in these forms; petitioner also sought to compel the NJDOE to approve a "small number" of APSSDs every year, and sought an opportunity to re-apply once these proposed changes were made by the NJDOE; however, petitioner offered no legal support for her claims nor for the relief she sought. The ALJ concluded that that the petition must be dismissed because petitioner failed to advance any cause of action upon which relief can be granted; there is no legal basis to grant the specific relief she seeks. Accordingly, respondent's motion to dismiss was granted and the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that petitioner failed to state a claim upon which relief can be granted. Accordingly, the Initial Decision was adopted as the final decision in this matter, and the petition of appeal was dismissed.

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.

406-24
OAL Dkt. No. EDU 09640-24
Agency Dkt. No. 124-5/24

New Jersey Commissioner of Education

Final Decision

Monica Osgood,

Petitioner,

v.

New Jersey Department of Education, Office of Special Education,

Respondent.

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 that petitioner has failed to state a claim upon which relief can be granted.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2024
Date of Mailing: November 6, 2024

[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 09640-24
AGENCY DKT. NO. 124-5/24

MONICA OSGOOD,
Petitioner,
v.
NEW JERSEY DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION,
Respondent.

Monica Osgood, petitioner, pro se

Michael Lombardi, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: August 8, 2024 Decided: September 12, 2024

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Petitioner Monica Osgood (Petitioner or Osgood) challenges the actions by the respondent Department of Education, Office of Special Education (NJDOE) in handling

applications for approved private schools for students with disabilities. The respondent moves to dismiss the Petition.

PROCEDURAL HISTORY

On or around May 2, 2024, petitioner filed a Petition of Appeal with the Commissioner of Education. The Commissioner transmitted the matter to the Office of Administrative Law (OAL), where it was filed as a contested case on July 10, 2024 pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

Prior to receiving the matter at the OAL, on or around July 5, 2024, the respondent filed a Motion to Dismiss in lieu of an Answer to the Petition. The petitioner opposed the motion on July 7, 2024. I held a telephone prehearing conference with the parties on August 8, 2024, at which time we discussed the status of the motion. No additional pleadings were filed, and the record closed at the conclusion of the conference.

FINDINGS OF FACT

Upon my review of Osgood's Petition and the parties' submissions, I **FIND** the following as **FACT**:

In 2004, Osgood was approved by the NJDOE to open an Approved Private School for Students with Disabilities (APSSD). She now seeks to establish a new APSSD, and submitted a new APSSD application to the NJDOE in 2023.

Osgood submitted her first draft of the Phase I portion of the application in or around November 20, 2023. As part of the Phase II approval process, NJDOE submitted Osgood's proposal for a new APSSD and Needs Assessment Survey to the counties requested by her in the application, which included over 600 Local Education Agencies (LEAs). These Needs Assessment Surveys were to be completed and returned to the NJDOE by the LEAs. According to the NJDOE, only fourteen of the 120 districts that responded to the Needs Assessment Survey indicated a positive response to Osgood's proposed new APSSD. Therefore, by letter dated March 21, 2024, NJDOE informed

Osgood that her application for a new APSSD was denied. The NJDOE informed Osgood that the returned Needs Assessment Surveys failed to reflect the required twenty-four potential student placements, and that, consequently, it determined that the need for Osgood's proposed program had not been established and that her application to establish the new school was denied. Osgood does not assert that she received the twenty-four required positive responses from districts/LEAs, nor does she challenge the NJDOE's basis for denying her application.

On or around May 3, 2024, Osgood filed with the Acting Commission of Education and the NJDOE's Office of Controversies and Disputes an appeal "regarding the current process of applying for an Approved Private School for Students with Disabilities." In the Petition of Appeal, Osgood writes that the Petition is regarding the NJDOE's APSSD Application for 2023. She asserts that the APSSD application changed since the last time she applied in 2004. Specifically, she maintains that the Needs Assessment process that is part of the Phase II review process was changed by the NJDOE and that this change is creating a "moratorium" on new APSSDs. Osgood asserts in her Petition that the wording of the current Needs Assessment "intimidates" the LEAs/districts from responding truthfully concerning their needs, and that because of this, she asserts, there has not been a new APSSD approved in over seven years, which the NJDOE denies. She alleges that districts "are reluctant to confirm they have OOD [out-of-district] needs due to the way the Needs Assessment is worded" by the NJDOE, and because the districts are now required to submit this directly to the NJDOE rather than to the applicant. Osgood recognizes that her most recent application did not yield the required twenty-four positive responses to be approved but maintains that the Needs Assessment process "is unacceptable and should be revised to allow districts to honestly express their out-of-district needs." In her Petition, Osgood expressly states that the relief requested in her Petition is "to change the Needs Assessment to allow school districts to express their needs truthfully."

Days after submitting her appeal to the NJDOE, petitioner submitted an Addendum to her appeal, seeking to amend the relief requested in the Petition to the following:

> First, revert Phase Two – Needs Assessment of the application back to the original procedure requiring the applicant to send the Needs Assessment to districts vs. the new procedure allowing the Needs Assessment to be distributed, collected, and tallied by the DOE. This change will remove the intimidation district feel expressing they have out-of-district (OOD) needs and allow them to speak freely about their needs. Again, not to encourage more OOD placements, but to provide districts with more choices so they can make the best decisions for their students and the district's budget.
>
> Second, change the Needs Assessment to allow school districts to express their needs truthfully. Specifically, reword the Needs Assessment Form as follows: . . .
>
> Third, I would like the opportunity to resend my Needs Assessment using my originally proposed name . . . .
>
> Fourth, the DOE should allow a small number of new APSSDs to open every few years to provide competition to existing APSSDs. Holding a moratorium on new private schools only allows the existing schools to increase tuition and 1:1 rates unchallenged . . . .

Osgood does not challenge the NJDOE's authority to develop and approve applications to establish new APSSDs in the State. She also does not dispute any of the facts upon which the NJDOE relied to deny her application, and she does not request that the NJDOE's denial of her application be reversed. Rather, she challenges the NJDOE's application process, including its process of developing and mailing out the Needs Assessment forms directly to the districts/LEAs rather than allowing the applicant to develop and secure these forms directly from the districts/LEAs; and she challenges the wording used by the NJDOE in these forms. Osgood also seeks to compel the NJDOE to approve a "small number" of APSSDs every year, and she seeks an opportunity to re-apply once these proposed changes are made by the NJDOE. She offers no legal support for her claims or to obtain the relief she seeks.

LEGAL ANALYSIS AND CONCLUSION

The NJDOE filed a Motion to Dismiss the Petition, in lieu of an Answer, asserting that the matter should be dismissed because the petitioner has advanced no cause of

action, even if her factual allegations are accepted as true, and because there are no constitutional or statutory bases to grant the relief Osgood seeks, rendering further proceedings unnecessary.

N.J.A.C. 6A:3-1.10 provides:

> At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute, or other good cause.

In reviewing such a motion to dismiss, the inquiry is "limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 749 (1989). "Dismissal is the appropriate remedy where the pleading does not establish a colorable claim and discovery would not develop one." State v. Cherry Hill Mitsubishi, 439 N.J. Super. 462, 467 (App. Div. 2015). While a Petition is entitled to a liberal reading by the reviewing tribunal, dismissal is appropriate when, on its face, it fails to set forth a basis for relief.

The NJDOE regulates APSSDs and has adopted a process to accept, review and approve applications to create new APSSDs in the State. N.J.A.C. 6A:14-7.2 governs the application process and authorizes the NJDOE to determine if any proposed program is needed. The NJDOE's current application process includes the dissemination and review of Needs Assessment Surveys/forms submitted to prospective sending school districts for any new proposed APSSDs.

Here, Osgood is not appealing the NJDOE's denial of her application, and she does not dispute any of the facts upon which the NJDOE relied to deny the application for a new APSSD. She concedes in her Petition that she failed to secure the required positive responses for potential student placements from the districts that were sent a Needs Assessment Form. Rather, Osgood is challenging the NJDOE's application process, including the manner in which it obtains Needs Assessment Surveys, the

language contained in these surveys/forms, and she asserts that the NJDOE should revert to its "original procedure." She claims that the NJDOE's current procedure is unfair; it discourages LEAs/districts from truthfully and accurately reporting their needs; and that this procedure effectively creating a moratorium on the approval of any new schools. Even if Osgood's factual allegations as reflected in the Petition are true, however, she has advanced no cause of action or colorable claim upon which relief can be granted by this tribunal. Moreover, this tribunal is without jurisdiction to grant the specific relief Osgood seeks in response to her claims. This tribunal is without authority to compel the NJDOE to approve any number of APSSD applications per year; to restrict the NJDOE from creating and/or obtaining Needs Assessment Surveys as part of its consideration of an APSSD application; or to order the NJDOE to re-write, as Osgood suggests, the Needs Assessment Forms that it distributes as part of the application process.

Consequently, upon my review of the Petition and the Addendum to the Petition, and while considering the allegations as true and affording petitioner all reasonable inferences that could be drawn therefrom, I **CONCLUDE** that this Petition must be dismissed because Osgood has failed to advance any cause of action upon which relief can be granted, and because there is no legal basis to grant the specific relief she seeks.

In order to effect a change to an application process, the petitioner may always seek redress through a petition for rulemaking under N.J.A.C. 1:30-4.1, which provides that "[a]n interested person may petition an agency to adopt a new rule or amend or repeal an existing rule."

ORDER

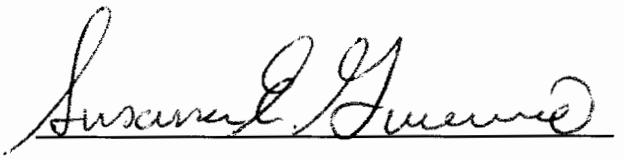
It is hereby **ORDERED** that the respondent's motion to dismiss be **GRANTED**, and that the Petition be **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

September 12, 2024
DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

407-24

New Jersey Commissioner of Education

Final Decision

N.D., on behalf of minor children, N.D-T., C.D-T., and C.D.,

Petitioner,

v.

Board of Education of the Township of Union, Union County,

Respondent.

Synopsis

Petitioner filed a pro se petition challenging the determination of the respondent Board that her minor children were not eligible to receive a free public education in respondent's school district during the 2023-2024 and 2024-2025 school years. The Board sought reimbursement of tuition from petitioner, asserting that petitioner was not domiciled within Union Township during the relevant time period. Petitioner failed to appear at the September 20, 2024 hearing in this matter; the hearing proceeded on an *ex parte* basis to allow the Board to present its evidence. The record closed on September 24, 2024, following the Board's certification of per diem tuition costs for the period of the ineligible attendance.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1, public schools are free to any persons over five and under twenty five years of age who are domiciled within the school district; pursuant to *N.J.A.C.* 6A:22-6.2., if a student does not have a right to attend the school district, the Commissioner may assess tuition for the period of ineligible attendance; in this case, petitioner did not appear at the scheduled hearing in this matter and failed to prove that she was domiciled in Union Township during the time period in question. The ALJ concluded that since N.D. and her minor children were not domiciled within the District during the 2023–2024 and 2024-2025 school years, they are not entitled to a free public education there; accordingly, the ALJ granted the Board's counterclaim for tuition reimbursement, retroactive from September 5, 2023, to September 27, 2024, in the amount of $29,564.32 for 2023-2024 for N.D.-T, C.D.-T., and C.D., and for the 2024-2025 school year in the amount of $914.44 for C.D.-T. and C.D.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions and adopted the Initial Decision of the OAL as the final decision in this matter, with modification to the ALJ's breakdown of tuition costs for the 2023-2024 school year. Petitioner owes the Board tuition in the total amount of $30,478.76 for the 2023-2024 and 2024-2025 school years when her three children were ineligible to attend school in the District. The petition of appeal was dismissed.

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.

407-24
OAL Dkt. No. EDU 08758-24
Agency Dkt. No. 136-5/24

New Jersey Commissioner of Education

Final Decision

N.D. on behalf of minor children, N.D-T., C.D-T., and C.D.,

Petitioner,

v.

Board of Education of the Township of Union, Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered.[1]

Upon review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner was not domiciled in Union (District) during the 2023-2024 and 2024-2025 school years. The Commissioner further concurs with the ALJ's conclusion that N.D.-T, C.D.-T., and C.D., were therefore not entitled to a free public education in the District during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor children were ineligible to attend school in the District. Upon review, the Commissioner agrees with the ALJ that the Board is entitled to a tuition reimbursement

[1] Petitioner emailed the Office of Controversies and Disputes on October 17, 2024, indicating that her children now attend private school and contending that she does not owe the Board anything. Petitioner also attached a copy of a lease. Petitioner did not copy the Board or the ALJ on her email. To the extent that this submission could be considered exceptions, it is untimely and does not comply with the service requirements of *N.J.A.C.* 1:1-18.4(a). Therefore, it was not considered.

of $29,564.32 for the 2023-2024 school year. However, the Commissioner disagrees with the ALJ's breakdown of costs, which appears to contain minor typographical errors. The ALJ mistakenly lists the cost for N.D.-T. as $9,926.83, but the correct amount is $9,912.83. The ALJ correctly lists the cost for C.D.-T. as $9,926.27. The ALJ mistakenly lists the cost for C.D. as $9,925.22, but the correct amount is $9,725.22.[2]

Regarding the 2024-2025 school year, the Commissioner concurs with the ALJ's finding that petitioner owes the Board $914.44 for C.D.-T's and C.D.'s ineligible attendance. The Commissioner further concurs with the ALJ's finding that petitioner owes the District a total of $30,478.76 for the ineligible enrollment of N.D.-T, C.D.-T, and C.D. during the 2023-2024 and 2024-2025 school years.

Accordingly, the Initial Decision is modified with respect to the breakdown of costs for the 2023-2024 school year, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2024
Date of Mailing: November 6, 2024

[2] These amounts are based on the cost per student for Grade 12, Grade 7, and Grade 6 for the 2023-2024 school year listed in the District's Certification of Yolanda Koon, Business Administrator/Board Secretary for the District (R-4), for 110 days of ineligible attendance.

[3] 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 08758-24
AGENCY DKT. NO. 136-5/24

N.D. ON BEHALF OF MINOR CHILDREN
N.D.-T., C.D.-T., AND C.D.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF UNION, UNION COUNTY,
Respondent.

No appearance by N.D., petitioner, pro se

Sonica Dixon, Esq. for respondent (Taylor Law Group, LLC, attorneys)

Record Closed: September 23, 2024 Decided: September 27, 2024

BEFORE: **KIMBERLY K. HOLMES**, ALJ:

STATEMENT OF THE CASE

Petitioner, N.D. and her minor children, N.D.-T., C.D.-T., and C.D., live together but are not domiciled within the school district of Union, New Jersey. Is petitioner entitled to a free public-school education in Union? No. Under N.J.S.A. 18A:38-1(a) and N.J.S.A. 6A:22-6, public school shall be free to minors who are domiciled within the school district.

PROCEDURAL HISTORY

On April 25, 2024, the Board of Education of the Township of Union (Board) determined that petitioner's children, N.D.-T., C.D.-T. and C.D., were ineligible to attend the schools in Union because petitioner was not domiciled there.

On May 13, 2024, petitioner appealed the determination, and on June 18, 2024, the Board filed a counterclaim for tuition reimbursement.

On June 25, 2024, the Department of Education, Office of Controversies and Disputes, transmitted the case as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23.

On July 3, 2024, I was assigned this case and scheduled an initial prehearing conference for July 19, 2024.

On August 9, 2024, and August 14, 2024, I held two additional prehearing conferences at which time the parties agreed to exchange discovery by September 6, 2024, and appear for the hearing on September 20, 2024.

After the second prehearing conference, I scheduled the hearing and issued a prehearing order, dated August 14, 2024, which was sent by email and regular mail to the parties.

On September 20, 2024, N.D. failed to appear at 9:30 a.m. for the hearing. At my direction, my judicial assistant called petitioner, but her voicemail was full. My judicial assistant then emailed petitioner that the hearing would begin at 9:45 a.m. I waited until 10:00 a.m., but N.D. did not appear. Therefore, I held an ex-parte hearing and kept the record open until respondent submitted a certification concerning the per diem tuition rate for each of petitioner's minor children who attended school in Union during the 2023–2024 calendar year. On September 23, 2024, respondent submitted two certifications

concerning the per diem tuition rate for each of petitioner's children, and I closed the record.

FINDINGS OF FACT

Based on the evidence the Board submitted and having considered its sufficiency and the opportunity to assess the witness' credibility, I **FIND** the following as **FACTS**:

On December 14, 2023, a lessee, "B.N.", entered into a lease agreement with a lessor, "W.A." The lease was from January 1, 2024, to February 28, 2025, at 2519 Doris Avenue, Union, NJ. Petitioner was not listed on the lease. According to an email from W.A., the only tenant that was to be on the lease was "B.N. and her three minor children." (R-2.)

A water bill from New Jersey American Water, dated February 29, 2024, lists B.N., not N.D., as the customer at the 2519 Doris Avenue address in Union. (R-3a.)

A gas bill from Elizabethtown Gas, dated February 23, 2024, lists B.N., not N.D., as the customer at the exact address. (R-3b.)

A gas bill from PSE&G, dated January 17, 2024, lists B.N., not N.D., as the customer at that address. (R-3c.)

On April 29, 2024, W.A. confirmed in an email with respondent that N.D. was not a tenant under the lease and that B.N. would be in violation of the lease if "additional people mov[ed] into the house without [his] written approval." (R-2.) Indeed, W.A. did not alter the lease to include N.D. The lease contains only B.N.'s name as the tenant for the Union address.

The four documents N.D. submitted into evidence do not establish domicile. A registration renewal was presented. (P-1.) A telephone bill from Verizon, dated "May 6," does not include the year. (P-2.) A change of address from DMV, dated January 7, 2024, was given. (P-3.) A United States Postal Service change of address request lists an

effective date of January 14, 2024, was submitted. The old address was listed as 2717 Vauxhall Road, Union, New Jersey 07083-4152. (P-4.)

For the 2023-2024 school year, the cost per student for Grade 12 was $16,221, for Grade 6 it was $16,243, and for Grade 5 it was $15,914. (R-4.)

2023-2024 School Year – Breakdown of Costs

N.D.-T. started school on January 1, 2024, and was improperly registered in the district for 110 days with a total tuition cost of $9,926.83.

C.D.-T. started school on January 1, 2024, and was improperly registered in the district for 110 days with a total tuition cost of $9,926.27.

C.D. started school on January 1, 2024, and was improperly registered in the district for 110 days with a total tuition cost of $9,925.22.

Based on a 180-day school year, the total tuition reimbursement cost of the three minor children of N.D. was $29.564.32 for 2023-2024. (R-4.)

For the 2024-2025 school year, the cost per student for Grade 6 and Grade 7 (C.D.-T. and C.D. respectively) is $16,460 with a per diem rate of $91.44. (R-5.)

2024-2025 School Year – Breakdown of Costs

C.D.-T started school on September 5, 2024, and was improperly registered in the district for five days with a total tuition cost of $457.22.

C.D. started school on September 5, 2024, and was improperly registered in the district for five days with a total tuition cost of $457.22.

Based on a 180-day school year, the total tuition reimbursement cost of the two minor children of N.D. is $914.44 for 2024-2025. (R-5.)

The total tuition reimbursement owed by N.D. to the Board for the 2023–2024 and 2024-2025 school years is **$30,478.76.**

Given the discussion of the facts, I **FIND** that N.D. is not domiciled in Union and tuition reimbursement is owed to the Board.

CONCLUSIONS OF LAW

Public school shall be free to a minor who is domiciled within the school district, N.J.S.A. 18A:38-1(a); New Jersey has consistently held that the domicile of the child follows the domicile of the parent, Shim v. Rutgers, 191 N.J. 374, 399 (2007). Moreover, if a student does not have a right to attend the school district, the Commissioner may assess tuition. N.J.A.C. 6A:22-6.2.

In this case, N.D.-T., C.D.-T., and C.D. were not domiciled in Union because their mother, N.D., was not domiciled in Union.

N.J.A.C. 6A:22-6.2(a) authorizes the Commissioner of Education to assess tuition for non-resident students prorated" to the time of the student's ineligible attendance in the school district." Since N.D. and minor children, N.D.-T., C.D.-T. and C.D, were not domiciled within the Union School District during the 2023–2024 and 2024-2025 school years, I **CONCLUDE** that they are not entitled to a free public education there. I also **CONCLUDE** that the Board is entitled to tuition reimbursement, retroactive from September 5, 2023, to September 27, 2024, in the amounts of $29.564.32 for 2023-2024 for N.D.-T, C.D.-T., and C.D., and $914.44 for 2024-2025 for C.D.-T., and C.D., respectively.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that N.D. owes the Board $29.564.32 for 2023-2024 for the period of N.D.-T., C.D.-T. and C.D.'s ineligibility from September 5, 2023, through the scheduled hearing date of September 27, 2024;

and $914.44 for C.D.-T., and C.D for the school days attended beyond the hearing date, for the remainder of the 2024-25 school year.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 under 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 **ACTING 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.

Kimberly K Holmes

September 27, 2024
DATE

KIMBERLY K. HOLMES, ALJ

Date Received at Agency: September 27, 2024

Date Mailed to Parties: September 27, 2024

lsr

APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

Bernadette Watson, Executive Administrative Assistant

EXHIBITS

For Petitioner:

P-1 Registration renewal

P-2 Verizon telephone bill from Verizon, dated "May 6" without the actual year

P-3 DMV change of address form, dated January 7, 2024

P-4 United States Postal Service change of address, dated of January 14, 2024

For Respondent:

R-1 Rental Lease Agreement between B.N. and W.A., dated December 14, 2023

R-2 Emails between W.A. and the Board, dated August 29, 2024

R-3 Utility bills of B.N. for the Union address

R-3a New Jersey American Water bill, dated February 29, 2024, with B.N. as the customer at the 2519 Doris Avenue address in Union

R-3b Elizabethtown Gas bill, dated February 23, 2024, with B.N. as the customer at the exact address

R-3c PSE&G was for a credit, dated January 17, 2024, with B.N. as the customer at that address

R-4 Certification 2023-2024

R-5 Certification 2024-2025

408-24

New Jersey Commissioner of Education

Final Decision

J.F., on behalf of minor child, J.J.C.,

Petitioner,

v.

Board of Education of the Town of West New York, Hudson County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that she and her minor child, J.J.C., were not domiciled in the respondent Board's school district (District) and that J.J.C. was therefore not entitled to a free public education in the West New York schools during the 2023-2024 school year; the Board contended that a residency investigation proved that petitioner was domiciled in North Bergen, not West New York. The petitioner subsequently failed to appear for two pre-hearing telephone conferences; on the date of the scheduled in-person hearing, petitioner J.F. sent an email at 12:22 a.m. stating that she was withdrawing her appeal. The ALJ granted the petitioner's request to withdraw but continued with the scheduled hearing on an *ex parte* basis in order for the Board to present its claim for tuition reimbursement.

The ALJ found, *inter alia*, that: petitioner withdrew her appeal; thereafter, the Board presented its proofs regarding petitioner's alleged residency in North Bergen at the in-person hearing; J.J.C. was not domiciled in West New York during the 2023-2024 school year, as the uncontested proofs and credible testimony presented by the Board showed that his parents were domiciled in North Bergen during the relevant time period; based on this competent and credible evidence, the ALJ concluded that J.J.C. was domiciled with petitioner in North Bergen, and was therefore not eligible for a free pubic education in West New York schools. Accordingly, the ALJ ordered that petitioner owes the Board $18,214.28 for the period of J.J.C.'s ineligibility from September 1, 2023, through June 30, 2024.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter, with modification to the amount of tuition owed by petitioner. Accordingly, the Commissioner ordered petitioner to reimburse the Board in the amount of $18,213.30, based on the per diem tuition of $102.90 and 177 days of ineligible attendance by J.J.C., as presented in the Certification of the District's Business Administrator. The petition of appeal was dismissed.

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.

408-24
OAL Dkt. No. EDU 08873-24
Agency Dkt. No. 150-5/24

New Jersey Commissioner of Education

Final Decision

J.F., on behalf of minor child, J.J.C.,

Petitioner,

v.

Board of Education of the Town of West New York, Hudson County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the petitioner pursuant to *N.J.A.C.* 1:1-18.4 have been reviewed and considered. The West New York Board of Education (Board) did not file a reply to petitioner's exceptions.

The Board determined that petitioner's child was not eligible to attend school in West New York because petitioner was domiciled in North Bergen. Petitioner appealed, and the case was transmitted to the OAL. Petitioner subsequently sent the OAL an email indicating that she "would like to dismiss the appeal, as [she is] not in town due to a family emergency." The Administrative Law Judge (ALJ) notified the parties that petitioner's request to withdraw would be granted but that the hearing would proceed because notice had been given. Following the hearing, at which only the Board appeared, the ALJ concluded that petitioner lives in North Bergen and that J.J.C. was not entitled to a free public education in West New York during the 2023-2024 school year.

The ALJ assessed tuition against petitioner in the amount of $18,214.28 for 177 days of J.J.C.'s ineligible attendance in West New York.

Petitioner's exceptions indicate that petitioner withdrew her appeal because J.J.C.'s permanent address is now in West New York. Petitioner includes a copy of her driver's license, listing an address in West New York. Petitioner also supplied a copy of a driver's license for A.H., listing the same address in West New York that is on petitioner's license, and a statement from A.H. indicating that he allowed petitioner and her family to reside periodically with him during the 2023-2024 school year due to the family's financial hardship. Petitioner argues that imposing a fee for a child's education is unreasonable, and states, "I trust this evidence [will] resolve the matter."

Upon review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain her burden of establishing that she was domiciled in West New York. The Commissioner further concurs with the ALJ's conclusion that petitioner's minor child was, therefore, not entitled to a free public education in the District during that time.

With regard to petitioner's exceptions, *N.J.A.C.* 1:1-18.4(c) provides that evidence not presented at the hearing shall not be submitted as part of an exception. Accordingly, the information submitted by petitioner, which was previously not part of the record, is not properly before the Commissioner.[1]

Moreover, petitioner withdrew her petition of appeal and is now precluded from arguing that the Board's residency decision was incorrect. Petitioner had the opportunity to make that argument to the ALJ, and to present any testimony or other evidence to support that claim during the hearing,

[1] However, this does not preclude the District from considering this information, or any other information that petitioner may present, if she seeks to re-enroll J.J.C. in the District based on her alleged updated living circumstances.

but she did not avail herself of that opportunity. As such, there is no basis to overturn the Board's residency determination.

The Commissioner further notes that the Board's determination is supported by the facts it presented during the hearing. Even if petitioner's exceptions were considered, the information she provides does not demonstrate that she was domiciled in the District or that J.J.C. was entitled to a free public education there during the relevant time period.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor children were ineligible to attend school in the District. Therefore, the Board is entitled to tuition reimbursement in the amount of $18,213.30[2] for September 13, 2023 through the end of the 2023-2024 school year, during which time petitioner's minor child was ineligible to attend school in the District.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, as modified with respect to the amount of the tuition reimbursement. Petitioner is directed to reimburse the Board in the amount of $18,213.30. J.J.C. shall be disenrolled from the District. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2024
Date of Mailing: November 6, 2024

[2] This amount is based on the per diem tuition of $102.90 and 177 days of ineligible attendance listed in the Certification of the District's Business Administrator. The Initial Decision orders tuition reimbursement of $18,214.28, which is the total amount of reimbursement requested in the certification, but which appears to be the result of a mathematical error.

[3] 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 08873-24
AGENCY DKT. NO. 150-5/24

J.F. ON BEHALF OF MINOR CHILD J.J.C.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK, HUDSON COUNTY,
Respondent.

No appearance by J.F., petitioner, pro se

Philip H. Gertner, Esq., for respondent (Taylor Law Group, LLC, attorneys)

Record Closed: August 30, 2024 Decided: September 10, 2024

BEFORE **KIMBERLY K. HOLMES,** ALJ:

STATEMENT OF THE CASE

Petitioner, J.F. is domiciled in North Bergen, New Jersey. Her minor child, J.J.C. lives with her. They do not live in West New York, New Jersey. Is petitioner entitled to a free public school education in West New York? No. Under N.J.S.A. 18A:38-1(a), public

school shall be free to a minor who is domiciled within the school district, and petitioner and her family meet no exception to this law.

PROCEDURAL HISTORY

On April 17, 2024, the Board issued a Notice of Final Ineligibility regarding the attendance of minor child, J.J.C., at West New York Public Schools.

On May 2, 2024, J.F. filed her pro se Residency Appeal on behalf of J.J.C.

On June 19, 2024, the Board filed an Answer and Counterclaim.

On June 26, 2024, the New Jersey Department of Education, Office of Controversies and Disputes, transmitted the case to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23.

On July 3, 2024, I was assigned this case.

On July 19, 2024, the first prehearing conference was scheduled. After having received notification electronically and by mail at the West New York address, J.F. failed to participate in the scheduled telephone conference.

On July 23, 2024, the second prehearing conference was scheduled. After having received notification electronically and by mail, J.F, appeared albeit late, and participated in the second scheduled telephone conference. At that time, L.C., the husband of J.F. and father to J.J.C., appeared.

On that same date, I issued a Prehearing Order, which set the in-person hearing date for August 23, 2024, and directed the parties to exchange discovery and their witness lists ten days before the hearing. On that date, neither J.F. nor L.C. appeared for the hearing. Rather, J.F. sent an email at 12:22 a.m. stating that she was withdrawing her appeal and was out of town for a family emergency. At 9:03 a.m., my judicial assistant

notified J.F. and Mr. Gertner, counsel for the respondent, that J.F.'s request to withdraw the appeal would be granted but that the respondent's counter claim for tuition reimbursement would be heard. Therefore, an ex parte hearing took place at the OAL in Newark, New Jersey, on August 23, 2024. The record remained open until August 30, 2024, to allow the respondent an opportunity to submit a Certification of the per diem tuition rate.

The record closed on August 30, 2024.

DISCUSSION AND FINDINGS OF FACT

The New Jersey Lease Agreement had the landlord's last name and signature as "Jacobe." J.F. and L.C. signed this Lease Agreement dated August 1, 2023, which ran from August 1, 2023, to August 1, 2024. (R-5.)

Three rent receipts for November 2023, December 2023, and January 2024, had the landlord's signature as "Jacobe." (R-5.)

A PSE&G bill for $70.45 from a Mr. Portillo with the exact same address as was on the Lease Agreement for West New York was in the file. (R-1; R-5.)

Allan C. Roth, Esq., is the Administrative Assistant to the Superintendent of Schools for the Board. Under oath, Roth stated that Portillo was a relative of J.F.

A $535.10 T-Mobile phone bill bearing J.F.'s name and West New York address was in her file. (R-5.)

The Board has levels of documentation that would suffice to establish residency in West New York. A lease, a deed, tax records and a utility bill were all types of documents that are held in the highest regard by the Board for validation of residency. A telephone bill receipt is on the lowest level of acceptability for residency by the Board.

The Board accepts lower-level documentations as proof of residency when other higher tier documents are coupled with the submission. To put it another way, a telephone bill and a lease would be strong indicators of residency whereas a telephone bill alone would not suffice.

On the deed, the owners' names were listed as " Jacome and Vivar, his wife." The address on the deed was for the address in West New York. The block and lot numbers were listed as 15 and 14 respectively. No other evidence was presented to show that anyone else owned the property other than Jacome. (R-6.)

The tax records for 6611 Hudson Avenue, listed Jacome and Vivar as the owners of block 15 and lot 14. There was no other evidence presented that anyone else paid the taxes from 2022 to 2024 on the property other than Jacome. The tax payment history shows that the last payment was made by Jacome on February 6, 2024. (R-6; R-7.)

Roth did an internet search of the parcel of land and presented a "NJ Parcel Ownership" document for 6611 Hudson Avenue. Under "owner information," Jacome and Vivar were listed with the exact same lot and block number as was provided in the deed and tax records. Here too, there was no other evidence presented that anyone else owned the property at that location other than Jacome. (R-6, R-7 and R-8.)

Three photographs were taken during the daytime by Lauren Curillo, the Assistant Principal, and investigated by Residency Compliance Officer Diaz. All photographs were from or near the address in North Bergen. The first one showed L.C. carrying a blue laundry bag with clothes inside at 4:15 p.m. on February 12, 2024, in North Bergen. L.C. was walking into that building. (R-1; R-2.)

The second photograph depicted a parked white car that belonged to J.F. near that address in North Bergen. (R-3.)

The third photograph showed L.C., J.F., and an unidentified person walking across the street to J.F.'s white vehicle which was parked in North Bergen. (R-3; R-4.)

A document which bore the title "Top New Jersey Bulldog Breeders" listed "JJS Puppy World" with the contact information for the address in North Bergen. It listed the email address and telephone number J.F. provided for the appeal for the matter at hand. (R-9.)

Roth submitted a timeline report of the residency investigation, which documented the residency home visit notes dated November 17, 2023, and March 13, 2024. The report delineated the excessive absences of J.J.C., and the behavior J.F. exemplified toward the staff of the Board when presented with questions regarding her residency.

The report also showed that on February 1, 2024, an employee of the Board for West New York saw J.F. parking her car in North Bergen at 4:40 p.m. and in the same area the next day at 11:00 a.m. (R-1.)

Curillo saw J.J.C. at 8:42 a.m. leaving from the address in North Bergen on February 12, 2024. (R-1.)

Diaz checked the mailboxes at the address in West New York, and neither J.F. nor L.C.'s names were listed on any mailbox. (R-1.)

The voter registration for L.C. listed his address in North Bergen. (R-10.)

On August 23, 2024, Roth testified that J.J.C. was a general education student who did not receive special education services.

On August 26, 2024, Dean Austin, the Business Administrator to the Board, submitted a Certification which outlined the tuition assessment at a rate of $102.90 per day for each day of ineligible enrollment. Austin described this tuition rate as that applying to a sixth-grade student, including J.J.C., for the 2023-2024 school year.

During the entire 2023–2024 school year, J.J.C. attended PS #4 in West New York. The Board seeks tuition reimbursement for the 2023-2024 school year as it was determined that J.J.C. was not eligible for a tuition-free education.

After the hearing, Austin confirmed that J.J.C.'s start date was September 13, 2023. The Certification stated that J.J.C. was "improperly registered" in the district for one hundred and seventy-seven days for a total of $18,214.28 of tuition reimbursement owed by J.F. and L.C. to the Board for the 2023–2024 school year.

Given the discussion of the facts, I **FIND** that petitioner lives in North Bergen. She does not live in West New York.

CONCLUSIONS OF LAW

Public school shall be free to a minor who is domiciled within the school district, N.J.S.A. 18A:38-1(a); New Jersey has consistently held that the domicile of the child follows the domicile of the parent, Shim v. Rutgers, 191 N.J. 374, 399 (2007); and if a student does not have a right to attend the school district, the Commissioner may assess tuition, N.J.A.C. 6A:22-6.2.

In this case, J.J.C. was not domiciled in West New York as the uncontested proofs and credible testimony of Roth showed that his parents were domiciled in North Bergen. The domicile of an unemancipated child is that of his or her parent, custodian, or guardian. P.B.K. o/b/o minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super 419, 427 (App. Div. 2001). Based on the mountain of competent and credible evidence, I **CONCLUDE** that the domicile of the minor child J.J.C. was that of J.F. and L.C. in North Bergen not West New York.

N.J.A.C. 6A:22-6.2(a) authorizes the Commissioner of Education to assess tuition for non-resident students prorated" to the time of the student's ineligible attendance in the school district."

Based upon the facts adduced at the hearing through Roth's credible testimony and Austin's Certification, I **CONCLUDE** that J.F., L.C. and minor child J.J.C., were not domiciled within the West New York School District during the 2023–2024 school year, and that J.J.C. is not entitled to a free public education there. I also **CONCLUDE** that the Board is entitled to tuition reimbursement, retroactive from September 13, 2023, to June

30, 2024, for one hundred seventy-seven days, calculated at the rate of $102.90 per day, which totals $18,214.28. The $102.90 daily rate is the rate applicable to a general education student attending school in the district, and it is the rate used to calculate the total annual per pupil cost to the district.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that J.F. and L.C. owe the Board $18,214.28 for the period of J.J.C.'s ineligibility from September 1, 2023, through June 30, 2024.

Based upon the foregoing, it is **ORDERED** that this residency appeal is **DISMISSED** and that J.J.C. be disenrolled from the Town of West New York Schools. It is further **ORDERED** that respondent's counterclaim seeking tuition reimbursement is **GRANTED**. It is further **ORDERED** that J.F. and L.C. reimburse the Board, at a daily tuition rate of $102.90**,** for the period beginning September 1, 2023, to June 30, 2024.

It is further **ORDERED** that the J.F. and L.C. owe the Board the cost of tuition for an out-of-district student, J.J.C., for his attendance at Town of West New York (P.S. #4) in the amount of $18,214.28.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 under 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 **ACTING**

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.

Kimberly K Holmes

September 10, 2024
DATE

KIMBERLY K. HOLMES, ALJ

Date Received at Agency: September 10, 2024

Date Mailed to Parties: September 10, 2024

lsr

APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

Allan C. Roth, Esq., Administrative Assistant to the Superintendent

EXHIBITS

For Petitioner:

None

For Respondent:

R-1 Timeline of Residency Investigation
- Residency Home Visit Notes dated November 17, 2023, and March 13, 2024

R-2 Photo of L.C. with a blue laundry bag in North Bergen

R-3 Photo of white car belonging to J.F in North Bergen

R-4 Photo of J.F. walking to white car in North Bergen

R-5 Submitted Lease by J.F. and L.C.
- PSE&G bill for Mr. Portillo for 6611 Hudson Ave., Apt 2, WNY
- J.F. T-Mobile bill for 611 Hudson Ave., Apt. 2, WNY

R-6 Deed for 6611 Hudson Avenue, WNY

R-7 Tax Records for 6611 Hudson Avenue, WNY

R-8 NJ Parcel Ownership for 6611 Hudson Avenue, WNY

R-9 J.F. posting for 7200 Park Avenue, North Bergen

R-10 Voter registration for L.C. (7200 Park Avenue, Apt, 301, North Bergen)

R-11 PS #4 Log Entries

409-24E
OAL Dkt. No. EDU 14569-24
Agency Dkt. No. 244-7/24

New Jersey Commissioner of Education

Final Decision

Gregory Holmes,

Petitioner,

v.

New Jersey Department of Education, Office of Student Protection,

Respondent.

The record of this emergent matter and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. This matter shall continue at the Office of Administrative Law with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2024
Date of Mailing: November 6, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON MOTION FOR EMERGENT RELIEF
OAL DKT. NO. EDU 14569-24
AGENCY DKT. 244-7/24

GREGORY HOLMES,
Petitioner,
v.
NEW JERSEY DEPARTMENT OF EDUCATION, OFFICE OF STUDENT PROTECTION,
Respondent.

Gregory Holmes, petitioner, appearing pro se

Rachel B. Kristol, Deputy Attorney General. appearing on behalf of respondent (Matthew J. Platkin, Attorney General of New Jersey)

Record Closed: October 21, 2024 Decided: October 21, 2024

BEFORE **KIMBERLY A. MOSS**, ALJ:

In this case, petitioner Gregory Holmes seeks emergent relief to allow him to work in Public Schools. The matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case on October 17, 2024, on petitioner's application

for emergency relief. Respondent filed an answer on October 18, 2024. Oral argument was held on October 21, 2024, on which date the record closed.

FACTUAL DISCUSSION

I **FIND** the following to be the **FACTS** of this matter.

Holmes states that incidents occurred between him and his wife in December 1983. Although the petition does not clearly state the result of the incident, it infers that Holmes was criminally convicted of an incident.

On January 1, 1985, Holmes was arrested and charged with homicide. He was convicted of manslaughter on June 21, 1985. He was sentenced to thirty years in prison with twelve years of parole ineligibility.

Petitioner states that he has been investigated twice by the State Social Work Board twice and was cleared. He also states that he worked at the Rutgers University Upward Bound Program which serves high school students for over eight years.

The petition did not address the standard upon which emergent relief can be granted.

LEGAL DISCUSSION AND CONCLUSIONS

Petitioner does not meet the criteria of Crowe v. DeGioia for emergent relief. N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief. The regulation instructs in salient part:

> A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards be met for granting such relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982):
>
> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying petitioner's claim is settled;

3. The petitioner has the likelihood of prevailing on the merits of the underlying claim; and

4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

Petitioner has the burden of establishing each of the above requirements in order to warrant relief in his favor.

It is well settled that relief should not be granted except "when necessary to prevent irreparable harm." Crowe, supra 90 N.J. at 132. In this regard, harm is generally considered irreparable if it cannot be adequately redressed by monetary damages. Id. at 132-33. In other words, it has been described as "'substantial injury to a material degree coupled with the inadequacy of money damages.'" Judice's Sunshine Pontiac, Inc. v. General Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976) (citation omitted). See New Jersey Dep't of Environmental Protection v. Circle Carting, Inc., 2004 N.J. AGEN LEXIS 968 (April 2, 2004) (finding no irreparable harm in connection with the revocation of respondent's solid waste license in that financial loss is generally insufficient to demonstrate this requirement). The moving party bears the burden of proving irreparable harm. More than a risk of irreparable harm must be demonstrated. Continental Group, Inc. v. Amoco Chemicals Corp., 614 F. 2d 351, 359 (D.N.J. 1980). The requisite for injunctive relief requires a "'clear showing of immediate irreparable injury,'" or a "'presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by common law.'" Ibid. (citation omitted.)

Petitioner did not show irreparable harm would be caused if the motion was not granted.

The next issue is likelihood of success on the merits and the legal right underlying the claim is settled.

N.J.S.A. 18A:6-7.1 provides:

A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ for pay or contract for the paid services of any teaching staff member or substitute teacher, teacher aide, child study team member, school physician, school nurse, custodian, school maintenance worker, cafeteria worker, school law enforcement officer, school secretary or clerical worker or any other person serving in a position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or the State Bureau of Identification which would disqualify that individual from being employed or utilized in such capacity or position. An individual employed by a board of education or a school bus contractor holding a contract with a board of education, in the capacity of a school bus driver, shall be required to meet the criminal history record requirements pursuant to section 6 of P.L.1989, c.104 (C.18A:39-19.1). A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 may require criminal history record checks for individuals who, on an unpaid voluntary basis, provide services that involve regular contact with pupils. In the case of school districts involved in a sending-receiving relationship, the decision to require criminal history record checks for volunteers shall be made jointly by the boards of education of the sending and receiving districts.

An individual, except as provided in subsection g. of this section, shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or

a. An offense as set forth in chapter 14 of Title 2C of the New Jersey Statutes, or as set forth in N.J.S.2C:24-4 and 2C:24-7, or as set forth in R.S.9:6-1 et seq., or as set forth in N.J.S.2C:29-2; or

b. An offense involving the manufacture, transportation, sale, possession, distribution or habitual use of a "controlled dangerous substance" as defined in the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al. or "drug paraphernalia" as defined pursuant to N.J.S.2C:36-1 et seq.; or

c.

(1) A crime involving the use of force or the threat of force to or upon a person or property including, but not limited to, robbery, aggravated assault, stalking, kidnapping, arson, manslaughter and murder; or

(2) A crime as set forth in chapter 39 of Title 2C of the New Jersey Statutes, a third degree crime as set forth in chapter 20 of Title 2C of the New Jersey Statutes, or a crime as listed below:

Recklessly endangering another person N.J.S.2C:12-2
Terroristic threats N.J.S.2C:12-3
Criminal restraint N.J.S.2C:13-2
Luring, enticing child into motor vehicle, structure or isolated area P.L.1993, c.291 (C.2C:13-6)
Causing or risking widespread injury or damage N.J.S.2C:17-2
Criminal mischief N.J.S.2C:17-3
Burglary N.J.S.2C:18-2
Usury N.J.S.2C:21-19
Threats and other improper influence N.J.S.2C:27-3
Perjury and false swearing N.J.S.2C:28-3
Resisting arrest N.J.S.2C:29-2
Escape N.J.S.2C:29-5
Bias intimidation N.J.S.2C:16-1; or

(3) Any crime of the fourth degree involving a victim who is a minor; or

(4) Conspiracy to commit or an attempt to commit any of the crimes described in this act.

d. For the purposes of this section, a conviction exists if the individual has at any time been convicted under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense.

e. Notwithstanding the provisions of this section, an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record.

f. When charges are pending for a crime or any other offense enumerated in this section, the employing board of education shall be notified that the candidate shall not be eligible for employment until the commissioner has made a determination regarding qualification or disqualification upon adjudication of the pending charges.

g. This section shall first apply to criminal history record checks conducted on or after the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.); except that in the case of an individual employed by a board of education or a contracted service provider who is required to undergo a check upon employment with another board of education or contracted service provider, the individual shall be disqualified only for the following offenses:

(1) any offense enumerated in this section prior to the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.); and

> (2) any offense enumerated in this section which had not been enumerated in this section prior to the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.), if the person was convicted of that offense on or after the effective date of that act.

Petitioner was convicted of manslaughter, one of the above offenses. Petitioner has not shown that he likelihood that he would prevail on the merits. Petitioner's conviction disqualifies him from employment. Petitioner has not shown that the legal right underlying her claim is settled in his favor. It is settled in favor of respondent.

When the equities are balanced the petitioner will not suffer greater harm than the District if the relief is not granted. Petitioner did not show that he would suffer a greater harm than respondent if the motion was not granted.

Based on the foregoing, I **CONCLUDE** that petitioner has failed to meet the requirements set forth in N.J.A.C. 6A:3-1.6(b) warranting a stay or emergent relief.

Accordingly, I **ORDER** that petitioner's application for such relief be and hereby is **DENIED**.

This order on application for emergency relief may be adopted, modified or rejected by **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who/which by law is authorized to make a final decision in this matter. If **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

October 21, 2024

DATE

KIMBERLY A. MOSS, ALJ

ljb

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

In the Matter of Tenure Charges Against
Jason Whalen

Board of Education

Of the township of North Bergen,

Petitioner

- and -

Jason Whalen,

Respondent

Docket #:29-2/24
Opinion and Award

Before: Deborah M. Gaines, Arbitrator

APPEARANCES:

FOR THE PETITIONER:
Weiner Law Group LLP By:
Margaret Miller, Esq.

FOR THE RESPONDENT:
Oxfeld Cohen, P.C. By: Gail
Oxfeld Kanef, Esq.

Pursuant to NJSA 18A:6-16, as amended by P.L. 2012, c.26 and P.L. 2015, c. 109("TEACHNJ"), the tenure charges brought by the Township of North Bergen/Commissioner of Education ("the Board", "District" or "Petitioner") against Jason Whalen ("Whalen" or "Respondent") were referred to me by the Bureau of Controversies and Disputes for a hearing and Decision on

February 21, 2024. I conducted a hearing at the Board's Offices in North Bergen, New Jersey on August 26 and 27, 2024.

The parties had full and fair opportunity to examine and cross-examine witnesses, introduce documentary evidence and make argument in support of their respective positions. The parties' submitted written closing statements on October 1, 2024, whereupon the record was closed. The evidence adduced and the positions and arguments set forth in the parties' post-hearing briefs have been carefully considered in the issuance of this Opinion and Award, whether specifically referenced or not.

ISSUES PRESENTED

The parties stipulated to the following issues for arbitral determination:

> Is there just cause to discipline Respondent, Jason Whaley? If so, what shall be the remedy?

THE CHARGES

Respondent was served sworn tenure charges on December 21, 2023, which included three counts of unbecoming conduct and other just cause. Respondent is charged with possessing and using marijuana at school, smoking within the school building and failing to properly follow the protocol in securing the school.

BACKGROUND

Respondent began employment in the District's custodial department as an intern in 2010. He was appointed to a fulltime custodial position in 2012. His duties included cleaning the school and securing it after the custodial staff leaves for the day.

Assistant Superintendent of Facilities Thaddeus (Ted) Goscinski testified Respondent was most recently assigned to the McKinley School, where he worked the 3pm to 11:30 pm shift. According to Goscinski, three custodians worked the evening shift. Each was assigned to clean one floor. Respondent was responsible for the basement.

Goscinski testified Respondent had numerous performance issues. He noted Respondent received repeated written warnings and letters to file since 2014. The letters to file were all included as part of the record. [See, Board Exhibits 1-43]. They include instances of failing to perform his assigned duties, time and attendance, smoking, sleeping on the job, failing to secure the building, leaving early, and failing to properly clock out. [Id.]

Goscinski testified the issues in this began on September 19, 2023, when the District had its back to School night. According to Goscinski, he communicated his expectations to the staff in advance of the event for what they needed to do before

the event. In addition, he testified he added staff for the evening to ensure all the work would be completed.

Goscinski testified a number of issues arose with Respondent's performance that evening. First, he testified Respondent failed to clean his assigned area as directed. [Respondent Exhibit 54] Goscinski testified he observed the area himself and noted Respondent did not clean the bathroom's urinals and floors. He testified he asked Respondent why he failed to get the work done, but Respondent did not respond.

Goscinski testified he also issued a disciplinary memo to Respondent for leaving the building without permission and tripping the security camera when he left for the evening.

According to Goscinski, the incident with the alarm was raised when he received a call from the security company. He testified he called Custodian Bolanos to find out what happened. He testified Bolanos told him that Respondent failed to appear at the exit door as expected and also did not respond to texts, calls or the intercom. Goscinski called Respondent and determined it was Respondent who tripped the alarm, and he sent Bolanos back to the school to re-secure the building. Goscinski testified he also received a report during the same evening from Bolanos about marijuana smoke in the building. Goscinski testified he advised Respondent that his-coworker Jonathan said Respondent was smoking

marijuana and Respondent replied, it was legal. Goscinski testified he issued a letter to Respondent regarding the smoking as well. [Board Exhibit 47]. Goscinski testified about a week later, on September 25th, he was called to the school again by Bolanos. Goscinski testified he came to the building around 7pm and discovered the basement area smelled like marijuana. He testified he saw Respondent trying to suppress the odor. He testified none of the other floors of the building smelled. Goscinski testified he confronted Respondent saying the whole building smelled of marijuana, to which Respondent said, it is legal now.

Goscinski testified he attended an investigatory meeting on October 2, 2023. He testified Respondent attended with his Union Representative Ed Stevens. Goscinski testified Respondent denied using marijuana. He testified the issue of smoking was also raised and he noted during the discussion that he has warned Respondent repeatedly about smoking in the building. Custodian Jonathan Bolanos testified that he worked with Respondent at McKinley. Bolanos testified he was responsible for cleaning the first floor of the school. Bolanos testified that on back-to-school night, he heard people complaining about smoke. He testified he heard statements to the effect that they smelled cigarette smoke or weed. Bolanos testified he smelled smoke in the gym closet. He testified he did not see anyone smoking. He

testified he also smelled marijuana that night. He testified that although he does not smoke marijuana, he is familiar with the smell. Respondent testified he called Goscinski to report the smell.

Bolanos testified he has previously smelled cigarette smoke in the basement. While he has never seen Respondent smoking, he has seen cigarettes on Respondent's desk as well.

Bolanos testified he was halfway home on the same night when Goscinski called him to return to the school. Bolanos testified the security alarm was tripped when Respondent left the building after the alarm had been set. He explained that the process for securing the building was for the staff to meet together at the end of shift in the exist area and for either he or Gladys to set the alarm. He noted that on this night, Respondent did not appear at the exit, nor did he answer Bolanos' texts, phone calls or the school's intercom. He testified Respondent also called him and said he had tripped the alarm.

Bolanos testified, on September 25th, he saw Respondent rolling a joint of marijuana when he went to get a dust mop from the basement. Bolanos testified the substance he saw in front of Grievant was greenish in color and looked like large cookie crumbs. Bolanos testified although he does not smoke pot, he generally knows what it looks and smells like. He testified it was not tobacco.

Vivian Whalen testified she has been a matron for 23 years in the district. Her primary duties are cleaning bathrooms. She testified she was assigned to work with Respondent on back-to-school night. She testified she discovered that Respondent had not put toilet paper in the bathroom, and she went to get some and saw Respondent in the boiler room. She asked him why he was there as it was parent's night. She testified she saw him spraying. According to Vivian Whalen, she smelled cigarette smoke in the basement.

Amy Tierney, who was a part time custodian at the time of the incidents, testified that she was working in the building on September 19, 2023. She testified she is a smoker and when she first began, she and Respondent smoked inside the building on occasion when the weather was bad. She testified after a couple of months, she stopped because there were multiple signs around the school prohibiting smoking on the premises.

Tierney testified she did not see Respondent smoking on back-to-school night. However, she noted she did see him with a cigarette in his hand. She testified she no longer has a very good recollection, but believes she encouraged him to go outside with her to smoke. But he did not.

Tierney testified she had seen him on another occasion smoking marijuana in the school. She testified she never said

anything as she did not want him to get in trouble. Tierney testified she worked with him on numerous occasions, and he was aware of the duties he was responsible for. She noted he had also left the building at times but had no specific recollections.

Superintendent Jack Solter testified that issues regarding Respondent's conduct were raised to him from Board Secretary Cabrera, who works the Facilities Department. He testified the issue of marijuana was raised to him from parents as well and he directed an investigation be conducted and determine a course of action.

Solter testified he was advised that it was determined marijuana was present in the building and Respondent had violated the cigarette policy. Solter testified that his review showed Respondent had previously been reprimanded for a similar violation. He noted the parties' Agreement contains a provision that imposes a monetary fine for smoking. However, he testified he had no recollection of anyone being fined. Rather, individuals have been disciplined.

Solter acknowledged that marijuana smoking and certain types of possession are now generally legal in the state. He noted, however, it continues to be prohibited on school property.

Solter testified that as part of the investigation the special counsel for the Board of Education met with Respondent. He noted that it was his understanding that Respondent was

directed to take a reasonable suspicion drug test. Solter testified Respondent refused to submit to the test which, under the policy, is considered a positive test.

Solter testified in determining the appropriate penalty, he examined the Respondent's entire personnel file. He noted there was substantial documentation of prior disciplinary incidents. He noted Respondent's increment was withheld in June 2021. Testified he believed termination was appropriate because Respondent has a record of continually violating rules and has failed to improve.

***

Respondent testified he has been working as a full-time custodian for 12 years in the District. He testified for the past three and half years, he has worked at the McKinley school where his schedule runs from 3pm to 11:30 pm. He testified that in addition to him, he works with two other custodians, Gladys and Jonathan. He noted, his work assignment was in the basement, Jonathan worked on the first floor and Gladys was assigned to the second floor.

According to Respondent, upon being hired, he advised Goscinski that he has a learning disability, which he described as being "slow." He testified that he told his supervisor, Sebastian Arnown and later Goscinski and Mike Boyce. He testified

he advised them he may need things to be repeated or to walk him through certain things.

Respondent testified no one ever offered him an accommodation or inquired if he needed assistance. Respondent testified Goscinski often yelled at him and called him retarded. He testified that he also belittled him and called him stupid.

Respondent testified that in 2014 he worked for Mike Boyce. He testified Boye called him "spear chucker" and said he expected more from him. Respondent testified he did not complain at the time, but later when he was working security at Franklin, he reported the conduct. The complaint was investigated, and Boyce was later transferred and left the district. Respondent testified his relationship with Goscinski changed after the investigation. he noted the two were friends and Goscinski asked him why he had never said anything to him about the incident. He testified after the discrimination report was issued; Goscinski targeted him for every little thing.

Respondent acknowledged smoking. He testified he smokes Lucky Strike and Marlboro cigarettes as well has rolling his own tobacco. He initially testified he did not understand there was a no smoking policy, and no one had ever discussed it with him. He testified he generally smokes outside, but when questioned why, he said, it was for no reason.

Respondent acknowledged smoking inside the building at times. He testified he did not recall whether anyone had told him he was not allowed. He testified he continued to smoke inside the building and stated that many others did.

Respondent denied rolling marijuana at school or smoking it. He testified Amy was not accurate when she said he had done so on another occasion. He testified he thinks she lied because she was seeking a promotion.

Respondent testified he did not understand that his salary increment was withheld but acknowledged not getting a raise. He testified no one had explained to him why it was withheld. Respondent testified that he attended a meeting at some point in September 2023 with his Union Representative Stevens, as well as an attorney for the district. He testified he was accused of smoking pot in the building on back-to-school night. He testified he had not been sent home or tested. He testified he was asked to take a drug test, but Ed Stevens told him not to do so.

Respondent testified he does not believe he was given a "fair shake". He testified that he believes he was targeted after his complaints about Boyce. He testified that he has expressed a willingness to fix problems.

NJEA Edward Stevens testified that he was involved in the negotiations for the collective bargaining agreement. He noted

smoking fine is in the contract, which provides in Section 26 that any member smoking in the building will be subject to a $100 fine. He noted it has been in the contract since 1998. Stevens testified he represented Respondent in an investigatory meeting on October 2, 2023. He testified there was an allegation of smoking marijuana on school grounds. He testified they asked Respondent to take a drug test. Stevens testified he told the Board it was not appropriate because it was well after the fact and would prove nothing. He testified he would advise Respondent not to take the test. He testified it never got to the point where Respondent was told directly to take a drug test.

Positions of the Parties

Position of the District

On this record, the Board argues: (a) it has met its burden of establishing just cause for termination by a preponderance of the evidence under the statute; (b) all school employees, including custodians, must conduct themselves in a "manner which will reflect dependability and inspire confidence" and conduct himself in a manner that in no way condones or encourages the use of drugs"; (c) the uncontroverted testimony and documentary evidence shows Respondent has a history of "flagrantly disregarding the Board's Policies and practices, including violating the District's rules against smoking; (d) Respondent's refusal to undergo reasonable suspicion testing is also grounds

for termination; (g) Respondent's protracted disciplinary record including failure to perform duties and meet the expectations of his job is further grounds to sustain discharge; (h) the testimony of Groscinski, Vivian Whalen, Bolanos and Tierney was more credible than the self-serving statements offered by Respondent; (i) the District's witnesses established Respondent consistently smokes on the premises and was caught smoking on September 19 and 24, 2023; (j) the record evidence shows Respondent was repeatedly provided verbal and written warnings regarding smoking; (k) Respondent's contention that he did not know the rules is simply not credible; (l) in addition to smoking on the premises, Respondent failed to ensure that his areas were cleaned, as established by Goscinski who inspected the area; (m) the record evidence establishes Respondent tripped the alarm and failed to notify his supervisor and respond to repeated attempts to contact him prior to setting the alarm; (n) Bolanos testified credibly that he saw Respondent rolling a marijuana cigarette on September 24, 2023 and smelled marijuana in the basement; (o) Respondent did not deny smoking, but rather told Goscinski that it was legal; (p) the District witnesses established that during the investigatory meeting, Respondent was directed to undergo a reasonable suspicion drug test and failed to comply; (q) Respondent's testimony that he never smoked marijuana, any concern about being tested was misplaced; (r) Respondent's conduct between

September 19 and 25 alone is cause for termination, but given the documented warnings, reprimands and prior increment withholding, the termination should be upheld; (s) there are no mitigating factors to reduce the penalty sought by the District; (t) the harassment cited by Respondent by Mr. Boyce is not relevant to this proceeding, as Mr. Boyce was transferred five years earlier; (u) Respondent has not contested any of the letters, reprimands and memos documenting that he claims is retaliation; (v) the evidence shows Respondent was fully aware his conduct was not acceptable and he refused to alter his conduct and expressed no remorse; and his past record of smoking, failing to perform his duties and excessive absenteeism cannot be ignored and, in fact, demonstrate the likelihood that he would continue to disregard the reasonable rules of the Board.

Position of the Respondent

Respondent, on the other hand, asserts: (a) the District has failed to establish just cause to terminate and therefore he should be reinstated with full back pay; (b) the District's claim that Respondent was smoking marijuana on its premises has not been established; (c) the District has not proven that Respondent was directed to and refused to take a drug test, nor has it proven that a positive test under the circumstances could lead to the conclusion he used marijuana on September 19th within the building;

(d) the record evidence shows Respondent's supervisor had it in for him and did not properly investigate the allegations against Respondent; (e) the investigation conducted by Goscinski concerning cigarette smoking was based on assumptions, such as finding a can of soda with cigarette butts in it, and assuming it belonged to Respondent; (f) the memorandum issued to Respondent on September 20th mentions only cigarette smoke and not marijuana; (g) no evidence of impairment was presented by any witness; (h) Goscinski's credibility is undermined by his clear belligerence under examination; (i) Groscinski's testimony belied a belief that any infraction was attributable to Respondent; (j) Goscinski did not conduct a proper investigation - as Amy Tierney was also a smoker but he never questioned her; (k) the rules regarding smoking were never clearly conveyed to employees; (l) termination is not appropriate penalty for smoking since the parties' Agreement provides only a fine for smoking and not termination; (m) the District has engaged in disparate treatment related to infractions related to smoking, as Tierney admitted smoking on the premises and has never been disciplined; (n) Respondent was not sent home either on September 19 or 25th, after allegedly smoking marijuana or ordered to take a drug test on those dates; nor was he issued a memorandum on September 19th although it is claimed he was smoking pot; (o)the District failed to properly investigate any of the allegations regarding marijuana and these

assertions should be rejected; (p) the allegation that Respondent refused a test is not supported by the record evidence as there could have been no reasonable suspicion when testing was raised one week after the incident and the presence of marijuana; (q) the record evidence fails to establish Respondent failed to secure the building, as there was no evidence Respondent failed to lock the building and even if there was an infraction, it is not a terminable offense; (r) termination cannot be upheld given the failure to establish any of the underlying charges;

Decision

After carefully considering the entire record before me, including my assessment of the credibility of witnesses and the probative value of evidence, I find the Board has proven just cause to discipline Respondent and, under the circumstances, the appropriate penalty in this case is discharge from employment. My reasons follow.

Respondent is charged with three counts of Conduct Unbecoming. I find the credible record evidence establishes Respondent guilty of Count One, which deals with smoking in the school building. Smoking is prohibited in school buildings by statute. N.J.S.A. 26:3D-58 The record evidence shows Respondent was clearly on notice regarding the prohibition. Custodian Amy Tierney testified there are multiple signs posted within the school advising smoking is forbidden. Finally, Respondent was

specifically warned on May 2, 2022, that smoking was not permitted. He was issued a memorandum which read:

> Re: Smoking in Building
>
> This memo is to inform you that you left a bottle of cigarette bottoms in the boiler room. As you know, there is no smoking on school property. There no smoking in school building you must exit the building to smoke.
> [Board Exhibit 40]

While no one specifically witnessed Respondent smoking on back-to-school night, the circumstantial evidence is sufficient to meet the burden of proof in this case. I credit Custodian Bolanos he heard complaints from parents on back-to-school night regarding cigarette smoke in the building and, in fact, smelled it. I credit Vivian Whalen's testimony that she saw Grievant with a cigarette in his hand that night and Groscinski's testimony that he smelled the smoke from the basement. Groscinski testified he, in fact, saw Grievant spraying in the area to mitigate the smell.

Given the smoke from the area he is responsible for, the fact that he was seen with a cigarette in his hand, I find the evidence sufficient to establish Respondent guilty of Count One. Moreover, Respondent has acknowledged he has smoked in the building on previous occasions.

Count two deals with the most serious allegation. Respondent is charged with possessing and smoking marijuana in the school

building on September 25th. New Jersey law prohibits smoking marijuana on school premises. Contrary to Respondent's assertion, I do not find he was insufficiently placed on notice of the rule. Moreover, Respondent acknowledged Groscinski also accused him of using marijuana September 19th. Thus, he was on actual notice that such conduct was impermissible.

While no one directly observed Respondent smoking, I find the credible record evidence sufficient to establish Respondent guilty of the charge. First, I credit Bolanos' testimony that he saw marijuana on Respondent's desk, which is a violation as well. His description of the substance as greenish and having the texture of large cookie crumbs is consistent with marijuana. Moreover, Tierney, Groscinski and Vivian Whalen all testified they smelled marijuana coming from the basement of the school. Likewise, Respondent was observed trying to cover up the smell.

Respondent's contention the investigation was insufficient is not persuasive. Goscsinski specifically received a report from Bolanos, smelled marijuana concentrated in the basement and confronted Respondent about the smell, and Respondent's reply that it was legal was taken to be an admission by Goscinski. I find Goscinski's hearing the statement as an admission to be reasonable. Likewise, an investigatory meeting was held later at

which time Respondent had another opportunity to explain himself. Under these circumstances, I find the investigation sufficient to meet due process standards.[1]

I do not find Respondent's assertion that the Board's witnesses were not credible persuasive. First, I note none of the co-workers embellished their testimony. They testified only as to what they observed. Their descriptions made sense and had the ring of truth. Respondent, on the other hand, was not credible on many important points. He claimed initially he did not know smoking was not allowed, yet on May 2, 2022, he specifically received a written warning advising him such. Likewise, he claimed never to smoke marijuana, yet Tierney, with whom he was friendly testified reluctantly that she had seen him with marijuana on a prior occasion in the building.

Finally, the record evidence establishes Respondent failed to properly perform his duties in connection with securing the building on September 19th as well. The credible record evidence establishes the procedure for the staff closing the building at 11:30 pm is for anyone working to gather at the exist when the

[1] Given my findings, I do not find it necessary to consider the District's assertions regarding whether Respondent was ordered to take a reasonable suspicion drug test or what implication his not taking the test should have on the charges.

alarm is set and to leave the building together. I credit Bolanos that Respondent not only failed to meet at the exit but, more importantly, failed to respond to his texts, calls on the cell phone and intercom. In addition, Grievant left afterward and tripped the alarm at 11:40 pm, after the shift ended. He clearly should have known that he was the last person leaving and the alarm would have been on. His failure to attempt to avoid this, meant the alarm was signaled and the potential of police arriving. I find this constitutes conduct unbecoming.

Having found Respondent guilty of conduct unbecoming and other just cause, I turn to the issue of penalty. Respondent's misconduct is serious. Possessing and using marijuana in the school building is explicitly prohibited and at odds with the school's mission. Respondent's actions in this case demonstrate a disregard for the rules that he certainly was on notice of and should have understood. The issue with smoking was compounded by the fact Respondent did so at back-to-school night - a time when parents were present in the school and observing the school environment that is provided to their children.

I find termination to be the appropriate penalty in this case based on Respondent's overall record. Respondent had 43 uncontested disciplinary letters in his file. They included warnings for failing to perform his duties, attendance, smoking, failing to secure the building, failing to properly punch out

among other things. None of the issues raised in the letters appear "nitpicky". Moreover, they are uncontested. To the extent Respondent claims they are retaliatory, there is no credible record evidence to support his allegation.

I do not find any mitigating circumstances sufficient to reduce the penalty in this case. Respondent has not demonstrated any remorse or reflection that indicates any further corrective action would be effective. Respondent continually claimed to not be aware of the rules, which I found not credible and reflects a lack of responsibility. Moreover, even when he acknowledged knowing the rules, he testified he willingly broke the rule regarding smoking.

Respondent's argument that Goscinski retaliated against him for filing a complaint against Boyce is not supported by the record evidence. The record evidence shows the District investigated and substantiated the complaint made by Respondent against Mike Boyce. [Respondent Exhibit 2]. In conjunction with Respondent's input, Boyce was transferred, and the District ensured no further contact between the two. [Id]. Respondent's contention that Goscinski retaliated against him is based on (1) Respondent's contention that after Boyce was transferred, Goscinski asked him why he did not report the issue to him; and (2) that only after the findings did the number of memoranda increase.

Even assuming Goscinski made that statement, it is not necessarily evidence of retaliatory intent. It could certainly be seen as an inquiry of concern. More importantly, there is no evidence Respondent ever complained or attempted to refute the memoranda at issue. Examination of the memos shows they all deal with discreet instances of misconduct and certainly within the realm of issues that go beyond "nitpicking" as Respondent claims. They deal with major issues of performance such as completing work assignments, regular attendance and smoking.

Under these circumstances, I find no reason to disturb the Board's judgment regarding penalty in this matter. As a result, I make the following

AWARD

The Board has demonstrated just cause for discipline and the appropriate penalty is termination from service.

Deborah Gaines

Dated: November 7, 2024 _____

Deborah Gaines, Arbitrator

Affirmation State of New York } County of New York
} ss:

I, DEBORAH GAINES, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: November 7, 2024

Deborah Gaines

_____

STATE OF NEW JERSEY DEPARTMENT OF EDUCATION
Agency Docket No.: 68-3/24

In the Matter of the TENURE Hearing between

The BOARD OF EDUCATION OF THE CITY OF CAMDEN, CAMDEN COUNTY, NEW JERSEY

PETITIONER

and

SHERWONDA RIOS,

RESPONDENT

BEFORE: **Ira Cure, Esq.**
Arbitrator

APPEARANCES

For the Petitioner School District:
Louis Lessig, Esq.
Brown & Connery, LLP

For the Respondent:
No Appearance

OPINION and AWARD

Pursuant to *N.J.S.A., 18A:6-16*, as amended by *P.L. 2012, c. 26 and P.L. 2015, c. 109* ("TEACHNJ"), the tenure charges alleging incapacity and other just cause brought by the Petitioner Board of Education of the City of Camden ("District" or "Petitioner") against Sherwonda Rios ("Rios" or "Respondent") were referred to me for a hearing and decision. The charges were filed by the District with the New Jersey Department of Education ("DOE") on or about December 20, 2023. An answer was filed by the

Respondent with the DOE on or about April 30, 2024. On May 1, 2023, Jennifer Simons, the DOE's Director of the Office of Controversies and Disputes, appointed me to hear this dispute. A hearing was originally scheduled to take place on June 28, 2024. Upon representation by counsel for the Respondent, I was told that the matter was close to being settled. The June 28th hearing was adjourned without date. When it became clear that no settlement would be forthcoming, I scheduled a new hearing date for September 19, 2024. At the request of the parties that hearing was also adjourned to September 27, 2024. I conducted a hearing at the offices of the District's attorneys Brown & Connery, LLP 360 Haddon Avenue, Westmont, New Jersey on September 27, 2024. Despite due notice, there was no appearance by the Respondent.

The District was represented by Louis Lessig, Esq. of the firm of Brown & Connery. Theresa Reese ("Reese"), the District's Chief Talent Officer, was the sole witness for the Petitioner. As noted, there was no appearance by the Respondent or her counsel. The District submitted a brief on October 25, 2024, and the record was closed at that time.

RELEVANT STATUTORY PROVISION

> N.J.S.A. 18A:6-10. Dismissal and reduction in compensation of persons under tenure in public school system
>
> No person shall be dismissed or reduced in compensation,
>
> (a) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public-school system of the state, or
>
> (b) if he is or shall be under tenure of office, position or employment during good behavior and efficiency as a supervisor, teacher or in any other teaching capacity in the Marie H. Katzenbach school for the deaf, or in any other

educational institution conducted under the supervision of the commissioner;

except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this sub-article, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided.

Nothing in this section shall prevent the reduction of the number of any such persons holding such offices, positions or employments under the conditions and with the effect provided by law.

THE CHARGE

TENURE CHARGES AGAINST SHERWONDA RIOS

I, Katrina M. McCombs, M. Ed., State Superintendent of the Camden City School District ("the District") do hereby charge that Sherwonda Rios ("Rios"), a tenured teacher, should be permanently dismissed from employment for incapacity and/or other just cause.

Charge One: Incapacity

1. Rios has been employed with the District since September 1, 2006, and is tenured. See CCSD SR001.

2. Beginning in December, 2021, Rios began to use extended leaves of absence related to a series of medical conditions.

3. On December 14, 2021, Rios tested positive for Covid-19, requiring a leave of absence beginning on December 14, 2021 until December 23, 2021. See CCSD SR002-005.

4. The December 14, 2021 to December 23, 2021 leave of absence was supported by a Certification of Health Care Provider Form signed by Dr. Emily Clausen, M.D. Id.

5. On January 3, 2022, Rios was hospitalized for a medical condition involving the use of her eyes, and started a subsequent leave of absence from work as a result of her medical condition. See CCSD SR006-008.

6. Rios was seen at the Wills Eye Hospital by Dr. Mark Moster, M.D., a Neuro-Ophthalmologist at Wills Eye Hospital, who observed Rios has "severe bilateral vision field constriction and blurred vision," and recommended that Rios "remain out of work until vision has improved." Id.

7. By way of Certification of Health Care Provider by Dr. Mark Moster dated January 27, 2022, Dr. Moster anticipated paid FMLA leave from January 3, 2022 to March 1, 2022. Id.

8. Additionally, by way of Certification of Health Care Provider by Dr. George D. Nghiem, DO dated February 22, 2022, Dr. Nghiem noted Rios was suffering from partial loss of vision and back pain as well as diabetes and cystic fibrosis, and anticipated a leave of absence from January 1, 2022 to March 31, 2022. See CCSD SR009.

9. Further, additional FMLA leave dates were approved from March 23, 2022 to June 30, 2022.

10. In total for the 2021-2022 School Year, Rios worked 56 out of a total 184 days and utilized 86.5 days of unpaid leave of absence.

11. On August 19, 2022, Rios provided another Certification of Health Care Provider Form to the District authorized by Dr. Mark Moster. The Certification explained

Rios could not perform "any job function that requires peripheral vision" and that Rios has "peripheral vision loss, nasally and inferiority, in both eyes." Dr. Moster also indicated that Rios required continuous absence from work. See CCSD SR010.

12. The Accepted Leave of Absence indicated on the Certification of Health Care provided an anticipated leave of absence to begin on September 1, 2022 to an end date of September 1, 2023. Id.

13. During the 2022-2023 School Year, Rios was not in work for a single day, but was primarily on an Unpaid Leave of Absence. See CCSD SR011-014.

14. In the past two school years, Rios worked a total of 56 days out of a possible 369 days.

15. On October 5, 2022, Human Resources Manager Janiell Tomlinson conducted an ADA call with Rios exploring possible accommodations. In the conversation, Rios expressed she was attending occupational therapy for her condition, but that she "doubts that she can return to a classroom" due to the loss of her peripheral vision, as well as difficulties with uncontrollable headaches, driving, and blurry vision. Rios had suggested a possible return to the District in an office position. See CCSD SR015.

16. On January 10, 2023, Human Resources Manager Janiell Tomlinson conducted a follow up call with Rios exploring possible accommodations. In this conversation, Rios concluded that she is not able to return to the classroom in any capacity, and explained that she is unable to see anything below her nose. Rios explained that her eye doctors were willing to consider office work options with accommodations, and that her doctors had given her special goggles for her vision. Rios reiterated that she continues with therapy, but will not be able to return to a classroom. See Id.

17. Additionally, the District had been in contact via email with Rios beginning in February 2023. In these conversations, Rios indicated she had given the Willis Eye Center a "return to work" form that would eventually be completed, signed, and returned to the District. Rios was instructed to have the Doctor write out accommodation notes because the District did not have its own "return to work" form. See CCSD SR016-019.

18. Rios provided a document to the District dated April 17, 2023 and signed by Dr. Mark Moster indicating the various medical conditions Rios has, including "occasional blurred vision, constricted field of vision, both eyes." Dr. Moster wrote that these impairments affect Rios by causing "fatigue from reading for extensive periods, tunnel vision" and "visual processing delays/ 'brain fog'." Dr. Moster stated these limitations affect Rios' ability to work by limiting her mobility, causing difficulty "observing each child," and "maintaining classroom environment." See CCSD SR020.

19. Further, the job description for Rios' position as a Pre-K teacher requires, as part of the major roles and responsibilities, a teacher to "consistently implementing and enforcing rules and consequences in the classroom setting and school-wide," (sic) as well as "effectively and innovatively incorporating technological resources into classroom lessons." Additionally, a candidate for Pre-K teacher is expected to demonstrate "[e]xceptional classroom management skills." See CCSD SR021-024.

20. Based on the documentation the District currently has in its possession, the continued absence of Rios, the unlikelihood of Rios' ability to function in a classroom setting, and the representation by Rios that she cannot return to a classroom, Rios is no longer capable of serving as a Pre-Kindergarten teacher.

21. Rios is no longer capable of continuing in a teaching position with the District due to her medical and health condition.

22. Therefore, pursuant to N.J.S.A. 18A:6-10, due to Rios' incapacity, the District seeks to terminate Rios' employment with the District as a teacher.

Charge Two: Other Just Cause

23. The above-described incapacity constitutes other just cause warranting Rios' permanent dismissal from employment with the District as a teacher.

24. Rios' continued absence from work has placed on (sic) strain on the District's resources in finding coverage for her classroom.

25. Rios' continued absence has also caused the District the inability to accurately evaluate her performance in the classroom, with her most recent evaluation occurring during the 2020-2021 School Year. See CCSD SR025-030.

26. Accordingly, Rios' incapacity constitutes other just cause warranting Rios' permanent dismissal from employment with the District as a teacher.

FACTS

Ms. Rios is a tenured Pre-Kindergarten teacher. Commencing in December 2021, Ms. Rios experienced a series of medical difficulties, including severe COVID which required a leave of absence. In addition, on January 3, 2022 Ms. Rios was hospitalized for a medical condition which concerned her eyesight. Her condition was subsequently identified as "severe bilateral vision field constriction and blurred vision." This condition also required a leave of absence. In addition, Ms. Rios suffered from back pain as well as diabetes and cystic fibrosis. Ms. Rios was given leave pursuant to the Family Medical

Leave Act ("FMLA") for the period January 1, 2022 to March 31, 2022. Additional FMLA leave was granted for the period March 23, 2022 to June 30, 2022. During the 2021-2022 School Year, Ms. Rios took eighty-six and one half (86.5) days of unpaid leave.

On August 19, 2022, Ms. Rios provided a certification from a heath care provider which stated that: Ms. Rios could not perform "any job function that requires peripheral vision" and that Ms. Rios suffered peripheral vision loss in both eyes. Ms. Rios accepted another leave of absence for the period September 1, 2022 to September 1, 2023. Ms. Rios did not work a single day during the 2022-2023 school year. District personnel contacted Ms. Rios to determine if there was any accommodation that she could receive which would permit Ms. Rios to return to service. Ms. Rios herself stated that she "doubted" that she could return to a classroom.

In addition, the District explored having Ms. Rios return to work in an office capacity. There is no evidence that any non-teaching or office position existed that could be offered to Ms. Rios and no evidence that one was offered to Ms. Rios, or that Ms. Rios was capable of performing office duties if such a position became available.

On April 17, 2023 Dr. Mark Mosher ("Mosher) submitted a document stating that Ms. Rios continued to have "occasional blurred and a constricted field of vision" in both eyes. Dr. Mosher stated that Ms. Rios' impairment caused "fatigue from reading for extensive periods, tunnel vision, visual processing delays/brain fog." Dr. Mosher also stated that these limitations limited Ms. Rios' mobility and would cause difficulty observing students and maintaining an adequate classroom environment.

The District concluded that Ms. Rios would not be able to meet the job requirements of a Pre-Kindergarten teacher and, based on Ms. Rios' continued absence

the District determined that Ms. Rios was no longer capable of serving in a teaching position. The District asserts that due to her medical and health conditions, Ms. Rios is incapacitated and as such the District seeks to terminate Ms. Rios's employment with the District. The District also asserts that Ms. Rios's continued absences placed a continuing strain on District resources, and that the District is unable to evaluate Ms. Rios' performance. Therefore, the District contends that there is just cause for the termination of Ms. Rios.

DISCUSSION

The burden in this case is on the District to prove by a preponderance of the evidence that the statutory criteria for the Tenure Charges have been met. The record evidence reveals that the District has met this burden. The documentary evidence and the testimony of Ms. Reese establish that the Respondent has not been able to fulfill her duties as a tenured Pre-Kindergarten teacher for 56 of the 184 teaching days during the 2021-2022 school and that the Respondent was not able to teach at all during the 2022-2023 school year. Where the District has met its burden, the burden then shifts to the Respondent to affirmatively prove that she has a defense to the Tenure charges brought against her. The Respondent has not appeared in this proceeding and has offered no explanations or defenses to the charges brought against her.

I find that the District has proven Charge One: Incapacity. The District has also proven Charge Two: Other Just Cause. The District has demonstrated through the testimony of Ms. Reese that the Respondent's excessive absence from the classroom placed a strain on the District's resources by requiring the District to find coverage for the

Respondent's duties.[1] The Respondent failed to rebut any of the evidence against her.

Based on the above, I render the following:

AWARD

The undersigned Arbitrator having been designated pursuant to *N.J.S.A., 18A:6-17.1(c), and AAA Labor Rule no. 27* hereby issues, and AWARDS as follows:

1. For the reasons set forth in this Decision and Award, the Arbitrator finds the District met its burden of proving that the Respondent Sherwonda Rios was incapable of performing her duties and the District had other just cause for terminating the Respondent. Therefore, the charges of "Incapacity" and "Other Just Cause" are sustained, and the dismissal of the Respondent Sherwonda Rios is upheld.

Dated: November 11, 2024

Ira Cure

State Of New York)
)
County of Kings)

On this 11th day of November before me personally came and appeared Ira Cure, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged that he executed the same.

Notary Public

ELIZABETH ORFAN
Notary Public, State of New York
No. 02OR4976601
Qualified in Kings County
Commission Expires April 23, 2027

[1] It is also follows that the Respondent's inability to perform her duties precluded the District from evaluating the Respondent's performance.

In the Matter of the **TENURE** Hearing	)	
	)	
"Petitioner"	)	**DECISION ON MOTION TO DISMISS**
	)	
STATE OPERATED SCHOOL DISTRICT OF THE CITY OF CAMDEN	)	
	)	
"Respondent"	)	AGENCY DOCKET NO. 275-8/24
	)	
CORINNE MACRINA	)	
	)	

Ruling on Respondent's Motion to Dismiss

In accordance with the Teacher Effectiveness and Accountability for Children of New Jersey Act, ("TEACHNJ Act" or "Act") P.L. 2012, Chapter 26 signed into law by Governor Chris Christie on September 25, 2022 the undersigned was appointed as Arbitrator of the dispute described herein.

BEFORE: Mattye M. Gandel, Arbitrator

APPEARING FOR PETITIONER:

Louis R. Lessig, Esq.
Brown & Connery, LLP

APPEARING FOR RESPONDENT:

Robert M. Schwartz, Esq.
Schwartz Law Group, LLC

BACKGROUND:

The designation letter from the Commissioner's office stated, in part, that

> the above captioned tenure charges have been reviewed and deemed sufficient, if true, to warrant dismissal or reduction in salary, subject to determination by the arbitrator of the respondent's motion to dismiss and any other defenses or motions which may be filed with the arbitrator. . .

A pre-hearing conference was held on October 22, 2024 during which time this Arbitrator started the call by asking the Respondent's attorney for its position on the Respondent's Motion to Dismiss and asked the Charging Party's attorney to respond. Upon hearing both their positions and advising them that I had read the complete file submitted to me by the Commissioner's office, I stated that the Motion to Dismiss was denied. The parties proceeded to identify dates for interrogatories and ten dates for the hearing and the location and time of the hearing dates.

Unfortunately, there was no recording of the call and memories differed with one party agreeing that I had denied the Motion and the other party having a different memory. On October 30, 2024, I received an email from Respondent's counsel regarding a second Motion to Dismiss this matter relating to the requirements of N.J.S.A. 18A:6-17.1(b)(3). Apparently, he did not recognize that the Motion to dismiss had been denied. Therefore, because it was important to clarify the record as to what might have been perceived as a mis-understanding, the following letter was sent to the parties on November 4, 2024 regarding the pre-hearing conference call and the steps forward.

Gentlemen;

On September 30, 2024, I wrote to the parties advising that I had been designated as the arbitrator in this matter, suggested some hearing dates and offered to arrange for a pre-hearing conference call. A conference call was held on October 22, 2024 with Mr. Schwartz, Mr. Farinella, Mr. Lessig, Mr. Clifford and me at which time Respondent's attorneys were asked to address its Motion to Dismiss. They cited the facts that Ms. Macrina had been disabled since June 2023 and that she was not given an opportunity to recover. Mr. Lessig responded that the Motion was inappropriate; that Ms. Macrina never said she had a disability and that there were many reasons for termination.

I responded that I had read the entire file sent to me by Jennifer Simons, Director, Office of Controversies & Disputes, which included the tenure charges filed by the Board and Respondent's Brief in Support of a Motion to Dismiss and a statement from the Acting Commissioner's office stating that

"charges have been reviewed and deemed sufficient, if true, to warrant dismissal or reduction in salary, subject to determination by the arbitrator of the respondent's motion to dismiss and any other defenses or motions which may be filed with the arbitrator. . ."

On our conference call and in response to the parties' positions, I clearly, succinctly but briefly stated that the Motion to Dismiss the Charges was denied. Subsequently, we proceeded to review the calendar for dates to hold the hearing. It was clear to me that the parties understood that the Motion to Dismiss had been denied because, if that had not been clear, there would have been no reason for the participants on the call to have spent time reviewing all our calendars, agreeing upon dates for interrogatories and dates for exchanging witness lists and the date, time and place for the first hearing on November 26, 2024. Additionally, a series of nine dates were agreed upon in January and February 2025. It is accurate that my email of October 22, 2024 did not state that the Motion to Dismiss had been denied but the actions of the parties made it very clear that everyone understood the way forward. Furthermore, because of my clear decision/statement and the clear actions of the parties during the call, there was no reason to discuss or even set a briefing schedule.

Finally, there is no proof that the filing of the Charges were amended or corrected. The Charges before me are as submitted to the Commissioner dated August 23, 2024 and as sent to me by Ms. Simons on September 25, 2024.

I trust that this matter is now settled and understood by both parties and that we can commence the tenure hearing on November 26, 2024.

Mattye M. Gandel
Arbitrator

During the pre-hearing conference call there was no mention of any briefing schedule because it was understood that the matter was proceeding to a hearing. In a memo sent to me on November 1, 2024, Respondent cited N.J.A.C 6A:3-1.5(g) regarding a briefing schedule. That language stated, in part, that

> . . . Briefing on the motions shall be in the manner and within the time fixed by the Commissioner, or by the arbitrator if the motion is to be briefed following transmittal to an arbitrator. (emphasis added)

Respondent claimed that this rule had not been followed but the Arbitrator cannot agree. The language is clear, "Briefing on the motions . . . fixed . . .by the arbitrator if the motion is to be briefed . . ." There was no request or discussion about briefing and, therefore, the clear statement in the November 4, 2024 letter was that the Motion to Dismiss was denied and that the Tenure hearing would commence on September 26, 2024.

SECOND MOTION TO DISMISS & DISCUSSION

The second Motion to Dismiss, issued on October 30, 2024 from Respondent, cited two counts. The first was that there had been no disposition of the first Motion to Dismiss. However, contrary to Respondent's claim, the record has established, as stated above, that during the October 22, 2024 pre-hearing conference call, the first Motion to Dismiss regarding the sick leave dismissal was denied. Though Respondent did not recognize that the Motion was denied, it was made very clear from the written response on October 22, 2024, well in advance of Respondent's October 30, 2024 letter, that the first Motion to Dismiss was denied.

Respondent's second claim addressed the District's failure to provide the "complete" Charge including its list of witnesses along with a summary of their anticipated testimony." N.J.S.A. 18A:6-17.1(b)(3) states that

> Upon referral of the case for arbitration, the employing board of education shall provide all evidence including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employee or the employee's representative. The employing board of education shall be precluded from presenting any additional evidence at the hearing, except for purposes of impeachment of witnesses. . . . (emphasis added)

The Board filed this tenure Charge with Kevin Dehmer, Acting Commissioner, Department of Education on August 23, 2024. A review of the packet of information revealed that it contained multiple documents as it relates to this tenure matter including all the Charges, documentary evidence in support of the Charges, three Confidential Investigation Reports including interviews with multiple staff members, Psychological Fitness-for-Duty Evaluation, Summons and supporting documents, suspension notice to Respondent and all certifications.

However, the statute is very clear that certain documents were required to be submitted upon referral of the case for arbitration. Amongst other items, it required the submission of "statements of witnesses, and a list of witnesses with a complete summary of their testimony."

Part of the packet submitted by the Board included the August 7, 2023 Investigation Report, which contained the names and the actual interviews of seven people; the August 29, 2023 Investigation Report contained the names and the actual

interviews of two people and the December 28, 2023 Investigation Report contained the names and the actual interviews of three people.[1] However, while the packet of information submitted by the Board contained the interviews of Board employees, a careful review indicated that statements of witnesses and a list of witnesses, separate and apart from the actual interviews, were not included. Furthermore, the language of the Statute included three required areas regarding witnesses and crafted the words in the Statute to be given meaning and this Arbitrator must take every word as having some meaning. Simply because the actual interviews were included did not mean that every interviewee would be called as a witness and cannot be considered complying with the clear language of the statute, which required the submission of a list of witnesses and a summary of their testimony.

While the Board attempted to cure this deficiency in its attachment to its October 31, 2024 letter, with the list of witnesses and a summary of their statements, the words of the Statute are very clear that this information was to be included "upon referral of the case for arbitration." The Board's claims that the witnesses listed in the referral to arbitration were known to Respondent and that the list and statements submitted on October 31, 2024 would have been no surprise to respondent are not the issues. They were required upon referring a matter for a tenure determination.

Furthermore, Respondent submitted three arbitration awards, which were

[1] One of the people listed, Steven Murray, could not be reached.

instructive in this matter.[2] In *Marie Ebert v the State-Operated School District of the City of Newark,* Agency Dkt. No 267-9/14, decided on January 30, 2025 by Arbitrator Tia Schneider Denenberg, it was determined that the Board failed to adhere to its statutory obligations as set forth and stated that "[T]he Legislature could not have more lucidly articulated the District's obligation" and agreed that "a prudent District would not file charges until it was ready to proceed with discovery, since the respondent had to be given all discovery documents and a complete summary of each potential witness' testimony as soon as the case is referred to the arbitrator."

Similarly, in *Tenure Charges of Noel Gordon and the Englewood School District,* Agency Dkt. 24-1/18 decided August 13, 2018, Arbitrator Joseph Licata stated that "since N.J.A.C 6A:3-5.1(b)1 requires a Statement of Evidence to include all documents identified therein, the failure to do so in a material sense, . . . cannot be countenanced" and granted the Motion to Dismiss.

Finally, in *Tenure Arbitration between the School District of the Camden County Technical Schools and Bett Fetty,* Agency Docket No. 173-7/19, Arbitrator Arnold H. Zudick granted the Motion to Dismiss the Charges because the District failed to comply with the statutory and procedural filing requirements.

In response to these decisions, the Board cited *Allen v E. Orange Bd. Of Educ.* Docket No. A-3995-19, Superior Court of NJ, Appellate Division, in support of its position

[2] Respondent submitted additional decisions, which granted Motions to Dismiss based on the fact that those boards did not submit the list of witnesses and a summary of the testimony when the matter was referred to the Commissioner's office and therefore, did not comply with the language of N.J.S.A. 18A:6-17.1(b)(3)

and to differentiate this matter from the cases supplied by Respondent. In this matter, the Board asserted that, as compared with the decisions cited by Respondent, it submitted its proofs and all relevant documents including all witnesses, their testimony and materials and that this information was known to Respondent when it filed this tenure matter on August 23, 2024.

However, one difference between this matter and the *Allen* decision is that in *Allen* the Appellate Division was reviewing an arbitration decision after the arbitrator had issued an Award on the merits. In fact, the *Allen* decision acknowledged that courts have limited statutory grounds on which to vacate an arbitration award.

Furthermore, the arbitrator heard plaintiff's motion to dismiss and proceeded to hear the merits, which can be differentiated from this matter. In fact, as stated by Arbitrator Denenberg,

> Holding a full evidentiary hearing is not a prerequisite to considering the motion to dismiss. Nothing in the relevant statutory provisions limits an arbitrator's ability to resolve motions before holding a hearing. Indeed, demanding a full evidentiary hearing before ruling on potentially dispositive motions could unnecessarily prolong tenure disputes, ignoring the expressed desire of the Legislature to expedite them.[3]

Further, there were multiple other issues considered by that arbitrator such as progressive discipline and the claim that the eight counts were not supported by substantial credible evidence. The Court disagreed with plaintiff's position that the failure of that board to supply discovery immediately upon referral of the case to arbitration

[3] *Marie Ebert v the State-Operated School District of the City of Newark,* Agency Dkt. No 267-9/14.

warranted vacating the arbitrator's award and cited the fact that the arbitrator gave the board an opportunity to provide the discovery required by the statute by adjourning the hearing to prepare for arbitration.

In contrast, there was only one issue before this Arbitrator, which was whether to grant the Motion to Dismiss. The merits of this case were not considered. Moreover, this matter has nothing to do with whether the Board was given additional time to present the information. The clear language of the Statute dictated when the documents must have been submitted. Giving the Board more time to present the required information would not have cured the violation.

Herein, Respondent claimed that the Board violated the clear language of N.J.S.A. 18A:6-17.1(b)(3) by not submitting, "[U]pon referral of the case to arbitration . . ." the list of witnesses and witnesses' statements, as required by the Statute. This Arbitrator must agree. While this Arbitrator always wants to, and does as a matter of longstanding practice, give all plaintiffs the opportunity to present all their arguments, this Arbitrator must agree with the arbitrators who have denied Motions to Dismiss based on clear and lucid language of the Statute, as stated by Arbitrator Denenberg. Affording more time, as done by the arbitrator in *Allen*, would hot have changed the violation of the Statute.

The Legislature selected specific words in the Statute and an arbitrator must read the entire Statute and give it its clear meaning. It is significant to note that not only does the Statute say [U]pon referral to arbitration, it continues by saying that "the employing board of education shall provide all evidence . . . (emphasis added). There is no choice.

Upon referral . . . the board shall provide all evidence, specifically in this matter, the list of witnesses and a summary of their testimony. Each word of the Statute must be considered and given meaning. Read as a whole, this Arbitrator was convinced that the Board was required to submit the requested documents when it submitted the Charges to the Commissioner. It did not do so.

In conclusion, this Arbitrator has reviewed and carefully weighed all arguments presented through written statements by both parties even though many facets were not referred to in the Decision. Considering all the facts, this Arbitrator must decide that the Board violated the clear, specific language of N.J.S.A 18A:6-17.1(b)(3) when it did not include the list of witnesses and the summary of the witnesses' testimony, as required by Statute and, therefore, Respondent's Motion to Dismiss is granted. Finally, through this ruling on the Motion to Dismiss, this Arbitrator has informed the Commissioner that the District has not conformed with the statutory requirements.

In consonance with the proof and upon the foregoing, the undersigned Arbitrator hereby finds, decides, determines and renders the following:

DECISION

1. The Motion to Dismiss is granted without prejudice to the District's right to re-file the tenure Charges.
2. If the charges are re-filed, the District must ensure that the re-filing comports with all applicable statutory provisions.
3. Respondent shall be awarded full back pay and benefits, as if she were in a principal position, but this Decision is not intended to require the District to return Respondent to the principal position in the Camden City School District.
4. The ten agreed upon hearing dates for evidence and arguments on the merits of this matter are canceled.

Mattye M. Gandel

Mattye M. Gandel

Dated: November 11, 2024
South Orange, NJ 07079

State of New Jersey)
:SS
County of Essex)

On the 11th day of November 2024, before me personally came and appeared Mattye M. Gandel, to me known and known to me to be the person described herein who executed the foregoing instrument and she acknowledged to me that she executed the same.

Manuela Barros

Notary Public

MANUELA BARROS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 27, 2028
2298440

419-24 Synopsis

New Jersey Commissioner of Education

Final Decision

K.P., on behalf of minor children, K.P. and K.P..,

Petitioner,

v.

Board of Education of the Township of Hamilton, Mercer County,

Respondent.

Synopsis

In this case on remand, *pro se* petitioner appealed the determination of the respondent Board that his minor child, Ky.P., was not entitled to a free public education in Hamilton schools during the 2022-2023 school year. (This matter pertains solely to Ky.P.; in the within decision, the Commissioner refers to K.P.'s minor children – both of whom share the initials K.P. – as Ky.P. and Ka.P., for purposes of clarity; the Board explained in its March 23, 2023, determination letter that it did not take any action with respect to Ka.P. as he remained eligible to attend school in Hamilton.) The Board contended that Ky.P. did not live with her father in Hamilton, but rather resided in Princeton Township, and demanded payment of tuition in the amount of $4,456.65 for Ky.P.'s ineligible attendance in the district.

On remand, the ALJ found, *inter alia*, that: after giving the petitioner a second opportunity to appear for a hearing, he once again failed to appear; based upon testimony and documentary evidence supplied by the Board, Ky.P. attended school in Hamilton Township for 55 days during the 2022-2023 school year while domiciled outside of the district; further, the cost of tuition for the 2022-2023 school year was $81.03 per day, or $14,586 per year for a third grade student. Accordingly, the ALJ concluded that the Board was entitled to payment from petitioner for Ky.P.'s tuition in the amount of $4,456.65.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ on remand and adopted the October 15, 2024 Initial Decision as the final decision in this matter. Accordingly, the Board's counterclaim for tuition was granted and petitioner was ordered to pay the Board $4,456.65 in tuition costs for Ky.P.'s period of ineligible attendance.

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.t

419-24
OAL Dkt. No. EDU 04401-24 (EDU 04952-23 on remand)
Agency Dkt. No. 137-5/23

New Jersey Commissioner of Education

Final Decision

K.P., on behalf of minor children, K.P. and K.P.,

Petitioner,

v.

Board of Education of the Township of Hamilton, Mercer County,

Respondent.

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

This matter concerns the Board's March 23, 2023, determination that Ky.P. does not reside in Hamilton Township and their demand for payment of tuition in the amount of $4,456.65 for Ky.P.'s ineligible attendance at school in the district during the 2022-2023 school year.[1] Petitioner appealed the Board's determination but failed to prosecute his appeal at the OAL.

In February 2024, the Administrative Law Judge (ALJ) granted petitioner's appeal and dismissed the Board's counterclaim for tuition. In March 2024, the Commissioner rejected the Initial Decision, dismissed the petition of appeal for failure to prosecute, and remanded the

[1] Because they share the same initials, in this decision, the Commissioner refers to K.P.'s minor children as Ky.P. and Ka.P for purposes of clarity. In its March 23, 2023, determination letter, the Board explained that it did not take any action with respect to Ka.P. and confirmed that he remained eligible to attend school within the Hamilton Township School District. Therefore, this matter pertains only to Ky.P., despite both children being named in the case caption.

matter to the OAL to develop the record regarding the number of days of Ky.P.'s ineligible attendance and the per diem cost of tuition.

On remand, the ALJ gave petitioner a second opportunity to appear for a hearing, and he failed to do so. Based upon testimony and documentary evidence supplied by the Board, the ALJ found that Ky.P. attended school in Hamilton Township for 55 days during the 2022-2023 school year while domiciled outside of the district. The ALJ further found that the cost of tuition was $81.03 per day, or $14,586 per year for a third-grade student. Accordingly, the ALJ concluded that the Board was entitled to payment from petitioner for Ky.P.'s tuition in the amount of $4,456.65.

The Commissioner concurs with the findings and conclusions of the ALJ on remand and adopts the October 15, 2024, Initial Decision as the final decision in this matter. "*N.J.S.A.* 18A:38-1(a) mandates that public schools are free to any person, [over age five and] under twenty years of age, 'who is domiciled within the school district.'" *K.K-M., on behalf of A.W. v. Bd. of Educ. of City of Gloucester City*, 463 *N.J. Super.* 24, 31 (App. Div. 2020). A child's parents "'shall have the burden of proof by a preponderance of the evidence' to prove domicile in the school district." *D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist.*, 366 *N.J. Super.* 269, 273 (App. Div. 2004) (quoting *N.J.S.A.* 18A:38-1(b)(2)).

If the petitioner fails to prosecute the appeal, "the Commissioner may assess tuition for the period during which the hearing and decision on appeal were pending, and for up to one year of a student's ineligible attendance in a school district prior to the appeal's filing and including the 21-day period to file an appeal." *N.J.A.C.* 6A:22-6.2(a). Because petitioner failed to prosecute the appeal, the Commissioner shall assess tuition against petitioner for the period during which

Ky.P. was ineligible to attend school in the district "computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance." *N.J.S.A.* 18A:38-1(b).

Accordingly, the Board's counterclaim for tuition is granted. Petitioner is hereby ordered to pay the Board $4,456.65 in tuition costs for Ky.P.'s period of ineligible attendance.

IT IS SO ORDERED. [2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 13, 2024
Date of Mailing: November 13, 2024

[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
OAL DKT. NO. EDU 04401-24
AGENCY DKT. NO. 137-5/23
(ON REMAND EDU 04952-23)

K.P. ON BEHALF OF K.P AND K.P.,
Petitioner,
v.
TOWNSHIP OF HAMILTON BOARD OF EDUCATION, MERCER COUNTY,
Respondent.

K.P., petitioner, pro se

Michael Pattantite, Esq., for respondent (Lenox, Socey, Formidoni, Giordano, Carrigg, Lang & Casey, LLC, attorneys)

Record Closed: September 24, 2024 Decided: October 15, 2024

BEFORE **NICOLE T. MINUTOLI**, ALJ

STATEMENT OF THE CASE

Petitioner appeals the determination of respondent, Township of Hamilton Board of Education (Board), that K.P. daughter[1] is not domiciled in the Township of Hamilton School District (District) and should be disenrolled and assessed back tuition of $4,456.65 for the days of illegal attendance.

PROCEDURAL HISTORY

Petitioner filed an appeal with the Department of Education ("the Department") on May 17, 2023. The Board filed an answer on June 5, 2023. The matter was transmitted to the Office of Administrative Law (OAL), where on June 5, 2023, it was filed as a contested case. N.J.S.A. 52:148-1 to -15; N.J.S.A. 52:14F-1 to -13.

A prehearing telephone conference was scheduled for June 20, 2023, but both parties failed to appear.

Notice of the rescheduled conference on August 1, 2023, was sent to the parties through email on July 12, 2023. Both parties appeared for this conference, during which they discussed K.P.'s domicile and agreed to appear at a subsequent conference.

On August 7, 2023, notice was sent to the parties of a telephone conference on September 5, 2023, through regular mail and email. A dial-in number was provided.

The petitioner failed to appear for the September 5, 2023, telephone conference, notify my office in advance, or request an adjournment. The petitioner then failed to appear for four subsequent telephone conferences.

[1] For clarity, I will refer to K.P. parent as "petitioner" and K.P. minor child as "K.P. daughter." Also, the pleadings should only have named K.P. daughter. There is no residency issue with K.P. son.

On November 9, 2023, notice was sent to the parties of a hearing by regular mail and email on January 5, 2024. The notice stated:

> If you do not attend the hearing, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.

On January 5, 2024, the Board appeared for the proof hearing, but the petitioner failed to appear and failed to notify my office in advance or to request an adjournment. The Board presented its proofs for its counterclaim, and the record remained open for the petitioner to explain his nonappearance and for the Board to provide additional information supporting its counterclaim. The Board made its submission on January 9, 2024. When no explanation was received from the petitioner regarding his failure to appear, the record closed on January 16, 2024.

An initial decision reversing the Board's findings was issued on February 6, 2024. On March 15, 2024, the Commissioner of Education reversed the initial decision, dismissed the petitioner's residency appeal, and remanded the matter to develop the record on the number of days of K.P.'s daughter's ineligible attendance and the per diem cost of tuition.

On June 4, 2024, the parties appeared for an in-person hearing. At that time, the petitioner advised that he has been residing in Hamilton for four years and that K.P. daughter resides with him. The petitioner further advised that as a truck driver, his schedule changes, and when he is scheduled to work overnights, K.P.'s daughter must stay with her mother, who resides in Ewing. The petitioner's schedule changes randomly, and K.P.'s daughter did not permanently reside with the mother but stayed with her temporarily.

Based upon the petitioner's assertions, both parties agreed to appear at a subsequent hearing on the residency issue. Notice of the rescheduled hearing for September 24, 2024, was emailed to the parties on June 5, 2024. The Board appeared for the hearing, but the petitioner failed to appear and failed to notify my office in advance

or request an adjournment. The hearing was held on September 24, 2024, testimony was taken, and the record was closed.

FINDINGS OF FACT

Based on the testimony of Dr. James Altobello, District Director of Operations, and the documentary submitted by the Board, I **FIND** the following as **FACTS**[2]:

1. K.P. daughter began attending school in the District in September 2022 as a third-grade general education school student for the 2022-2023 school year.

2. Thereafter, the respondent received information that K.P. daughter was not residing in Hamilton but was residing in Princeton Township.

3. The Board engaged the services of Tri-Shield Security and Protection to investigate K.P. daughter's actual residence.

4. Surveillance was conducted at the Princeton Township address. After a complete investigation, it was determined that K.P. daughter resided at the Princeton address with her brother's mother and did not reside in Hamilton Township.

5. On February 6, 2023, a residency hearing was conducted before the Board. The petitioner did not attend the residency hearing or claim he did not receive notice.

6. On February 22, 2023, the Board determined that K.P. daughter was not domiciled in or a resident of the Township of Hamilton, which would have entitled her to attend a school within the District without a tuition obligation for the school year 2022-2023.

[2] Although not required, I am restating the facts from the remanded EDU 04952-23, derived from the Board's Counterpetition for an Order Assessing Tuition, marked R-2.

7. By letter dated March 23, 2023, the Board notified the petitioner of its decision that K.P. daughter was ineligible to attend the District schools and of his right to appeal. This letter was sent to the petitioner at both the Hamilton and Princeton Township addresses via regular mail and Certified Mail, Return Receipt Requested.

8. Between March 23, 2023, through June 21, 2023, K.P. daughter attended school in the District for fifty-five days, though not domiciled in the District.

9. The annual per pupil cost for a general education school student in third grade in the District is $14,586.

10. The District was in session for 180 days during the 2022-2023 school year; the daily tuition rate for a general education school student is $81.03. The Board assessed K.P. $4,456.65 for fifty-five days of ineligible attendance.

11. K.P. daughter is not registered in the District for the 2023-2024 school year and did not attend school in the District during the 2023-2024 school year.

CONCLUSIONS OF LAW

At issue is whether K.P. daughter was entitled to a free education under N.J.S.A. 18A:38-1, which provides that public schools shall be free to persons over five and under twenty years of age who are "domiciled within the school district." See V.R. ex rel A.R. v. Hamburg Bd. of Educ., 2 N.J.A.R. 283, 287 (1980), aff'd, State Bd., 1981 S.L.D. 1533, rev'd on other grounds sub nom. Rabinowitz v. N.J. State Bd. of Educ., 550 F. Supp. 481 (D.N.J. 1982) (New Jersey requires local domicile, as opposed to mere residence, in order for a student to receive a free education).

A person who meets age requirements and is domiciled within a school district may attend its public schools free of charge. N.J.S.A. 18A:38-1(a). A person may have many residences but only one domicile. Somerville Bd. of Educ. v. Manville Bd. of Educ.,

332 N.J. Super. 6, 12 (App. Div. 2000), aff'd, 167 N.J. 55 (2001). A child's domicile is normally that of his or her parents. Ibid. The domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning, and from which he has no present intention of moving. In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), aff'd, 311 N.J. Super. 589 (App. Div. 1998), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051 (1999).

The acts, statements and conduct of the individual, as viewed in the light of all the circumstances, determine a person's true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959). The parent has the burden of proof by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)(2).

The record reflects that K.P. daughter attended fifty-five days of school within the District for the 2022-2023 school year while domiciled outside of the District. Accordingly, I **CONCLUDE** that K.P. daughter was not entitled to a free public education in the District. N.J.S.A. 18A:38-1(b)(1) provides that when the evidence does not support the claim of the resident, the resident shall be assessed tuition "for the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be computed based on 1/180 of the total annual per-pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the commissioner are enforced." The uncontested record reflects that the actual cost of K.P.'s attendance in-district was $81.03 per day, equaling $14,586 per annum. Accordingly, I **CONCLUDE** that the Board is entitled to reimbursement for tuition by the petitioner in the amount of $4,456.65.

ORDER

For the reasons above, I hereby **ORDER** that petitioner K.P. pay respondent Hamilton Township Board of Education tuition in the total amount of $4,456.65 for unauthorized attendance in the District schools for the abovementioned periods.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

October 15, 2024

DATE

NICOLE T. MINUTOLI, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

NTM/dw

APPENDIX

WITNESSES

For petitioner:

None

For respondent:

Dr. James Altobello

EXHIBITS

For petitioner:

None

For respondent:

R-1 Published Tuition Rates for 2022-2023 school year

R-2 Counter petition for tuition from EDU 04952-23 (remanded matter)

420-24

New Jersey Commissioner of Education

Decision

P.P., on behalf of minor child, S.P.,

Petitioner,

v.

Board of Education of the Camden County Technical Schools, Camden County,

Respondent.

Synopsis

Petitioner challenged the decision of the respondent Board which concluded that an unfounded harassment, intimidation, or bullying (HIB) complaint naming S.P. as the perpetrator was not filed for retaliatory reasons. The Board maintained that although it ultimately determined that S.P.'s actions did not meet the statutory definition of HIB, the HIB complaint at issue was legitimate, warranted investigation, and was not retaliatory. As background, S.P. was involved in an incident in November 2022 wherein he asserted that he was the victim of ridicule and bullying when A.W., a fellow student, threw food at him in the school cafeteria. Subsequently, an investigation determined that the incident constituted HIB against S.P. by A.W., and consequences were issued to A.W. In January 2023, A.W.'s mother filed a complaint against S.P., alleging an HIB incident involving threatening gestures and name calling against A.W. An investigation followed which failed to establish that S.P. had committed HIB against A.W. Following this second HIB investigation, petitioner filed a complaint on S.P.'s behalf alleging that A.W. had retaliated against S.P. for filing the original HIB complaint against her son. A hearing was held in this contested matter on May 22, 2024 at the Office of Administrative Law (OAL).

The ALJ found, *inter alia*, that: an action by a board of education is entitled to a presumption of correctness unless it is proven to be arbitrary, capricious, or unreasonable; under the Act, "harassment, intimidation, or bullying" is broadly defined as any gesture, any written, verbal, or physical act, or any electronic communication that is reasonably perceived as motivated by any actual or perceived distinguishing characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability, that takes place on school property and substantially disrupts the orderly operation of the school; in the instant case, the testimony of the school principal and member of the HIB investigation team provided reasonable and sound justification as to why the HIB complaint filed by A.W.'s parents did not constitute retaliation against S.P. The ALJ concluded that the Board's decision was not arbitrary, capricious or unreasonable; accordingly, the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its determination. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

420-24
OAL Dkt. No. EDU 07418-23
Agency Dkt. No. 193-7/23

New Jersey Commissioner of Education

Final Decision

P.P., on behalf of minor child, S.P.,

Petitioner,

v.

Board of Education of the Camden County Technical Schools, Camden County,

Respondent.

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.

In this matter, petitioner P.P. appeals a May 18, 2023, decision by respondent, Board of Education of the Camden County Technical Schools (Board), which concluded that an unfounded harassment, intimidation, or bullying (HIB) complaint naming S.P. as the perpetrator was not filed for retaliatory reasons.

The Anti-Bullying Bill of Rights Act (the Act), *N.J.S.A.* 18A:37-13 to -32, prohibits students from engaging in "retaliation or false accusation" against victims of HIB. *N.J.S.A.* 18A:37-16. Petitioner asserted that the HIB complaint filed by the parents of another student, A.W., was initiated in retaliation for a prior substantiated HIB complaint wherein the Board found that A.W. had committed an act of HIB against S.P. The Board maintained that although it ultimately

determined that S.P.'s actions did not meet the statutory definition of HIB, the HIB complaint at issue was legitimate, warranted investigation, and was not retaliatory.

Following a contested hearing at the OAL, the Administrative Law Judge (ALJ) concluded that the Board's decision was not arbitrary, capricious, or unreasonable. In support of that conclusion, the ALJ cited the testimony of Chantell Green, school principal and member of the HIB investigation team, who provided "a reasonable, plausible, and sound justification why" the HIB complaint filed by A.W.'s parents did not constitute retaliation against S.P. Initial Decision, at 4.[1]

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. Bd. of Educ. of W. Orange*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration," and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't of Env't Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff'd*, 131 *N.J. Super.* 37 (App. Div. 1974).

Upon review, the Commissioner concurs with the ALJ that the Board's decision was not arbitrary, capricious, or unreasonable. The record lacks evidence to support petitioner's contention that the HIB complaint filed against S.P. was an act of retaliation. Thus, *N.J.S.A.* 18A:37-16 was not violated. Moreover, there is no indication that the Board's decision

[1] The record does not contain hearing transcripts.

lacked a rational basis or was induced by improper motives. The Commissioner finds no reason to substitute his judgment for that of the Board of Education.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 13, 2024
Date of Mailing: November 13, 2024

[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
OAL DKT. NO. EDU 07418-23
AGENCY DKT. NO. 193-7/23

P.P. ON BEHALF OF S.P.,
Petitioner,
v.
CAMDEN COUNTY TECHNICAL SCHOOLS BOARD OF EDUCATION, CAMDEN COUNTY,
Respondent.

P.P., on behalf of his minor child, S.P., petitioner, pro se

David C. Patterson, Esq., for respondent (Maressa Patterson, LLC, attorneys)

Record Closed: May 28, 2024 Decided: October 10, 2024

BEFORE **CARL V. BUCK III,** ALJ:

STATEMENT OF THE CASE

Petitioner, P.P. on behalf of S.P, challenged the decision of the respondent Camden County Technical Schools Board of Education, Camden County (Camden or Board) that an incident filed against S.P. by a classmate (Student A or A.W.) did not constitute harassment, intimidation, or bullying (HIB) under District Policy 5512 as defined in the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-14 and was, in fact, retaliation regarding against S.P. regarding another matter.

PROCEDURAL HISTORY

On July 21, 2023, petitioner filed a pro se petition of appeal with the State of New Jersey, Department of Education, Commissioner of Education, Office of Controversies and Disputes. On August 9, 2023, respondent filed its answer. The matter was transmitted to the Office of Administrative Law on August 14, 2023, to proceed as a contested matter under N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

A hearing was held on May 22, 2024. The record closed on May 28, 2024, after receipt of the parties' post-hearing submissions. A request for an extension for issuance of this Initial Decision was requested and granted.

FACTUAL DISCUSSION AND FINDINGS

Having heard the testimony presented at the hearing, and having reviewed the documentary evidence, I **FIND**:

At all relevant times to this action S.P. was a student at the Camden County Technical School, Gloucester Township Campus (School). On or about November 7, 2022, S.P. was involved in an event at the school cafeteria where S.P. asserts he was a victim or ridicule, was bullied and had food thrown at him by A.W., another student.

After reporting this to the School by P.P., the School conducted an investigation of the event of November 7, 2023, determining that S.P. was the victim of a HIB incident instigated by A.W. The results of the investigation were sent to P.P. and consequences were issued to A.W.

In January 2023 the mother of A.W. filed a complaint against P.P. alleging HIB incident relating to threatening gestures and name calling. An investigation was conducted, and it was found that a HIB by S.P. as against A.W. did not occur. Shortly after the result of this investigation was issued, P.P. filed a second HIB on S.P.'s behalf against A.W. alleging that the immediate prior allegation (of the filing of a HIB of A.W. by P.P.) constituted retaliation against S.P. An investigation by the school was conducted

and it was determined that this filing (of A.W. against S.P.) was not a HIB but it was not a retaliation against S.P. Both parents were informed. P.P. filed an appeal to the Board of Education challenging the decision by the HIB team that this was not HIB. The appeal was heard on May 17, 2023. The parents of S.P. and HIB team presented their respective positions to the board. No recording of that meeting exists. Subsequent to presentations the board agreed with the HIB team and advised the parents. The parents appealed.

Issue: Was the action taken by A.W.'s parent a retaliatory action against S.P.

Chantell Green is the principal of the School. She is part of the HIB investigation team and has been for approximately four years. She was also a HIB team member at her prior school and has had approximately fifteen years of experience with HIB. She described the HIB process and the investigation process and how the investigation progresses. If the investigation determines HIB occurred there are a variety of recommendations for the perpetrator. If parents notified the school of a suspected HIB, they are notified of the investigation's findings. However, no action is taken until the matter is reviewed by the Board. (R-8.)

She expressed a clear knowledge of her role as the principal in the HIB investigation process. Based on the consistency of the events as stated in the investigation report, her clear understanding of her role in a HIB investigation, and her knowledge of what constitutes a HIB violation, I accept the testimony of Ms. Green as credible.

Regarding the first investigation (R-2) wherein P.P. notified the school regarding the actions of A.W. Ms. Green testified to the process, notification of the parties and related activities. She provided a reasonable, plausible, and sound justification why A.W.'s actions against S.P., based on the facts and circumstances did constitute HIB. The parents of S.P. expressed a desire to meet with administrators but due to family events this did not occur. No appeal of this action was made.

Regarding the second investigation (R-3) wherein the mother of A.W. filed HIB against S.P., Ms. Green provided a reasonable, plausible, and sound justification why S.P.'s actions against A.W., based on the facts and circumstances did NOT constitute HIB.

Regarding the third investigation (R-4) wherein P.P. filed an action alleging that A.W.'s action against S.P. was retaliation for the initial complaint, Ms. Green provided a reasonable, plausible, and sound justification why S.P.'s actions against A.W., based on the facts and circumstances did NOT constitute a retaliation. Specifically in order to find HIB, there needs to be a distinguishing characteristic and disruption in the education of the student present. None could be found.

P.P. then filed an appeal of that action, contending that the action of A.W. DID constitute a retaliatory act. The appeal of P.P. was heard by the Board who did not agree with P.P. and stated that the filing of A.W. against S.P. did NOT constitute a retaliatory action. On May 18, 2023, the Board notified P.P. of the Board's decision of May 17, 2023, denying P.P.'s contention that the act of A.W. was retaliatory.

P.P. expressed concerns regarding his ability to record the interviews during the investigation process. P.P. alleged a number of HIB's against his son, notwithstanding that they are not the subject of this matter. A partial recording of a November 18, 2023, meeting was submitted by P.P. over the objection of the Board. The Board correctly noted that this was for the first investigation which was found to have been a HIB against S.P. and was not appealed.

P.P. expressed that physical evidence in S.P.'s clothing and other factors led to their existing a HIB against S.P. Further a retaliatory act by A.W. is also present.

I accepted the testimony of P.P. as being motivated by his concern for S.P. and S.P.'s safety and well-being.

While petitioner expressed his dissatisfaction with the process of discovery and the statutory language, respondent and this tribunal are required to follow the definition of HIB provided in N.J.S.A. 18A:37-14.

CONCLUSIONS OF LAW

It was the intent of the Legislature in enacting the "Anti-Bullying Bill of Rights Act" to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises. N.J.S.A. 18A:37-13.1, -13.2.

N.J.S.A. 18A:37-14 and District Policy 5512 define harassment, intimidation, or bullying in pertinent part as anything that could be "reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic" that "takes place on school property" and "substantially disrupts or interferes with the orderly operation of the school or the rights of other students" and that:

> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

S.P.'s parents believed that the focus of the school's administration, their HIB investigation team and the Board was not accurate in their consideration of P.P.'s contention that the filing by A.W. against S.P. constituted a retaliatory HIB. P.P.'s position dealt with underlying considerations of racism and other invidious concerns.

As explained by Ms. Green, there was no distinguishing characteristic found in the investigation of A.W.'s action. The Board's finding that no HIB occurred because there was no distinguishing characteristic does not diminish what happened to S.P. The Appellate Division in K.L. v. Evesham Township Board of Education, 423 N.J. Super. 337, 350–51 (App. Div. 2011), succinctly stated:

> The statutory definition of "bullying" does not include all violent or aggressive conduct against a student. The definition, both before and after adoption of the 2010 Anti-Bullying Act, refers to conduct that is "reasonably perceived as being motivated" by a "distinguishing characteristic" of the victim, such as, "race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory [disability]." N.J.S.A. 18A:37-14. The statute has not limited "distinguishing characteristic" to those specifically enumerated, but it has consistently required such a perceived motivation.
>
> Thus, harmful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying.

Thus, an incident may be physically, psychologically, or socially harmful, but still not meet the HIB criteria.

Petitioner questioned why other factors as to the investigation process; specifically, the interview process, were not considered. Under N.J.S.A. 18A:37-14, the required element is "how the actor's motivation is perceived and whether that perception is reasonable." Wehbeh v. Bd. of Educ. of Verona, 2020 N.J. AGEN LEXIS 50 (Feb. 4, 2020), at *8. To determine whether the perception is reasonable, "the alleged victim [need not] correctly assess the actor's motivation, as such a requirement would convert the analysis from one about reasonably perceived motivation to one about actual motivation and would inappropriately place the burden on the alleged victim to divine the intent of the actor." Ibid., n.3. The HIB investigation by Ms. Green reasonably showed that A.W.'s allegation against S.P. did not meet the burden of HIB.

After hearing P.P.'s appeal, the Board voted to affirm the decision that the A.W.'s complaint did not constitute a retaliatory HIB. Petitioner presented his arguments to the Board, but the Board was not persuaded that their prior decision was incorrect.

The decision of a board acting within the scope of its authority is "entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious, or unreasonable." Thomas v. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Similarly, the action of a board "which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives." Kopera v. Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). The petitioner contended that the Board was wrong in not finding that A.W.'s HIB did not constitute a retaliatory filing. Petitioner believes that the HIB policy must be revised to protect all students; nevertheless, a finding of HIB requires that the conduct be reasonably perceived as being motivated by an actual or perceived characteristic. No such motivation or distinguishing characteristic or difference has been identified.

In view of the foregoing, I **CONCLUDE** that the Board's determination that the filing of A.W. against S.P. did not constitute HIB – and further, did not constitute retaliatory HIB was not arbitrary, capricious, or unreasonable.

ORDER

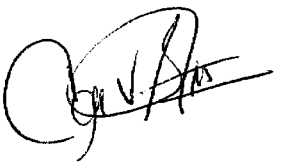
It is hereby **ORDERED** that the petitioner's appeal is **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.



October 10, 2024
DATE

CARL V. BUCK, III., ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

CVB/tat

APPENDIX

WITNESSES

For Petitioner:

P.P.

For Respondent:

Chantell Green, Principal

EXHIBITS

For Petitioner:

1a	Email reporting HIB1#9159, November 7 to November 14, 2022
1b	Recording of HIB1#9159 interview, November 18, 2022
1c	HIB1 #9159 - Investigation report, November 15, 2022
1d	Photo of stain on pants, November 7, 2022
2a	Letter requesting to be present during interviews, June 7, 2022
2b	Response letter from school, June 17, 2022
2c	Recording of Initial call HIB2#9452, January 19, 2023
2d	Search for term "in loco parentis" currently on website
2e	Recording of interview HIB2#9452, January 20, 2023
2f	HIB2 #9452 - Investigation report, January 19, 2023
2g	Certified statement provided by Ms. Green, August 9, 2023
2h	Recording of HIB2 # 9452 results, January 26, 2023
3a	Email reporting HIB3# 9523 & follow up email, January 31, 2023 and February 2, 2023
3b	Recording of HIB3#9523 conversation, February 1, 2023
3c	HIB3 #9523 - Investigation report, February 2, 2023
3d	Email asking for update HIB3#9523, March 6, 2023

3e Recording of HIB3#9523 results, March 7, 2023
4a Email previous counsel - HIB appeal, April 17, 2023
4b Letter from previous counsel - Appeal questions, April 21, 2023
4c Respondents' answers to appeal questions, April 25, 2023
4d Letter regarding rules of appeal hearing, April 26, 2023
4e Recording of HIB appeal hearing, May 17, 2023
4f HIB appeal hearing denial letter, May 18, 2023
5a Board minutes - HIB reports, December 2022, January 2023, and February 2023
5b Discovery/Interrogatories, March 13, 2023
5c Board minutes - roll call, May 17, 2023
5d Board minutes - votes casted for denial, May 17, 2023

For Respondent:

R-1 November 16, 2022, HIB Incident Report (9 pages)
R-2 January 19, 2023, HIB Incident Report (5 pages)
R-3 January 31, 2023, HIB Incident Report (5 pages)
R-4 May 17, 2023, Redacted CCTS BOE Closed Session Minutes (3 pages)
R-5 May 18, 2023, CCTS Letter to Mr. and Mrs. Prashant Patel
R-8 CCTS Board of Education Harassment, Intimidation and Bullying Policy (Pages 1-3)

421-24

State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

KEVIN DEHMER
Acting Commissioner

November 13, 2024

Sanford R. Oxfeld, Esq.
Oxfeld Cohen, P.C.
60 Park Place, Suite 600
Newark, NJ 07102

Lawrence M. Teijido, Esq.
Antonelli Kantor Rivera PC
354 Eisenhower Parkway, Suite 1000
Livingston, NJ 07039

Re: ***Terrell Gilkey v. Board of Trustees of the Queen City Academy Charter School, Union County, Agency Dkt. No. 112-4/24, Commissioner Decision No. 384-24***

Dear Counsel:

I have reviewed the materials filed in connection with petitioner Terrell Gilkey's motion for clarification of the Commissioner's Final Decision in the above matter, issued on October 10, 2024. Specifically, petitioner seeks an order clarifying the Final Decision "to expressly define a 'full academic year'" as utilized in the streamline tenure regulation, *N.J.A.C.* 6A:11-6.2.

Pursuant to *N.J.A.C.* 6A:3-1.15(b), any party may file a motion for clarification within 10 days of the filing of the Commissioner's decision. Petitioner's motion is timely. Motions for clarification shall be considered by the Commissioner "based upon necessity as specifically demonstrated in the papers submitted with the motion." *N.J.A.C.* 6A:3-1.15(b)(3).

Upon review of the parties' submissions, the Commissioner concludes that petitioner has not demonstrated in his papers that clarification of the October 10, 2024 Final Decision is necessary.

As stated on page 3 of the Final Decision, although not expressly defined in the charter school regulations, *N.J.S.A.* 18A:1-1 defines "academic year" as "the period between the time school opens in any school district or under any board of education after the general summer vacation until the next succeeding summer vacation." Additionally, as stated on page 3 of the Final Decision, because statutes and regulations governing the same subject matter are interpreted harmoniously, "academic year" as utilized in *N.J.A.C.* 6A:11-6.2 means "the period between the time school opens in any school district or under any board of education after the general summer vacation until the next succeeding summer vacation."

While petitioner contends that the statutory definition of "academic year" should not be utilized in the streamline tenure context, his disagreement with the Commissioner's legal analysis does not necessitate the granting of his motion for clarification.

Accordingly, the petitioner's motion for clarification is hereby DENIED.

Sincerely,

Kevin Dehmer
Acting Commissioner

KD/JS
421-24L

422-24
Agency Dkt. No. 259-8/24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Tori N. Joseph, Board of Education of the City of New Brunswick, Middlesex County

This matter was opened before the Commissioner of Education on August 9, 2024, by way of an Order to Show Cause served by petitioner (Board of Education of the City of New Brunswick) upon respondent (Tori N. Joseph), requiring respondent to show cause why an order should not be entered suspending her teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

By notice dated August 15, 2024, the Office of Controversies and Disputes (Office) acknowledged proof that the Order to Show Cause had been served upon respondent and directed her to answer within 20 days. No answer having been received, on September 9, 2024, the Office sent respondent a second and final notice – via certified and regular mail – directing her to file an answer within ten days. The notice advised that, pursuant to *N.J.A.C.* 6A:3-1.5(e), failure to answer would cause each allegation in petitioner's papers to be deemed admitted and might result in summary decision by the Commissioner. To date, respondent has not answered the Order to Show Cause.

The petition and supporting exhibits submitted in this matter indicate that: respondent entered into an employment contract to work as a special education teacher in New Brunswick

for the 2023-2024 school year, beginning November 1, 2023 and ending June 30, 2024; the contract provides that it can be terminated by either party upon sixty days' written notice; and, on April 8, 2024, respondent sent correspondence to the Board indicating that she was resigning effective April 22, 2024, thereby providing less than the required 60 days' notice. She has not denied these allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(e) and further deems them sufficient to justify suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner, and respondent's teaching certificates, as well as any substitute teaching credential she may hold, are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 13, 2024
Date of Mailing: November 13, 2024

[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.

423-24

New Jersey Commissioner of Education

Final Decision

Lucy Ferguson,

Petitioner,

v.

Board of Education of the Township of Hillside, Union County,

Respondent.

Synopsis

Petitioner challenged her termination from the position of school custodian after eighteen (18) years of employment without the filing of tenure charges and without a hearing. Petitioner was a member of the Hillside Education Association, which served as the collective bargaining unit for janitorial and maintenance staff; the collective bargaining agreement for the period from July 1, 2021, to June 30, 2024, contained a provision stating that "(c)ustodians hired prior to July 1, 2018, following receipt of their fourth contract, after having served continuously for three (3) calendar years (36 months) shall be placed under tenure...". The petitioner filed a motion for summary decision, which was opposed by the respondent Board.

The ALJ found, *inter alia*, that: on December 23, 2023, the Board issued a one-sentence letter terminating petitioner effective December 29, 2023, without stating a reason for the termination; petitioner was a tenured employee; and the Board terminated her without filing tenure charges or holding a disciplinary hearing; and there are no material facts in dispute in this case, and the matter is ripe for summary decision. The ALJ concluded that petitioner was improperly terminated and ordered that she be reinstated to her position with back pay and benefits, retroactive to December 29, 2023.

Upon review, the Commissioner, *inter alia,* concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter. The Commissioner directed the Board to reinstate petitioner as a school custodian effective December 29, 2023, with back pay and benefits.

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.

423-24
OAL Dkt. No. 05247-24
Agency Dkt. No. 77-3/24

New Jersey Commissioner of Education

Final Decision

Lucy Ferguson,

Petitioner,

v.

Board of Education of the Township of Hillside, Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered.

Upon review, the Commissioner agrees with the Administrative Law Judge (ALJ) – for the reasons expressed in the Initial Decision – that petitioner was a tenured employee when the Board terminated her employment. In addition, the Commissioner concurs with the ALJ that the Board improperly terminated Petitioner without tenure charges or a disciplinary hearing.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and petitioner's motion for summary decision is granted. The Board is directed to reinstate petitioner as a school custodian effective December 29, 2023, with back pay and benefits.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 15, 2024
Date of Mailing: November 18, 2024

[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 05247-2024
AGENCY DKT. NO. 77-3/24

LUCY FERGUSON,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF HILLSIDE,
Respondent.

Nicholas Poberezhsky, Esq., for petitioner (Caruso Smith Picini, attorneys)

Raymond Hamlin, Esq., for respondent, (Hunt, Hamlin & Ridley, attorneys)

Record Closed: September 24, 2024 Decided: October 4, 2024

BEFORE **ANDREA PERRY VILLANI**, ALJ:

STATEMENT OF THE CASE

Respondent, the Hillside Board of Education, summarily terminated petitioner, Lucy Ferguson, a school custodian, after eighteen years of employment without filing tenure charges and without a hearing. Can the termination stand? No. The Tenure Employees Hearing Law, which confers tenure on public school janitors, prohibits tenured employees from being terminated without a hearing.

PROCEDURAL HISTORY

On December 22, 2023, Erskin Glover, Superintendent of the Hillside Public Schools, notified Ferguson on behalf of the Hillside Board of Education that she was terminated from her position as custodian effective December 29, 2023.

On March 25, 2024, Ferguson filed a Certified Petition of Appeal with the New Jersey Department of Education.

On April 17, 2024, the New Jersey Department of Education, Office of Controversies and Disputes, transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23.

On May 17, 2024, I conducted a pre-hearing telephone conference. Counsel agreed to adjourn the conference thirty days to allow for settlement negotiations.

On June 26, 2024, I held a second pre-hearing telephone conference, but no one called in. The conference was rescheduled for July 8, 2024.

On July 8, 2024, the Board's attorney did not call in for the conference. Counsel for Ferguson stated his intention to file a motion for summary decision. I requested that he contact the Board's attorney and attempt to agree on a joint stipulation of facts.

On August 20, 2024, Ferguson filed her motion for summary decision, and counsel confirmed that he issued a proposed joint stipulation of facts to the Board's attorney, but the Board never responded.

On September 23, 2024, the Board filed opposition to the motion for summary decision. On September 24, 2024, Ferguson filed her reply, and I closed the record.

FINDINGS OF FACT

Ferguson was employed by the Board as a full-time custodian and maintenance worker beginning November 28, 2005. On May 22, 2009, the Board issued a salary notification to Ferguson marked "Tenure." (P-2.) On October 17, 2023, Ferguson was removed from her active work duties and placed on paid administrative leave. On December 22, 2023, the Board issued a one-sentence letter terminating Ferguson effective December 29, 2023. (P-3.) It did not give a reason for the termination. (P-3.)

Ferguson was a member of the Hillside Education Association (HEA), which served as the collective bargaining unit for janitorial and maintenance staff. The Controlling Collective Bargaining Agreement (CBA) for the period of July 1, 2021, to June 30, 2024, contained the following provision: "For custodian's hired prior to July 1, 2018, following receipt of their fourth contract, after having served continuously for three (3) calendar years (36 months) shall be placed under tenure..." (P-1.)

As such, Ferguson was a tenured employee, and the Board terminated her without filing tenure charges or holding a disciplinary hearing. Although Ferguson believes the Board fired her because she had an altercation with a co-worker, the Board presented no evidence of this or a criminal indictment or even an investigation.

CONCLUSIONS OF LAW

Summary Decision

Under N.J.A.C. 1:1-12.5(b), summary decision may 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 the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b) also holds that when a motion for summary decision is made and supported, for an adverse party to prevail it must "by responding affidavit set forth specific facts" showing there is a genuine issue that can only be determined in an evidentiary proceeding.

In this case, Ferguson filed an affidavit in the form of a Certified Petition of Appeal and six exhibits supporting her position that she was employed by the Board for eighteen years and received tenure. She also established that she was terminated without tenure charges or a disciplinary hearing. In other words, her Motion was made and supported. However, the Board did not respond with an affidavit as required by N.J.A.C. 1:1-12.5(b). The Board only provided a letter brief, and that brief did not set forth any specific facts showing that there is a genuine issue for trial.

Because N.J.A.C 1:1-12.5(b) is almost identical to R. 4:46, "Summary Judgment," subsection (c), New Jersey courts have applied the legal standard for summary judgment to administrative proceedings. See Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 122 (App. Div. 1995). Part of the legal standard for summary judgment is that abstract doubt regarding material facts is not sufficient to defeat it. See O'Loughlin v. Nat'l Cmty. Bank, 338 N.J. Super. 592, 606-07 (App. Div. 2001). To put it another way, competent opposition to summary judgment requires "competent evidential material" beyond mere "speculation" and "fanciful arguments." Merchs. Express Money Order Co. v. Sun Nat'l Bank, 374 N.J. Super. 556, 563 (App. Div. 2005).

In this case, the Board argues that Ferguson should produce additional evidence to "confirm" she was continually employed for eighteen years and thereby entitled to tenure. At the same time, the Board does not actually dispute that Ferguson was continually employed or that she was granted tenure. Also, as noted above, the Board has not provided any specific facts indicating that Ferguson was not tenured. For these reasons, the Board's opposition amounts to nothing more than abstract doubt or mere speculation. Therefore, I **CONCLUDE** that there are no material facts in dispute and this case is ripe for summary decision.

Tenure Employees Hearing Law

N.J.S.A. 18A:17-3, "Tenure of janitorial employees," confers tenure upon school janitors if they are not employed for a fixed term. However, janitors employed for a fixed

term may also be afforded tenure under the terms of a Collective Bargaining Agreement. Wright v. Bd. of Educ., 194 N.J. Super 181, 184-85 (App. Div. 1983). In Wright, the Appellate Division noted that N.J.S.A. 18A:17-3 "clearly affords a school district the option of deciding whether it wishes to grant tenure to a janitor" and, therefore, a collective bargaining agreement that confers tenure on a janitor employed for a fixed term is not in derogation of that statute. Id. at 184.

In this case, Ferguson received tenure under both N.J.S.A. 18A:17-3 and a Collective Bargaining Agreement (CBA). N.J.S.A. 18A:17-3 applies because Ferguson was employed by the Board for eighteen years, clearly not a fixed term. Although the Board suggests that N.J.S.A. 18A:17-3 does not apply because Ferguson was employed for a fixed term of twelve months (July 1st through June 30th) eighteen times, even if this were true, she is still entitled to tenure under Wright and the terms of the CBA. Again, the CBA confers tenure after three years of continuous employment. Although the Board questions whether Ferguson was "continuously" employed, it has provided no facts whatsoever to the contrary.

N.J.S.A. 18A:17-3 holds that a tenured janitor may only be dismissed, suspended, or reduced in compensation for misbehavior in the manner prescribed by statute. N.J.S.A. 18A:6-10 states that tenured employees may not be dismissed or reduced in compensation "except for inefficiency, incapacity, unbecoming conduct or other just cause, and then only after a hearing held pursuant to this sub-article..." Further, in Slater v. Bd. of Educ., 237 N.J. Super. 424, 426 (App. Div. 1989), the Appellate Division stated, "a tenured employee may be suspended without pay only if indicted or if tenure charges have been preferred and certified to the Commissioner of Education. In all other circumstances, a suspension must be with pay."

In this case, Ferguson was terminated on December 29, 2023, without tenure charges or a disciplinary hearing. Similarly, there was no criminal indictment. Therefore, I **CONCLUDE** that Ferguson was improperly terminated.

ORDER

Based on the foregoing, I **ORDER** that Ferguson be reinstated to her position effective December 29, 2023, with back pay and benefits.

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 case. 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 becomes a final decision under N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision is 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.

Andrea Perry Villani

October 4, 2024
DATE

ANDREA PERRY VILLANI, ALJ

Date Received at Agency: October 4, 2024

Date Mailed to Parties: October 4, 2024

sej

APPENDIX

DOCUMENTS RELIED ON:

Petitioner's March 18, 2024 Certified Petition of Appeal

- Exhibit P-1 Collective Bargaining Agreement
- Exhibit P-2 Salary Notification
- Exhibit P-3 Termination Letter
- Exhibit P-4 Letter from Ferguson's Attorney
- Exhibit P-5 Second Letter from Ferguson's Attorney
- Exhibit P-6 Medical Bill

Petitioner's August 20, 2024 Brief

Respondent's September 23, 2024 Brief

Petitioner's September 24, 2024 Reply Brief

424-24
OAL Dkt. Nos. EDU 14336-19; EDU 14337-19; EDU 14338-19; EDU 14339-19; EDU 14340-19; and EDU 14341-19 (Consolidated)
Agency Dkt. Nos. 131-6/19; 132-6/19; 133-6/19; 134-6/19; 135-6/19; and 136-6/19

New Jersey Commissioner of Education

Final Decision

Board of Trustees of the Y.A.L.E. School Southeast, Inc., Burlington County,

Petitioner,

v.

New Jersey Department of Education,

Respondent.

AND

Board of Trustees of the Y.A.L.E. School, Inc., Cherry Hill, Camden County,

Petitioner,

v.

New Jersey Department of Education,

Respondent.

AND

Board of Trustees of the Y.A.L.E. School Atlantic, Inc., Atlantic County,

Petitioner,

v.

New Jersey Department of Education,

Respondent.

AND

Board of Trustees of the Y.A.L.E. School West, Inc., Camden County,

Petitioner,

v.

New Jersey Department of Education,

Respondent.

AND

Board of Trustees of the Y.A.L.E. School Southeast II, Inc., Camden County,

Petitioner,

v.

New Jersey Department of Education,

Respondent.

AND

Board of Trustees of the Y.A.L.E. School East, Inc., Atlantic County,

Petitioner,

v.

New Jersey Department of Education,

Respondent.

The records of these six consolidated matters, the proposed Settlement Agreement and Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been

reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The consolidated cases are hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 15, 2024
Date of Mailing: November 20, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
APPROVING SETTLEMENT

BOARD OF TRUSTEES Y.A.L.E. SCHOOL SOUTHEAST, INC., BURLINGTON COUNTY,
Petitioner,
v.
NEW JERSEY DEPARTMENT OF EDUCATION,
Respondent,

OAL DKT. NO. EDU 14336-19
AGENCY REF. NO. 131-6/19

And

BOARD OF TRUSTEES Y.A.L.E. SCHOOL INC., CHERRY HILL, CAMDEN COUNTY,
Petitioner,
v.
NEW JERSEY DEPARTMENT OF EDUCATION,
Respondent,

OAL DKT. NO. EDU 14337-19
AGENCY REF. NO. 132-6/19

And

New Jersey is an Equal Opportunity Employer

BOARD OF TRUSTEES Y.A.L.E. SCHOOL ATLANTIC, INC., ATLANTIC COUNTY,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

Respondent,

OAL DKT. NO. EDU 14338-19
AGENCY REF. NO. 133-6/19

And

BOARD OF TRUSTEES Y.A.L.E. SCHOOL WEST, INC., CAMDEN COUNTY,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

Respondent,

OAL DKT. NO. EDU 14339-19
AGENCY REF. NO. 134-6/19

And

BOARD OF TRUSTEES Y.A.L.E. SCHOOL SOUTHEAST II, INC., CAMDEN COUNTY,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

Respondent,

OAL DKT. NO. EDU 14340-19
AGENCY REF. NO. 135-6/19

And

BOARD OF TRUSTEES Y.A.L.E. SCHOOL EAST, INC., ATLANTIC COUNTY,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

Respondent,

OAL DKT. NO. EDU 14341-19
AGENCY REF. NO. 136-6/19

Vito A. Gagliardi, Jr., Esq., for petitioners (Porzio, Bromberg and Newman, P.C., attorneys)

Janelle Edwards-Stewart, Esq., for petitioners (Porzio, Bromberg and Newman, P.C., attorneys)

Rachel E. Fairley, Esq., for petitioners (Porzio, Bromberg and Newman, P.C., attorneys)

Ryan J. Silver, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: October 4, 2024 Decided: October 8, 2024

BEFORE **SARAH G. CROWLEY**, ALJ:

These contested cases were transmitted to the Office of Administrative Law for hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle these cases and have entered into an agreement. Their settlement agreement is attached to this decision.

Having reviewed the terms of their agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in these cases.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that these cases are **CONCLUDED**.

I **FILE** my decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration. This recommended decision may be adopted, modified, or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is empowered by law to make a final decision in this case. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not so act within 45 days, and unless such time limit is otherwise extended, this recommended decision becomes a final decision in accordance with N.J.S.A. 52:14B-10.

October 8, 2024
DATE

Sarah G. Crowley
SARAH G. CROWLEY, ALJ

Date Received at Agency: 10/9/2024

Date Mailed to Parties: 10/9/2024

SGC/onl

PORZIO
Bromberg & Newman

MORRISTOWN, NJ • NEW YORK, NY • OCEAN CITY, NJ • PHILADELPHIA, PA
SAN JUAN, PR • TRENTON, NJ • WESTBOROUGH, MA • WILMINGTON, DE

JANELLE EDWARDS-STEWART
MEMBER, CT, NJ AND NY BARS
DIRECT DIAL NO.: 973-889-4092
E-MAIL ADDRESS: JEDWARDSSTEWART@PBNLAW.COM

October 4, 2024

VIA ELECTRONIC MAIL

Honorable Sarah G. Crowley, A.L.J.
State of New Jersey
Office of Administrative Law
P.O. Box 049
Trenton, NJ 08625
Olivia.Lear@oal.nj.gov

Re: Re: Y.A.L.E. School Southeast, Inc., Burlington Cty v. NJ Dep't of Education
OAL Docket No.: EDU 14336-2019S

Y.A.L.E. School, Inc., Cherry Hill, Camden Cty v. NJ Dep't of Education
OAL Docket No.: EDU 14337-2019S

Y.A.L.E. School Atlantic, Inc., Atlantic Cty v. NJ Dep't of Education
OAL Docket No.: EDU 14338-2019S

Y.A.L.E. School West, Inc., Camden Cty v. NJ Dep't of Education
OAL Docket No.: EDU 14339-2019S

Y.A.L.E. School, Southeast, II, Inc., Camden Cty v. NJ Dep't of Education
OAL Docket No.: EDU 14340-2019S

Y.A.L.E. School East, Inc., Atlantic Cty v. NJ Dep't of Education
OAL Docket No.: EDU 14341-2019S
Our File No.:019432.008165

Dear Judge Crowley:

This firm represents Petitioners in the above-references consolidated matters. Enclosed please find a copy of the parties' fully executed Settlement Agreement and Release. Should the enclosed meet with Your Honor's approval, we respectfully request that same be incorporated into a final order.

We thank Your Honor for the courtesies extended.

Respectfully submitted,

Janelle Edwards-Stewart

JES:acr
Enclosure
Cc: Amna Toor, DAG (via email)
Ryan Silver, DAG (via email)

SETTLEMENT AGREEMENT AND RELEASE

This settlement agreement and release ("Agreement") is entered into between Petitioners, Y.A.L.E. School Southeast, Inc., Y.A.L.E. School Cherry Hill, Inc., Y.A.L.E. School Atlantic, Inc., Y.A.L.E. School West, Inc., Y.A.L.E. School Southeast II, Inc., Y.A.L.E. School East, Inc. (collectively "Y.A.L.E." or "Petitioners") and Respondent, the New Jersey Department of Education ("DOE"), Office of Fiscal Accountability and Compliance ("OFAC" or "Respondent"), (collectively "the Parties").

RECITALS

WHERAS, Petitioners are each approved private schools for students with disabilities ("APSSDs"), as recognized by the DOE; and

WHEREAS, on or about December 2, 2016, Respondent conducted fiscal monitoring of Petitioners in accordance with *N.J.A.C.* 6A:23A-18.15 and issued a report of examination ("ROE") for the period July 1, 2013 to June 30, 2014; and

WHEREAS, Petitioners challenged the OFAC's ROE findings in respective appeals; and

WHEREAS, in response to Petitioners' appeals, the OFAC modified some of its initial conclusions and sustained others; and

WHEREAS, Petitioners then filed individual Verified Petitions of Appeal with the Office of Administrative Law ("OAL") on June 11, 2019 in further appeal of the challenged findings;

WHEREAS these matters have been pending for several years and accruing significant expense;

WHEREAS, the Parties desire to resolve amicably all claims asserted in connection with OAL Docket Numbers EDU-14336-2019S, EDU-14337-2019S, EDU-14338-2019S, EDU-14339-2019S, EDU-14340-2019S, EDU-14341-2019S, a consolidated matter; and

WHEREAS, Respondent will issue a notice letter, within 10 business days of executing this Agreement, to all school districts that paid tuition to Petitioners in the 2013-2014 school year alerting them to a potential settlement in this matter, and allowing them a period of 30 days to submit any comments to Respondent; any agreement between the Parties is not final and binding until after this period expires.

WHEREAS, no later than three calendar days after the comment period expires, Respondent's counsel shall notify Petitioners' counsel in writing that this Agreement ensues in full force and effect, being final and binding upon the Parties.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and to avoid the ongoing expense and uncertainty of further litigation, the Parties agree as follows:

1. The above "WHEREAS" clauses are incorporated herein and made part of this Agreement.

2. **Payment.** The Parties have agreed to the following:

    a. Prior to June 30, 2027, Petitioners shall pay the sum of one hundred and forty thousand, three hundred and seventeen dollars and thirty-two cents ($140,317.32) (the "Settlement Amount"), which they agree and accept as a non-allowable cost attributable to the 2013-2014 school year, and which is comprised of the following:

        i. Fifty-four thousand, nine hundred and thirty five dollars and eight cents ($54,935.08) shall be paid in connection with challenged "Finding One" as it relates to Cherry Hill, East, and Southeast II, and Atlantic, and challenged "Finding Two" as it relates to Southeast and West, consultant fees in excess of maximum allowable salaries;

ii. Thirty-eight thousand, nine hundred and sixty-eight dollars and sixty cents ($38,968.60) shall be paid in connection with "Finding One" as it relates to West, and "Finding Two" as it relates to Cherry Hill, East, and Atlantic, write-off of accounts receivable;

iii. Twenty-five thousand, six hundred and eleven dollars and fifty-five cents ($25,611.55) shall be paid in connection with "Finding One" as it relates to Southeast, a disallowance of employee salary and fringe benefits;

iv. Sixteen thousand nine hundred and ninety-two dollars and fifty cents ($16,992.50) shall be paid in connection with "Finding Three" as it relates to Cherry Hill and East, and "Finding Five" as it relates to West, costs attributable to unsupervised related services relating to swimming;

v. Two thousand, six hundred and twenty-six dollars and eighty-four cents ($2,626.84) shall be paid in connection with "Finding Three" as it relates to West, unallowable consultant costs, namely the Protocall contract; and

vi. One thousand, one hundred and eighty-two dollars and seventy-five cents ($1,182.75) shall be paid in connection with "Finding Four" as it relates to Southeast, excess administrative costs.

b. OFAC has identified the districts that are impacted by this Agreement by reason of having paid tuition to Petitioners during the 2013-2014 school year. The Settlement Amount shall be allocated to each impacted district based on the ratio of each sending district board of education's total Average Daily Enrollment ("ADE") with each Petitioner for the 2013-2014 school year to each Petitioner's total ADE for the same period.

c. Each district shall receive an allocation of the Settlement Amount in each year of this agreement until its total allocation is repaid, and unless the Settlement Amount is prepaid. Petitioners agree to notify each impacted sending district of this settlement within 90 days and commence repayment in accordance with Paragraph 2.g. below.

d. It is understood that the purpose of the allocation set forth in Paragraphs 2.b. and 2.c. above is to refund to each sending district a portion of the funds previously paid by those districts in respect to the charges disallowed pursuant to this Agreement. The allocation and this Agreement are not intended to bestow a windfall on districts that have not yet paid Petitioners the tuition charges for the years related to the refund and at issue in this matter.

e. Subject to the obligations set forth in Paragraph 2.c. above, nothing herein shall affect whatever entitlement Petitioners otherwise would have to collect from sending districts any outstanding tuition charges unrelated to the partial disallowance agreed to herein.

f. Petitioners' payment of the Settlement Amount shall be memorialized in a Note Disclosure in that year's audited financial statements. Under no circumstances shall the Settlement Amount be included in allowable costs.

g. Petitioners' full repayment of the Settlement Amount to sending districts shall be completed by June 30, 2027. This arrangement allows Petitioners a minimum of three full school years (2024-2025, 2025-2026, and 2026-2027) for all payments to be received by sending districts. Nothing in this Agreement shall prohibit

Petitioners from prepayment over a shorter term or applying sums owed to Petitioners to a district's outstanding balance.

h. The Parties acknowledge that Y.A.L.E. School Southeast II, Inc. is no longer in existence, and nothing in this Agreement or otherwise prevents sums relative to this Petitioner from being paid by the other Petitioners.

3. **Release.** The Parties hereby agree that this Agreement shall fully dispose of any and all causes of action and claims that the Parties may have against one another relating to Respondent's audit of Petitioners' financial statements for the 2013-2014 school year. In exchange for, and in consideration of, the payments, benefits, and other commitments described herein, each party hereby fully releases, acquits, and forever discharges the other party of and from any and all claims, liabilities, causes of action, damages, costs, expenses, and compensation whatsoever, of whatever kind of nature, in law, equity or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected, that the party may now have up to the execution date of this Agreement, against the other party related to Respondent's audit of the Petitioners' financial statements for the 2013-2014 year, and for violations of the same kind occurring in subsequent school years from 2014-2015 through the 2021-2022 year which have been, and are, closed and certified, never to be revisited by OFAC or the Office of Fiscal Policy and Planning, regarding any purported issue For any year which has not been closed and certified, nothing in this Agreement waives Respondent's obligations under N.J.A.C. 6A:23A-18.1 to -18.23. The Parties agree that attorneys' fees related to OFAC's FY13-14 fiscal monitoring and OAL Docket Numbers EDU-14336-2019S, EDU-14337-2019S, EDU-14338-2019S, EDU-14339-2019S, EDU-14340-2019S, EDU-14341-2019S, are an allowable cost.

4. **No Admission of Liability.** Nothing in this Agreement shall constitute an admission or stipulation of facts. By entering into this agreement, the Parties agree that all actions taken, and statements made by Petitioners and Respondent and their representatives relating to the issuance and/or execution of this Agreement, including its development and implementation shall not constitute, be interpreted, be construed, or be used as evidence of any admission of fact, law, responsibility, wrongdoing, or liability, and shall not be referred to in any other proceeding by any party other than to enforce the express terms of this Agreement. Neither party admits or denies a violation of any state or federal law. Petitioners specifically denies any liability whatsoever for any damages, injuries or other claims by the OFAC.

5. **Effect of Agreement.** This Agreement shall not constitute precedent or be used as evidence of any admission of fact, law, responsibility, wrongdoing, or liability on the part of the Parties and shall not be referred to in any other proceeding by any party other than to enforce the express terms of this Agreement.

6. **Modification.** No change or modification of this Agreement shall be valid or effective unless it is set forth in writing signed by the Parties.

7. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other prior discussions, agreements and understandings, both written and oral, among the Parties with respect thereto, and shall inure to the benefit of the Parties referenced herein, jointly and severally, and the executors, administrators, personal representatives, heirs, and successors of each. The Parties agree that no representations, warranties, or promises have been made or relied upon other than as set forth herein.

8. **Representation.** This Agreement is the product of arms-length negotiations. Each party has consulted with its respective legal counsel regarding its contents and seek to enter this Agreement freely and voluntarily.

9. **Interpretation.** Legal counsel for each party has participated in the drafting of this Agreement. Thus, the language of this Agreement shall not be construed presumptively in favor or against either Party. This Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey, including but not limited to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. The Parties agree that any action to enforce or interpret this Agreement shall only be brought in the Superior Court of New Jersey.

10. **Severability.** If any provision of this Agreement or any portion of any provision of this Agreement is declared void or unenforceable by any Court or tribunal having jurisdiction, then such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect.

11. **Execution and Authorization of Signatures.** This Agreement may be executed in counterparts. All such counterparts shall constitute one and the same Agreement. Electronic and facsimile signatures shall be treated as originals. The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that s/he is authorized to sign on behalf of his/her party.

12. **Dismissal.** Petitioners shall file a Stipulation of Dismissal with Prejudice of OAL Docket Numbers EDU-14336-2019S, EDU-14337-2019S, EDU-14338-2019S, EDU-14339-2019S, EDU-14340-2019S, EDU-14341-2019S, a consolidated matter, with the New Jersey Office of Administrative Law within 30 days of receiving post-comment period,

written confirmation that the Parties' Agreement ensues in full force and effect. A copy of the executed Agreement will be filed with the New Jersey Office of Administrative Law simultaneously.

The undersigned hereby accept and agree to be bound by the terms of this SETTLEMENT AGREEMENT AND MUTUAL RELEASE.

Y.A.L.E. Schools, Inc.

By: _____
Printed Name:

Subscribed and Sworn to me before this _____ day of _____, 2024

New Jersey Department of Education, Office of Fiscal Accountability and Compliance

By: Dr. Jamar E Purnsley
Printed Name: Dr. Jamar E. Purnsley

Subscribed and Sworn to me before this 26 day of February, 2024

By: Lisa D McCormick
Printed Name: Lisa D. McCormick

Subscribed and Sworn to me before this 26 day of February, 2024

New Jersey Department of Education, Office of Fiscal Policy and Planning

By: Elise Sadler-Williams
Printed Name: Elise Sadler-Williams

Subscribed and Sworn to me before this 26 day of February, 2024

written confirmation that the Parties' Agreement ensues in full force and eff

the executed Agreement will be filed with the New Jersey Office of Admini trat

simultaneously

The undersigned hereby accept and agree to be bound by the terms of this SETTLEMENT AGREEMENT AND MUTUAL RELEASE.

V.A.L.F. Schools, Inc.

By: _____

Printed Name: Chris Sarantoulis

Subscribed and Sworn to me before this 28 day of February, 2024

New Jersey Department of Education, Office of Fiscal Accountability and Compliance

By: _____

Printed Name: Dr. Jamar L. Purnsley

Subscribed and Sworn to me before this 26 day of February, 2024

By: _____

Printed Name: Lisa D. McCormick

Subscribed and Sworn to me before this 26 day of February, 2024

New Jersey Department of Education, Office of Fiscal Policy and Planning

By: Elise Sadler-Williams

Printed Name: Elise Sadler-Williams

Subscribed and Sworn to me before this 26 day of February, 2024

425-24
OAL Dkt. No. EDU 04846-21
Agency Dkt. No. 56-4/21

New Jersey Commissioner of Education

Final Decision

Board of Education of the Warren Hills Regional School District, Warren County,

Petitioner,

v.

Board of Education of the Town of Hackettstown, Warren County, and New Jersey Department of Education,

Respondents.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent Hackettstown Board of Education (Hackettstown) pursuant to *N.J.A.C.* 1:1-18.4, and petitioner Warren Hills Regional School District Board of Education's (Warren Hills) reply thereto, have been reviewed and considered. Respondent New Jersey Department of Education (DOE) did not file exceptions or a reply.

This matter arises out of a dispute concerning who is fiscally responsible for the education of E.N. from the 2018-2019 school year to the 2020-2021 school year. It is undisputed that on December 18, 2014, E.N. was placed by the Department of Children and Families (DCF) at the Bancroft School (Bancroft), a private residential school for students with special needs. Prior to her placement at Bancroft, E.N. lived with her mother, S.A., in Newark. In September 2016, S.A's mother and sister applied and signed a lease for an apartment in Mansfield Village, within the Warren Hills Regional

School District. The residency application and lease listed S.A. and A.N. (E.N.'s sister) as additional occupants/immediate family. The initial lease period was from December 1, 2016, to November 30, 2017, and a lease renewal addendum was signed for the term of December 1, 2017, to November 30, 2018. According to a notarized statement signed by X.S., S.A.'s cousin, S.A. moved out of the Mansfield Village apartment and into X.S.'s home in Hackettstown, within the Hackettstown school district, in July 2018.[1]

On March 15, 2019, Cindy Lee (Lee), then Director of State Aid Entitlements and Payments at the DOE, issued a determination that Hackettstown is responsible for E.N.'s education costs for the 2018-2019 school year because S.A. resided in Hackettstown on October 15, 2018. On July 30, 2019, then Deputy Assistant Commissioner for the Office of School Finance, Glenn Forney (Forney), affirmed Lee's determination.[2] Forney's decision was not appealed to the Commissioner.[3]

Hackettstown then emailed Anthony Hearn (Hearn) at the DOE's Office of Fiscal and Data Services, indicating that it suspected that S.A. may have been "doubled-up" at her sister's residence in Mount Olive. Hearn replied that this would make S.A. homeless and A.N. eligible for protection under the McKinney-Vento Homelessness Assistance Act (McKinney-Vento).

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[1] The Mansfield Village apartment bears a mailing address in Hackettstown, but it is nonetheless located within the Warren Hills Regional School District. All references herein to S.A.'s residence in Hackettstown are intended to refer to X.S.'s home on Herbert Lane in Hackettstown, within the Hackettstown school district.

[2] The determinations made by Lee and Forney were determinations of the district of residence for a student placed by DCF, pursuant to the procedures established by *N.J.A.C.* 6A:23A-19.2.

[3] Hackettstown did write to Forney and request that he reconsider his decision. However, there is no provision in the applicable rules for reconsideration in these circumstances. *See N.J.A.C.* 6A:23A-19.2(f) (providing that when the Office of School Facilities and Finance is unable to resolve a dispute, a board of education may file a petition of appeal with the Commissioner pursuant to the provisions of *N.J.A.C.* 6A:3). Forney's July 30, 2019 letter notified Hackettstown of this procedure.

On August 1, 2020, the Bancroft School sent a letter to the Warren County Office of Education regarding E.N.'s outstanding tuition.[4] On August 26, 2020, Tania Mongioi (Mongioi), Special Education Specialist from the Warren County Office of Education, sent an email determining that Warren Hills was responsible for E.N.'s education and transportation costs from July 2018 to January 2020. On January 19, 2021, Executive County Superintendent (ECS) Rosalie Lamonte (Dr. Lamonte), issued a letter determining that S.A. had become homeless during the 2017-2018 school year in Warren Hills, and that Warren Hills was fiscally responsible for school years 2018–2019, 2019–2020, and 2020–2021.

On April 16, 2021, Warren Hills filed the instant petition against Hackettstown and the DOE, seeking a determination that Hackettstown is responsible for E.N.'s costs during the 2018-2019 school year and that the DOE is responsible for the 2019–2020 school year and forward, pursuant to *N.J.S.A.* 18A:7B-12(d). Hackettstown filed an answer, and the DOE filed a motion to dismiss the petition. The matter was transmitted to the OAL and the DOE's motion was denied. Warren Hills and Hackettstown then filed cross-motions for summary decision, which were denied by the ALJ because a genuine issue of material fact existed regarding the validity of the homelessness determination that had been made and a more fact-intensive analysis was required.

Following a hearing, and citing to testimony and evidence on the record, the ALJ found that S.A. had moved to the Mansfield Village apartment in August or September 2017, and left Mansfield Village for Hackettstown in July 2018. The ALJ concluded that S.A. was not homeless when she moved from Mansfield Village to Hackettstown. Specifically, the ALJ found that S.A. did not leave Mansfield Village out of necessity or due to an emergency. The ALJ noted that S.A. testified that she was neither evicted nor asked to leave; rather, she planned to return to Newark, but received an appealing

[4] Hackettstown paid Bancroft $60,697.72 towards E.N.'s educational costs for the 2019-2020 school year.

invitation from X.S. to live with her and her family in Hackettstown and help with childcare in exchange for rent.

Furthermore, the ALJ found S.A.'s residence in Hackettstown to be fixed, regular, and adequate, and more comfortable than the Mansfield Village apartment. The ALJ reasoned that S.A. had her own bedroom in Hackettstown compared to Mansfield Village, where she shared a room with her daughter;[5] in addition, the Hackettstown home is a split-level home and not an apartment. The ALJ also found that S.A. intended to remain in Hackettstown indefinitely, as evidenced by her changing the address on her driver's license to the Hackettstown address. Additionally, the ALJ found that the residents of the home in Hackettstown all depended on each other as in *Bd. of Educ. of the Twp. of Pennsauken, Camden Cnty. v. Lovell Pugh-Bassett, Interim Executive Cnty. Superintendent, Bd. of Educ. of Haddon Twp., Camden Co., and A.A. on behalf of minor child, A.L.*, Commissioner Decision No. 122-22 (June 16, 2022). The ALJ noted that S.A was never asked to leave Hackettstown, and only moved out after X.S.'s father-in-law died unexpectedly and his spouse, X.S.'s mother-in-law, needed to move in because she could not take care of herself. The ALJ found that X.S. did not want S.A. to leave. The ALJ reversed the ECS's determination, reinstated Forney's decision from July 30, 2019, and directed Hackettstown to assume financial responsibility for E.N.'s tuition from 2018 onward, totaling $160,739.88.

In its exceptions, Hackettstown argues that the ALJ erred in finding that S.A. was not homeless when she left Mansfield Village for Hackettstown. This finding, they contend, contradicts Mongoi's August 26, 2020 determination of homelessness that Warren Hills failed to timely challenge; as such, Warren Hills's appeal should be dismissed pursuant to *N.J.A.C.* 6A:3.1.3(i). Further, even assuming a

[5] The Initial Decision indicates both that S.A. and her daughter shared a bedroom and that they shared a bed. The second statement appears to be a typographical error, as S.A. testified that she and her daughter shared a bedroom at Mansfield Village, not a bed. *See* T49:4.

timely appeal, Hackettstown argues that the record supports a conclusion that each of S.A.'s living arrangements – at the Mansfield Village apartment, in Hackettstown, in Budd Lake, and in Pennsylvania – were not fixed, regular, and adequate; thus, S.A. was homeless. Hackettstown notes that S.A. had not lived in the Hackettstown school district for at least 365 days during the relevant time period, and argues that Hackettstown cannot, therefore, be responsible for E.N.'s education.

Hackettstown also argues that the ALJ incorrectly relies on *Pennsauken*, *supra*, in reaching the conclusion that S.A. was not homeless. Hackettstown distinguishes this matter from *Pennsauken*, noting that the living conditions in *Pennsauken* were fixed, regular, and adequate, with the mother and student having their own bedrooms and access to all home facilities. Further, they had been living in the home for years by the time of the hearing, and the homeowner relied on her daughter (the student's mother) for fulltime medical care. Hackettstown argues that, in contrast, S.A. shared a room with her adult daughter in Mansfield Village, was not on the lease, and moved out because the lease was ending. Further, S.A. did not have a bedroom, but a "space" in Hackettstown; she resided there for well under a year; did not pay rent; was not on the lease; and was eventually told that she might have to leave. Hackettstown also argues that, unlike in *Pennsauken* where the homeowner depended on her daughter, X.S.'s family appears to have had other options for childcare beyond S.A.

Furthermore, Hackettstown argues that Warren Hills has not met its burden of proving that S.A. was not homeless. Hackettstown also takes exception to the ALJ's finding that Hackettstown did not act in compliance with the relevant homelessness regulations, asserting that they contacted the Office of School Finance and – by way of a carbon copy – the ECS, seeking reconsideration of the DOE's decision to uphold the finding that Hackettstown was responsible for E.N.'s educational costs. Hackettstown contends that it was appropriate for it to seek a homelessness determination from the

ECS because the ECS has exclusive jurisdiction over homelessness determinations and had not yet made a determination regarding E.N.

Lastly, Hackettstown takes exception to the ALJ's finding that Hackettstown is fiscally responsible for E.N.'s tuition from 2018 forward. Hackettstown argues that the DOE's determinations from Lee and Forney only reviewed the 2018-2019 school year, finding that because S.A. lived in Hackettstown on October 15, 2018, Hackettstown was fiscally responsible for 2018-2019. No other DOE determinations for subsequent school years had been made, and the record shows that S.A. did not live in Hackettstown in October 2019, October 2020, or October 2021. Accordingly, Hackettstown argues that neither the record nor the decision can substantiate a finding that Hackettstown is responsible for the school years from 2018 forward.

In response, Warren Hills contends that Hackettstown's exceptions reiterate arguments presented during the hearing and in their post-hearing brief that have already been considered and dismissed by the ALJ; as such, those arguments should not be considered by the Commissioner. Next, Warren Hills challenges Hackettstown's assertion that it complied with the relevant homelessness regulations, arguing that there is no provision in the law or code for a request for reconsideration of a determination of district of residence. Regarding the issue of timeliness, Warren Hills emphasizes that Dr. Lamonte's January 19, 2021 determination – that S.A. became homeless in Warren Hills during the 2017-2018 school year – forms the basis for the instant appeal; therefore, Warren Hill's appeal – filed April 16, 2021 – is timely. Warren Hills contends that Mongioi's August 26, 2020 email does not constitute an ECS determination since she did not consult the ECS in reaching her determination, and Dr. Lamonte neither signed nor certified the email.

Lastly, Warren Hills argues that there is ample evidence in the record to support the ALJ's conclusion that S.A. was not homeless. Citing to case law referenced in the ALJ's decision,

Warren Hills contends that S.A. was not living in Hackettstown out of necessity. Warren Hills notes that S.A. testified that she was neither evicted nor asked to leave Mansfield Village. Rather, she left Mansfield Village because she was unhappy and wanted to return to Newark, where she had grown up, but S.A.'s mother did not want her to move back. S.A.'s other family members remained at Mansfield Village after S.A. left. S.A.'s family members in Hackettstown did not give her a set amount of time during which she could stay with them and S.A. testified to always having lived with relatives throughout her life. Warren Hills also contends that the Hackettstown home was fixed, regular, and adequate, and that S.A.'s testimony suggests that she had more comfortable living arrangements in Hackettstown than she did at Mansfield Village.

Initially, the Commissioner concludes that Warren Hills' appeal was timely filed. Pursuant to *N.J.A.C.* 6A:17-2.7, a determination of homelessness is made by the ECS; the ECS's determination is then appealable to the Commissioner. Accordingly, Warren Hills' timeline to file its petition of appeal began running only when Warren Hills received Dr. Lamonte's January 19, 2021 determination; the earlier correspondence from Hearn and Mongoi is irrelevant. The petition of appeal was filed on April 16, 2021, less than 90 days after Dr. Lamonte's determination, and was therefore timely pursuant to *N.J.A.C.* 6A:3-1.3(i).

Under McKinney-Vento, homeless children are defined as "individuals who lack a fixed, regular and adequate nighttime residence," which includes "children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason." 42 *U.S.C.A.* § 11434a(2). Similarly, under state law, homeless children are defined as "child[ren] or youth who lack[] a fixed, regular and adequate residence pursuant to *N.J.S.A.* 18A:7B-12 and *N.J.A.C.* 6A:17-2.2," which includes children living in the "residence of relatives or friends where the homeless child resides out of necessity because his or her family lacks a regular or permanent residence of its own."

N.J.A.C. 6A:17-1.2 and 2.2. "[D]omicile attaches immediately if a student's dwelling is found to be fixed, regular and adequate." *Bd. of Educ. of Twp. of Egg Harbor v. Bd. of Educ. of Mainland Reg'l Sch. Dist.*, Commissioner Decision No. 555-10 (Dec. 30, 2010), at 4 (citing *N.J.S.A.* 18A:17B-12(c)).

The Commissioner has previously held that homelessness "is best viewed in a continuum." *St.-Op. Sch. Dist. of Camden v. C. Ann Volk*, Commissioner Decision No. 172-17R (June 20, 2017), at 11. Conducting a homelessness evaluation to determine whether a child's home is considered fixed, regular, and adequate requires a fact-specific analysis and "cannot rest upon a simple calculation of the amount of time that children have spent in a particular location or municipality." *M. O'K. v. Bd. of Educ. of Borough of Cresskill,* Commissioner Decision No. 325-14 at 3 (August 12, 2014), *aff'd*, No. A-0828-14T4 (App. Div. Sept. 8, 2016). In conducting such a fact-specific inquiry, the Commissioner must consider the totality of the circumstances, as "[t]he reasons for the children's homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant." *Ibid.*

Here, these principles apply to the analysis of whether S.A. was homeless. Upon review, the Commissioner concurs with the ALJ that S.A. was not homeless upon leaving Mansfield Village, for the reasons detailed in the Initial Decision. S.A. did not leave Mansfield Village out of necessity or due to an emergency, and her residence in Hackettstown was – at least initially – fixed, regular, and adequate. Accordingly, upon her move to Hackettstown, into a fixed, regular, and adequate home with X.S., S.A. was domiciled in Hackettstown. Forney's July 30, 2019 decision, which determined that Hackettstown was responsible for the costs of E.N.'s education for the 2018-2019 school year based on S.A.'s residence in Hackettstown on October 15, 2018, was therefore correct, as was the ALJ's corresponding conclusion for the 2018-2019 school year.

However, the Commissioner finds that S.A. became homeless while residing in Hackettstown. Specifically, S.A.'s residence in Hackettstown was no longer fixed, regular, or adequate once X.S.'s mother-in-law moved in. S.A. testified that she only left Hackettstown because X.S. needed the guest room – where S.A. slept – for her mother-in-law following the unexpected death of X.S.'s father-in-law. The record indicates that space was so limited in Hackettstown after X.S.'s mother-in-law moved in that S.A. was relegated to the "other little space that they had temporary." T64:11. S.A. testified that the space they gave her was not a bedroom but rather a small playroom, which was like an office. Additionally, there was a small child in the household who could use the playroom, limiting any privacy S.A. had. X.S. wrote a letter dated March 25, 2019, stating that as of March 29, 2019, S.A. would no longer be able to reside in Hackettstown due to family circumstances. Based on these factors, the Commissioner finds that S.A. left Hackettstown did not leave Hackettstown out of preference, but rather due to an emergency – the sudden death of X.S.'s father-in-law, which led to the arrival of X.S.'s extremely ill mother-in-law, which in turn left S.A. displaced in and then from the home.

Upon leaving Hackettstown, S.A. went to live with her sister, W.C., in Budd Lake. S.A. did not contribute to rent or the mortgage and she testified only that she had a place to sleep. Further, nothing in S.A.'s testimony indicated that the members of W.C.'s residence depended on each other as a household unit as in *Pennsauken*. Accordingly, the Commissioner cannot find S.A.'s living arrangements at W.C.'s home to be fixed, regular, or adequate.

S.A.'s subsequent residences in Village Green, Budd Lake,[6] and in Pennsylvania, were also not fixed. When asked if she helped with rent or the mortgage at Village Green, she replied only that she

[6] S.A. testified to moving in with her mother, C.A., at Village Green, Budd Lake after living at W.C.'s Budd Lake residence. She testified that she does not remember when she moved into the Village Green residence.

contributed to "a lot of things." Further, S.A. testified that after becoming sick in January 2019,[7] her mother told her that she could not stay at Village Green if she did not get better. S.A. testified that she went back and forth between New Jersey and a family friend in Pennsylvania who offered her a place to stay and took care of her while she was sick. S.A. testified to renting hotel rooms in order to see family members during this period. Regarding finances, S.A. testified that she started looking for a job and applying for benefits during this time, but to no avail. At the time of the hearing, S.A. acknowledged that she had been living in a hotel for several weeks because she was trying to see if she could return to Newark. Taken as a whole, S.A.'s transience after the time X.S.'s mother-in-law moved into the Hackettstown home, as well as her regular reliance on hotel rooms, indicates that her living arrangements were not fixed or regular.

Once it is determined that a child or her parent is homeless, the question becomes which district is financially responsible for the child's education. Generally, a student is eligible for a free public education in a school district if he or she is domiciled within the school district. *N.J.S.A.* 18A:38-1(a); *N.J.A.C.* 6A:22-3.1(a). A student's domicile is determined by the domicile of her parents. *N.J.A.C.* 6A:22-3.1(a)(1). The district of residence for a child whose parent "temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent . . . last resided prior to becoming homeless." *N.J.S.A.* 18A:7B-12. This district "shall be the school district of residence until the parent establishes a permanent residence." *N.J.A.C.* 6A:17-2.3. However, when a homeless child lives in a school district for one year or longer – and a new domicile has not been established – the child is "deemed domiciled" in that district for the purposes of determining which district is responsible for the cost of the child's education. *N.J.S.A.* 18A:38-1(d); *N.J.A.C.* 6A:17-2.3(c).

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[7] S.A. testified that she became sick in the beginning of the COVID-19 pandemic and that she moved to Pennsylvania "around the time of the pandemic." Therefore, the January 2019 date may be a mistake.

In this matter, S.A. last resided in Hackettstown prior to becoming homeless. Prior to X.S.'s mother-in-law moving in, S.A.'s living arrangements in Hackettstown were fixed, adequate, and regular. Her testimony reveals that she had her own room, with a bed. The ALJ correctly determined that everyone in the Hackettstown home depended on each other; in exchange for rent, S.A. watched X.S.'s son and at times purchased groceries. S.A. worked two part-time seasonal jobs and was waiting on a new job opportunity through X.S.'s husband. S.A. had not been given a moveout date and she moved into the Hackettstown home voluntarily and not out of necessity. Following the move of X.S.'s mother-in-law to Hackettstown, S.A. moved to the playroom, rendering her living conditions inadequate. X.S. took steps to secure housing for S.A. elsewhere, such as coordinating S.A.'s move to Budd Lake with W.C, and drafted a letter stating the S.A. no longer lived at the Hackettstown home. Accordingly, the Commissioner concludes that Hackettstown is the district of residence pursuant to *N.J.S.A.* 18A:7B-12(b).

The Commissioner further concludes that Hackettstown remained the district of residence for the subsequent school years, because petitioner did not establish a permanent domicile during that time, nor did she live in any school district for one year in order to be deemed domiciled there. Petitioner lived in Hackettstown from July 2018 to May 2019. From there, she lived with W.C. in Budd Lake; A.N. testified that S.A.'s residence there lasted for 7-8 months. Next, S.A.'s testimony indicates that she moved to her mother's residence at Village Green, Budd Lake, but was transient and moved back and forth between Pennsylvania and New Jersey, sometimes staying in hotels. Therefore, although the Commissioner modifies the Initial Decision to conclude that S.A. was homeless after X.S.'s mother-in-law moved into the Hackettstown home, the Commissioner nonetheless concurs with the ALJ that Hackettstown remained responsible for the costs of E.N.'s education for the 2019-2020 and 2020-2021 school years.

Accordingly, the Initial Decision is adopted in part and modified in part. Hackettstown is directed to assume financial responsibility for E.N.'s education from the 2018-2019 school year to the 2020-2021 school year.

IT IS SO ORDERED.[8]

Kathleen Ehling

ASSISTANT COMMISSIONER OF EDUCATION[9]

Date of Decision: November 15, 2024
Date of Mailing: November 20, 2024

[8] 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.

[9] Pursuant to *N.J.S.A.* 18A:4-34, this matter has been delegated to Assistant Commissioner Kathleen Ehling.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. EDU 04846-21
AGENCY DKT. NO. 56-4/21

WARREN HILLS REGIONAL SCHOOL DISTRICT, WARREN COUNTY,
Petitioner,
v.
TOWN OF HACKETTSTOWN BOE, WARREN COUNTY AND NEW JERSEY DEPARTMENT OF EDUCATION,
Respondents.

Marc H. Zitomer, Esq., for petitioner (Schenck, Price, Smith & King, LLP, attorneys)

Emily E. Strawbridge, Esq., for respondent Hackettstown Board of Education (Parker McCay, P.A., attorneys)

Sadia Ahsanuddin, Deputy Attorney General, for respondent New Jersey Department of Education (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: June 28, 2024 Decided: July 18, 2024

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE

Petitioner, Board of Education of the Warren Hills Regional School District, Warren County (Warren) appeals a McKinney-Vento Education Act (McKinney-Vento) determination made by the New Jersey Department of Education's (DOE) interim executive county superintendent (ECS) that Warren is the party fiscally responsible for the education of E.N., a now twenty-two-year-old student who was placed by the Department of Children and Families (DCF) at the Bancroft School (Bancroft). The DOE has previously concluded on two occasions that respondent Board of Education of the Town of Hackettstown (Hackettstown) was responsible. The determinations of the DOE were not timely appealed by Hackettstown. Thereafter, the interim ECS of Warren County reached a different conclusion, "rubber-stamping" Hackettstown's suggestion that Warren was responsible for the education of E.N. Warren contests that determination, as it directly contradicts multiple prior rulings of the DOE, including that of Deputy Assistant Commissioner Forney.

PROCEDURAL HISTORY

On or about April 16, 2021, petitioner filed a petition of appeal together with exhibits with the Commissioner of Education (Commissioner), seeking a determination regarding the party responsible for the education of E.N. On May 11, 2021, Hackettstown filed an answer, and on June 2, 2021, the DOE filed a motion to dismiss the petition of appeal in lieu of an answer. The Department transmitted the matter to the Office of Administrative Law (OAL), where it was filed on June 3, 2021. The DOE filed a brief with exhibits in support of its motion, and petitioner filed a brief with exhibits in opposition to the motion. On November 5, 2021, the motion to dismiss was denied.

On September 1, 2022, petitioner filed a motion for summary decision. The DOE filed opposition to petitioner's motion on October 18, 2022. Respondent Hackettstown filed opposition to petitioner's motion and a cross-motion for summary decision on October 28, 2022. Petitioner filed opposition to respondent Hackettstown's opposition and cross-motion, also on October 28, 2022. Summary decision was denied as there

was a genuine issue of material fact with respect to the validity of the homelessness determination that had been made based upon insufficient evidence, and that a far more fact-intensive analysis was required.

A hearing was held on September 13, 2023. The parties submitted post-hearing briefs, and following receipt of all exhibits, the record was closed.

FACTUAL BACKGROUND

The parties entered into a Joint Stipulation of Facts, as follows:

1. E.N.'s date of birth is August 10, 2000.
2. On December 18, 2014, E.N. was placed by the DCF at the Bancroft School.
3. Prior to placement at the Bancroft School, E.N. resided with her mother, S.A., in Newark, New Jersey.
4. On September 27, 2016, a residency application was filed for an apartment in Mansfield Village, Hackettstown, New Jersey 07840-3522, listing C.A. and K.A. as applicants. S.A. and A.N. were listed on the residency application for Mansfield Village as additional occupants. Attached hereto as "Exhibit J-1" is a true and accurate copy of the residency application for Mansfield Village.
5. C.A. and K.A. signed a lease, dated September 30, 2016, to become tenants in Mansfield Village, Hackettstown, New Jersey 07840. S.A. and A.N. are listed on the lease as "immediate family." Attached hereto as "Exhibit J-2" is a true and accurate copy of the lease.
6. The Mansfield Village, Hackettstown, NJ 07840 address falls within the Warren Hills Regional School District.
7. On March 9, 2018, Cindy Lee, Director of State Aid Entitlements and Payments, New Jersey Department of Education, issued a determination that Warren Hills Regional School District was responsible for tuition for E.N. for the 2017–2018 school year because S.A. resided at the Mansfield Village residence on October 13, 2017. Attached hereto as "Exhibit J-3" is the March 9, 2018, determination issued by the Department of Education.

8. The Warren Hills Regional School District Board of Education paid the tuition and aide for the 2017–2018 school year in the amount of $107,363.16. Attached hereto as "Exhibit J- 4" is proof of payments made by Warren Hills for the 2017–2018 school year.

9. On November 27, 2017, C.A. and K.A. signed a lease renewal addendum for the apartment in Mansfield Village, Hackettstown, NJ 07840 for the term December 1, 2017 to November 30, 2018. Attached hereto as "Exhibit J-5" is a true and accurate copy of the lease renewal signed by C.A. and K.A..

10. On November 12, 2018, C.A. signed a notice of vacating form for the Mansfield Village, Hackettstown, NJ 07840 apartment. Attached hereto as "Exhibit J-6" is a true and accurate copy of the notice of vacating form signed by C.A..

11. On March 15, 2019, Cindy Lee from the DOE issued a determination that Hackettstown School District was responsible for tuition for E.N. for the 2018–2019 school year because on October 15, 2018, S.A. resided on Herbert Lane, Hackettstown, N.J. 07840-2503. Attached hereto as "Exhibit J-7" is the March 15, 2019, determination issued by the Department of Education.

12. On July 30, 2019, Deputy Assistant Commissioner Glenn Forney affirmed the determination that Hackettstown School District should be responsible for the 2018–2019 school year. Attached hereto as "Exhibit J-8" is the July 30, 2019, letter issued by Deputy Assistant Commissioner Glenn Forney.

13. On August 1, 2019, counsel for Hackettstown School District wrote to Mr. Forney requesting that they "reconsider its denial of the Board's appeal." However, a petition of appeal was not filed with the New Jersey Commissioner of Education to appeal the July 30, 2019, determination. Attached hereto as "Exhibit J-9" is the August 1, 2019, letter from Hackettstown.

14. The Hackettstown School District paid $60,697.72 toward E.N.'s educational costs for the 2019–2020 school year.

15. On August 1, 2020, the Bancroft School sent a letter to the Warren County Office of Education regarding outstanding tuition for E.N. Attached hereto as "Exhibit J-10" is the August 1, 2020, letter from the Bancroft School.

16. On August 26, 2020, Tania Mongioi, special education specialist at the Warren County Office of Education, determined that S.A. became homeless

during the 2017–2018 school year from the Warren Hills Regional School District. Attached hereto as "Exhibit J-11" is the August 26, 2020, email from Tania Mongioi.

17. The August 26, 2020, decision discussed in the above paragraph was not appealed.

18. On January 19, 2021, Executive County Superintendent Rosalie Lamonte issued a letter determining that S.A. became homeless during the 2017–2018 school year from the Warren Hills Regional School District. Attached hereto as "Exhibit J-12" is the letter of determination from the Executive County Superintendent.

19. Attached hereto as "Exhibit J-13" are the interrogatory answers received by the Warren Hills Regional School District Board of Education from the Hackettstown Township Board of Education in this matter.

20. Attached hereto as "Exhibit J-14" are the interrogatory answers received by the Warren Hills Regional School District Board of Education from the New Jersey Department of Education in this matter.

I **FIND** the following additional facts:

After the DCF residentially placed E.N.—a special-needs student, then age fourteen—in the Bancroft School, E.N. attended Bancroft for the next eight years, through the 2020–2021 school year.

Over the course of E.N.'s time at Bancroft, Cindy Lee, the director of State Aid Entitlements and Payments at the Department of Education (DOE), made a yearly determination of district responsibility. To determine district responsibility, the DOE would traditionally look to the address of the student's parent or guardian on the final school day before October 16 of that school year. On October 15, 2018, E.N.'s mother, S.A., resided at Herbert Lane, Hackettstown, NJ 07840. Because this address is located inside of the Hackettstown Public School District, Lee ultimately determined on March 15, 2019, that Hackettstown Public School District was responsible for paying E.N.'s educational costs at Bancroft for the 2018–2019 school year.

About a month after this determination, the Hackettstown Board of Education (Hackettstown) appealed Lee's decision to Kevin Dehmer, Assistant Commissioner for the DOE. The appeal requested that Dehmer consider findings that, according to Hackettstown, proved that S.A. still resided at Mansfield Village, Hackettstown, NJ 07840—the address at which she had resided in past school years—on October 15, 2018. The Mansfield address is located in the Warren Hills School District.[1] S.A. had responded to two letters from Hackettstown that were sent to the Mansfield Village address, one on April 7, 2018, and one on August 27, 2018.

S.A. moved to the apartment in August or September 2017. She did not have her own room while living there; rather, she shared a bedroom with her adult daughter. S.A. moved out of the Mansfield apartment and in with her cousin on Herbert Lane in July 2018, as confirmed by her cousin's notarized statement and S.A.'s testimony that "it could have been July, which is what [her cousin] said." She also told Guy Jorstad, Hackettstown director of pupil personnel services, that she has lived in Hackettstown since that date, which led him to meet with her to enroll E.N.

The move to her cousin's home was made out of preference and S.A. was not evicted or even asked to leave the Mansfield apartment. She had planned to move back to Newark, NJ, but her cousin X.S. invited her to come live with her and her family and help care for the cousin's baby in exchange for living there rent-free. She could have remained at the Mansfield apartment, and had the option to live in either place. S.A. had her own room at Herbert Lane, the prospect of a job with her cousin's employer, and no timetable for living there. She purchased groceries at times and was employed at two part-time jobs.

Hackettstown acknowledged that there was evidence supporting the determination that S.A. resided on Herbert Lane. Among this evidence was a pharmacy receipt dated November 28, 2018, and a 2018 tax return. Most notably, however, was a notarized letter

[1] S.A.'s mother and sister were confirmed to have stayed at that address roughly through the end of the lease.

dated February 19, 2019, and signed by S.A.'s cousin, attesting that S.A. had been residing with her on Herbert Lane since July 2018.

While waiting for a ruling on its appeal, Hackettstown refused to register E.N. in its district without receiving proofs of residency from S.A., despite Lee's residency determination.

On July 30, 2019, Glenn Forney, Deputy Assistant Commissioner at the Office of School Finance, rejected Hackettstown's request for a redetermination, upholding Lee's determination of district responsibility. In Forney's opinion, "[m]ost of the evidence [Hackettstown] presented [did] not specifically corroborate where the child's mother resided on October 15, 2018." (J-8.) Expounding on his decision, Forney wrote, "The only evidence presented that demonstrates where [S.A.] resided on October 15, 2018, is the notarized letter from S.A.'s cousin . . . [,] who provided a notarized statement that [S.A.] has been living at Herbert Lane since July 2018." At the end of his determination, Forney wrote, "If the Hackettstown Board of Education disagrees with this determination, it may initiate a formal proceeding before the Commissioner by filing a Petition of Appeal pursuant to the provisions of N.J.A.C. 6A:3-1 et seq." Notably, N.J.A.C. 6A:3-1.3(i) requires a petitioner to file their appeal within ninety days of receipt of the ruling.[2]

On August 1, 2019, counsel for Hackettstown wrote Forney requesting that he reconsider his denial of the original appeal and name Warren Hills School District responsible. The executive county superintendent was copied on this correspondence, which did not state that Hackettstown believed S.A. was homeless.

Guy Jorstad then emailed Anthony Hearn at the Office of Fiscal and Data Services of the DOE and Diahann DeRiggiero, the program coordinator of the McKinney-Vento Education of Homelessness and Youth Program at the DOE on September 10, 2019. He told them that he was looking to see if S.A. had become homeless after leaving her Mansfield Village address. Jorstad suspected that S.A. may have been "doubled-up" at

[2] This determination was not appealed.

her sister's residence in Mount Olive; Hearn replied that this would make S.A. homeless and E.N. eligible for McKinney-Vento.

The next day, Jorstad emailed administrators at Hackettstown, declaring that Hearn had determined S.A. to be homeless upon arriving in the Hackettstown school district and that that would make Warren Hills—as the district of origin—financially responsible for E.N. during the 2018–2019 school year. The next day, counsel for Hackettstown sent these documents to Forney, claiming that Hearn determined that S.A. had been "residing with relatives or friends out of necessity due to a lack of a regular or permanent residence" and was therefore homeless and eligible for McKinney-Vento. At the same time, counsel for Hackettstown implicitly acknowledged that this was not the end of the matter, requesting, "[i]n light of the new information and determinations . . . that the Office of School Finance reconsider its prior determination that Hackettstown is responsible [for] the financial costs for E.N.'s educational program for the 2018–19 school year."

On January 1, 2020,[3] Timothy Havlusch, Hackettstown's business administrator, emailed Bancroft asserting that Hearn's determination[4] of homelessness rendered Warren Hills fiscally responsible for all costs related to E.N. Havlusch requested that Bancroft return any money paid for E.N.'s education by Hackettstown. Bancroft replied nearly two months later, claiming that Hackettstown was still responsible for E.N.'s costs "during any appeal process." At this point, nearly seven months had passed since Deputy Assistant Commissioner Forney's determination.

Tania Mongioi, the Warren County special education specialist, received a communication from Bancroft on August 1, 2020, claiming that because no payments had been made for E.N., she would be disenrolled from Bancroft in thirty days. On August 26, 2020, Mongioi issued a homelessness determination for S.A. and declared that because she did not reside at the Hackettstown location for a year, Warren Hills would

[3] There is a typo in the email's heading reading that it was sent on January 20, 2019.
[4] In an interrogatory, Hearn's department stated that he "never made any official determinations as to district of residence and only gave advice based solely on the facts provided to him" by Hackettstown. Hearn did not have the authority to make final determinations.

be responsible for all of E.N.'s tuition and transportation from July 2018 through January 2020. When Warren Hills objected, Mongioi claimed that Forney's decision was overturned by Hearn in September 2019, and the responsibility returned to Warren Hills.

On January 19, 2021, Interim Executive County Superintendent Rosalie Lamonte reviewed Mongioi's determination of homelessness and determined that Warren Hills would be responsible for all costs associated with E.N. Warren Hills appealed Lamonte's determination on April 16, 2021.

TESTIMONY

What follows is not a verbatim accounting of the testimony, but rather a summary of the testimonial and documentary evidence I found to be relevant to resolving the issues in this matter.

S.A. is the mother of E.N., who was placed in Bancroft on or about December 16, 2014. E.N. was living with S.A. in Newark when she was placed.

S.A. moved to the Mansfield Village Apartments in Hackettstown in September 2017, she believes. She lived with her mother, C.A., and does not know if she was on the lease. She was there a few months until possibly August 2018 or early September and then moved to Herbert Lane, Hackettstown, NJ, with her cousin, X.S., and her husband and three children. She lived there until sometime after her cousin's father-in-law passed away at the end of July 2019. Her mother-in-law was in very poor health, on oxygen, and could not care for herself, and so they needed to have her move in with them.

S.A. testified that she had her own room and contributed to childcare by watching her cousin's children. She also bought groceries. When an unexpected need to care for the ailing in-law arose, they needed the guest room for her. S.A. then moved in with her sister, W.A., in Budd Lake, New Jersey after she left her cousin's house. She could not recall exactly when she left there. She did not pay rent or any of the mortgage while living with her cousin and family but helped with household costs and also worked part-time.

After she left Budd Lake, she went to live with her mother C.A. again, but she doesn't recall when. She contributed to expenses while living with her mother but declined to indicate what those were due to undisclosed privacy concerns.

From 2017 to 2021, she did not own her own home but always "had a roof to stay under." When asked whether she would have been able to afford her own home from 2017 to 2021, she indicated she could afford a shared apartment but not her own home, and that's why she lived with others, but added, "I always live with my family."

She is currently employed at T.J. Maxx and earns something over the minimum wage. In 2019, she worked at Dunkin' and also at Edible Arrangements. She testified that she got sick in April 2020. She went to Pennsylvania at some point during the COVID-19 pandemic to stay with a friend, who had an extra room, for a few months while she was sick. She went back and forth between New Jersey and Pennsylvania, but she and her mother were both sick and couldn't work due to COVID. Thereafter she returned to live with her mother.

She testified that she had applied for food stamps, TANF and unemployment benefits but didn't receive any, so she stayed in Pennsylvania only while she was sick.

S.A. indicated she moved to the Herbert Lane address sometime after July 4, so it may have been August or September 2018, but that "it could have been July, which is what [her] cousin said." Her cousin had invited her to move in and help with the kids, so she did. Her cousin's husband said that soon thereafter he would have a job for her at his company to take over from someone who was leaving. However, then his father passed away unexpectedly.

She remembered speaking with a Warren County residency officer in November 2018.[5] She testified that she had her own space at Herbert Lane and was saving for an apartment. She does not recall why she moved out of Mansfield Village but indicated she

[5] This was a typo in Investigator Guth's report, which reflects that the meeting took place in November 2018.

was not getting along with her mother and had conflicts with her over wanting to move back to Newark, which her mother was against. She had lived in Newark for over thirty years and it felt too different, so she wanted to move back to Newark. She emphasized that she was not evicted from Mansfield but rather left on her own. Her cousin had invited her to move in, and so she did.

S.A. stated her cousin's name and indicated she does not know if it's her cousin's signature on the March letter but that in May 2019 she was still at Herbert Lane. She then said that she was in Budd Lake in May as well. She testified that she visited her daughter every Wednesday and Saturday at Bancroft for years until COVID. She also visited her cousin at Herbert Lane even after she moved out and went to see the baby, but when she got sick, they lost touch for a bit.

S.A. was emphatic that she never told Bancroft that her cousin had asked her to leave.

The State had been the entity that suggested Bancroft and first told her that DYFS would pay for it, and then changed that to say that the State would pay, and then changed that again to say that the Newark Board of Education would pay, and then finally said that Hackettstown would pay for tuition at Bancroft.

When she lived in Mansfield Village, there were three people in the apartment: herself, her mom and her daughter. There were two large bedrooms. She would not answer the question initially as to whether she had her own bedroom, but when directed to do so, she indicated she shared a bedroom with her daughter.

She does not recall if she was employed in 2017. In 2018 she had a part-time seasonal job at Lowe's and another part-time job at Dollar Tree but made very little money. She received food stamp benefits during that time. She took care of her cousin's baby on the days she didn't work and helped around the house in exchange for rent.

She had her own room and bed at the Herbert Lane address. They told her there was a job that would be available for her at their company because someone was going

on maternity leave; until then, she could continue to take care of the baby and help around the house.

S.A. testified that her mother's home was not her permanent residence, and while her mother never told her she should leave, she did want to find her own place. She wanted to go back to Newark.

S.A. indicated that when she moved to Herbert Lane she was working the two part-time jobs she mentioned. She began working at Dollar Tree in November 2017 and at Lowe's beginning in March 2018. She noted her cousin's notarized letter saying that she had lived at her address since July 2018 and testified that she moved out at the end of July 2019 and as such had been there for one year.

S.A. reiterated that her cousin never told her to leave. When her cousin's husband's father died, they needed the room for his widow, who was very sick and had an oxygen tank and needed help functioning. Her cousin clearly felt horrible and did not want her to leave, but they needed the room for the mother-in-law, who was extremely ill. Her cousin said, "we want to keep you." In fact, the cousin indicated she was going to check with her son, who was in the army, to see if he was coming back or if they could give her his room. She only left because they had a crisis in that the mother-in-law, who was now unexpectedly widowed, had an oxygen tank and needed help. It was "all friendly," and there were no issues; indeed, she remained there for an additional period of time after the mother-in-law moved in. She stayed in the playroom and continued to watch the baby. Thereafter, her sister told her to come live with her.

A.N. is the guardian of her sister, E.N. She became the guardian on July 2, 2021. Prior to that, the State was the guardian, and prior to her placement at Bancroft, her sister lived with her mother, her grandmother, and her aunt in Newark, New Jersey. She moved to Hackettstown to live at Mansfield Village in 2016, around August or September. They lived there through 2017, and her mother, S.A., moved to Herbert Lane in 2018. After that, she lived with her sister in Budd Lake. After living in Budd Lake, she moved to Pennsylvania with a family friend in 2020.

When asked why S.A. moved from Hackettstown to Herbert Lane, she indicated that S.A. wanted to be independent and save money while living with her cousin because she couldn't afford her own apartment. A.N. testified that in her opinion, without her relatives, S.A. would have been homeless ever since she left Newark.

A.N. was not aware of when her sister became a ward of the State because she was a minor at the time, so she is not sure how it happened. She believes her mother left Herbert Lane sometime in 2019 after moving there in 2018 and agreed that her mother took care of her cousin's child.

A.N. did not recall when her mother left Mansfield, but it was before she moved out in December 2018. She believes her mother left months earlier.

Rosalie Lamonte is the interim ECS in Warren County and has been in that position for fourteen years. She said she is a resource between the DOE and districts in Warren County.

At times they make determinations of homelessness and provide guidance to a district on McKinney-Vento and how it works. She agreed that she has no authority to conduct a fact-sensitive determination of homelessness and did not do any investigation. She relies entirely upon information provided by districts. No one from her office spoke to S.A. or to any family member. No one from her office spoke to anyone at Warren.

She stated that in 2020 Bancroft contacted them for assistance.[6] They weren't able to reach S.A., who she believes lived in Mansfield Township and then with relatives in Hackettstown, and thereafter with relatives in Budd Lake. She testified that those residences were not permanent without indicating how she knew that. She stated that S.A. went to Pennsylvania in January 2020. She then testified that she learned all of this from various districts and that the mother had not established any permanent residences after she left Mansfield.

[6] Bancroft has no legal authority to dispute the prior determination of Deputy Assistant Commissioner Forney and request a McKinney-Vento determination. Bancroft is not an "involved school district" within the meaning of N.J.A.C. 6A:17-2.7(b).

When asked what she considered to be a permanent residence, Lamonte stated that it would be where S.A. is not doubled up with relatives for more than 365 days. She did not know, however, if S.A. was doubled up at Mansfield. She testified that doubled up means no residence of your own and just staying somewhere for shelter.

She agreed that she never inquired of S.A.'s cousin in Hackettstown what the living arrangement was and indicated that she relied on what Hackettstown had provided. She also stated that she believed S.A. had been evicted by her mother but was "not certain." She never spoke to S.A. or to any of her relatives, including her mother or her cousin. All the information she relied upon was what she was told by Hackettstown.

Bancroft asked for a determination as to who was responsible for tuition.[7] She has no idea how long S.A. was in Pennsylvania or why. When asked about the July 19, 2021, letter, which says she agrees with "the family's claim of homelessness," she testified that "that's a phrase that we use."

When shown J-7, the Cindy Lee letter, she testified that in her opinion the letter does resolve the homelessness issue.[8] McKinney-Vento requires that 365 days pass before the original district is no longer responsible for a student fiscally.

At the end of Lamonte's letter, she advises Warren that, "[i]n accordance with N.J.A.C. 6A:17-2.7, the Warren Hills School District may appeal a determination through the NJDOE Offices of Controversies and Disputes, while the district provides all educational services for E.N." This is the basis of the within appeal.[9]

Anthony Hearn is employed at the Department of Education, Office of Fiscal and Data Services. From 2018 to 2020, he was overseeing homeless education.

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[7] The ECS was not legally permitted to make a determination here, as Lamonte admitted she was never asked to do so by one of the "involved school districts." N.J.A.C. 6A:17-2.7(b).

[8] Lee's letter (J-7) concludes, "[i]n accordance with N.J.S.A. 18A:7B-12, N.J.A.C. 6A:23A-19.2, N.J.A.C. 6A:23A-19.3 and based upon the information provided, we determine that Hackettstown Public School District is the responsible school district for E.N."

[9] The petition of appeal was filed on April 16, 2021, and thus is entirely timely.

Homelessness determinations are all fact-based, and very specific facts are required. He defined "doubled up" as having no legal right to live there, and you can be asked to leave.

Hearn agreed he had not spoken to anyone from Warren Hills, only the people from Hackettstown who had reached out. He did not speak to S.A. at all and does not offer the official position of the DOE. He said that a lot of factors go into a determination of homelessness and indicated he has no clue of the circumstances here and was not aware that S.A. had some jobs and who she lived with and why. No factual inquiry was conducted because he is "not the one giving the legal opinion on it" and that "if somebody wants a formal opinion from the county office, the county office then does their investigation and then makes that determination with the input of the homeless coordinator." He has no idea if S.A. felt she was homeless, and no idea why she moved from the Mansfield apartment. They did not consider parent input. If an individual has their own bedroom, etc., it goes into the equation in determining whether someone is doubled up under McKinney Vento, adding that the inquiry is very fact-based, explaining

> [T]he situation as to who is fiscally responsible determination [sic] has to do with a very, very factual based situation as to where a child lived and the living arrangements, and those type of things, so, its very, very factual based. If you don't have good facts, you're never going to be able to give the right answer, so, that's part of the reason why I don't give official answers as to it, because I only have the facts that are presented to me.

He testified that Jorstad provided facts indicating that Warren Hills was the responsible party. He did not do an investigation of any kind and has no authority to make homelessness determinations.

Dennis Morgan is the director of educational services at Bancroft. He indicated that in 2014, E.N. was placed by the Newark school district, and that in August 2020 was the last time she was there. He testified that the tuition due for 2018 and 2019 is

$119,699.44. For 2019 to 2020, it is $28,497.72. For 2020 to 2021, it is $12,542.72, for a total due of $160,739.88. He stated that Hackettstown has paid $60,700.

David Guth is the security director for Warren Hills following a thirty-year career in law enforcement. He has done a few dozen residency investigations over the years and conducted one in this case.

His report is dated November 18, 2019 (P-1).[10]

On November 18, 2018, the Mansfield Village management office indicated S.A. lived there and gave him a copy of her application. No one was at the apartment when he went there. He visited again on November 25, 2018, and no one was there. On November 25, 2018, he arrived at 7:30 a.m. and spoke to the sister of E.N., A.N., who said that she, her grandmother, and her sister all lived there. He noted that the apartment was a mess and there were moving boxes everywhere. A.N. indicated that her mother did not live there and that she lived at Herbert Lane. He said she was very candid and credible. When he went to the Herbert Lane address later that same day, the cousin answered the door and indicated that S.A. did in fact live there. She called for S.A., who had been in her bedroom, and was smoking, so she came out to speak to him for privacy and they sat on the steps to talk. She became emotional and he told her he was there to determine where she was living. She indicated she had conflicts with her grandmother and her other daughter and so she left Mansfield. When Guth was told that S.A. had testified she had moved out by this time, he indicated that was false. S.A. made it clear that she chose to live with her cousin due to conflicts with her mother and her other daughter and also told him at the time, "I'm living here and contact me here if anything else is needed." It was a single-family residence.

Guy Jorstad has been employed at Hackettstown as the director of pupil and personnel services for 16 years. He is the McKinney-Vento coordinator. He does annual trainings on McKinney-Vento each year and has reviewed about 100 cases over 16 years. He testified that this case was first on his radar on January 23, 2019, after hearing from

[10] Guth indicated that there are typographical errors in his report and that the year was 2018, not 2019.

Bancroft. He was treating it as a usual residency case and started the process of enrolling her. He initially did not think the family was homeless and testified that E.N.'s mother S.A. repeatedly denied being homeless. He emailed Hearn on September 10, 2019, opining that the family did not live in Hackettstown for a year before they went to Budd Lake. He asked for documentation from S.A. to show when she lived in the district, if ever, and received ambiguous documentation. These were red flags.

He testified that Mansfield Village is in Hackettstown and is part of the Warren Hills school district and that Herbert Lane, Hackettstown is in the Hackettstown school district. He received no documents from S.A.'s cousin and the cousin's children actually went to school elsewhere. He emailed his homeless determination to Forney on September 11, 2019. Jorstad believed Warren Hills was responsible and agreed with Mongioi's determination.

Jorstad first became aware of the family in January 2019 when Bancroft called. He needed to enroll E.N. because her mother lived at Herbert Lane then. S.A. said they had been there since July 2018 and he met with her at his office to do the paperwork. She had no plans to move out at that time. Her modus operandi was to live with family and she said she was not and had never been homeless.

He found her to not be homeless. He later changed his opinion after talking to Hearn, who he relied on as "more of an expert" in this situation and who had said that S.A. was homeless.[11] He reiterated that S.A. adamantly denied that she was or had ever been homeless. He found this case to be unusually complicated.

He had asked for proofs, and S.A. provided a Walgreens receipt from November 2018 with the Herbert Lane address on it and her Dollar Tree tax documentation for 2018, also with the Herbert Lane address on it. A picture of her license issued April 11, 2019 (J-2), also has the Herbert Lane address on it.

[11] Hearn testified that he had "no clue" as to the circumstances here and had no authority to make final determinations.

Jorstad then issued his letter, relying on his conversations with Hearn; neither had conducted any fact-sensitive inquiry required to reach a homelessness determination. He did not send it to anyone first to verify facts upon which he relied. He never asked Warren Hills about it and never discussed it with them. Jorstad also did not copy Warren Hills on his letter to Hearn because he felt Hackettstown might have been the responsible district at that point.

PARTIES' ARGUMENTS

Warren Hills indicates that the only issue is whether S.A. was homeless when she moved. The DOE did not conduct a fact-sensitive investigation or inquiry when they determined she had become homeless; rather, they just relied on what Hackettstown said and rubber-stamped it. No one visited S.A.; no one talked to or contacted S.A., and no one did any investigation or inquiry. Warren Hills, however, did investigate and went to S.A.'s home and spoke to her. She also confirmed that she was not homeless, never was homeless, and there is nothing to support a finding of homelessness

Warren Hills argues that Hackettstown should be bound by Deputy Assistant Commissioner Forney's July 30, 2019, determination which Hackettstown failed to timely appeal.

Hackettstown contends that E.N. was determined to be homeless, asserting that because she had not lived in one location for a year after being deemed eligible for McKinney-Vento Act protections, Warren Hills—her most recent place of domicile for over a year—should be responsible for any expenses related to her schooling.

The DOE avers that because the ECS is permitted to make determinations of homelessness and residency, they were proper under McKinney-Vento in designating Warren as the school district responsible to Bancroft for expenses related to E.N.

LEGAL DISCUSSION

I. When adjudicating disputes under the McKinney-Vento Act, the burden of proof is typically placed on the party alleging homelessness.

The McKinney-Vento Act, 42 U.S.C. §§ 11431 et seq., requires state educational agencies to "ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education . . . as provided to other children and youths." 42 U.S.C. § 11431(1). To qualify for federal grant money under the Act, states must develop and outline "procedures" for identifying homeless children and "for the prompt resolution of disputes regarding the educational placement of homeless children and youth." 42 U.S.C. § 11432(g)(1)(B) – (g)(1)(C).

A. Statutes and regulations addressing education of homeless children

New Jersey's Commissioner of Education has adopted regulations to that end, in accordance with the Administrative Procedure Act. See N.J.A.C. 6A:17-1.1 et seq. Defining what it means to be homeless, N.J.A.C. 6A:17-2.2 provides:

> [T]hat a child or youth is homeless for purposes of this subchapter when the child or youth resides in any of the following:
>
> 1. A publicly or privately operated shelter designed to provide temporary living accommodations, including:
>   i. Hotels or motels;
>   ii. Congregate shelters, including domestic violence and runaway shelters;
>   iii. Transitional housing; and
>   iv. Homes for adolescent mothers;
> 2. A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation, including:
>   i. Cars or other vehicles, including mobile homes;
>   ii. Tents or other temporary shelters;
>   iii. Parks;
>   iv. Abandoned buildings;
>   v. Bus or train stations; or

> vi. Temporary shelters provided to migrant workers and their children on farm sites;
> 3. The residence of relatives or friends where the homeless child or youth resides out of necessity because the child's or youth's family lacks a regular or permanent residence of its own; or
> 4. Substandard housing.
>
> [N.J.A.C. 6A:17-2.2 (emphasis added).]

Similarly, 42 U.S.C. §§ 11434a(2)(A) and (B)(i) describe homeless children as those "who lack a fixed, regular, and adequate nighttime residence," including, inter alia, "children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason . . . ." With respect to a child living with relatives or friends, "[a]n examination of the conditions that precipitated the family's relocation is critical to ascertaining whether the living arrangement arose 'out of necessity,' and whether the family is without access to a 'regular or permanent residence of its own.'" Bd. of Educ. of Borough of Hawthorne v. Bd. of Educ. of Borough of Prospect Park, Agency Docket No. 247-10/13, Comm'r of Educ. (May 12, 2014), <https://njlaw.rutgers.edu/collections/oal/final/edu16270-13_1.html>. "Thus, an evaluation of 'homelessness' cannot rest upon a simple calculation of the amount of time that children have spent in a particular location or municipality. The reasons for the children's homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant." M.O'K v. Bd. of Educ. of Cresskill, Agency Docket No. 214-9/13, Comm'r of Educ. (Aug. 12, 2014), <https://njlaw.rutgers.edu/collections/oal/final/edu14830-13_1.pdf>. In other words, the analysis is fact-sensitive.

As the Commissioner stated in Bd. of Educ. of the Bordentown Reg'l Sch. Dist. v. Raymond Marini, Interim Exec. Cnty. Superintendent, Agency Docket No. 7-1/22, Comm'r of Educ. (July 6, 2023), in relevant part:

> Under the McKinney-Vento Act, homeless children are defined as "individuals who lack a fixed, regular and adequate nighttime residence," which includes "children sharing housing with other persons due to loss of their own housing, economic hardship, or a similar reason." Similarly, under

> state law, homeless children are defined as "child[ren] or youth who lack[] a fixed, regular, and adequate residence . . . which includes children living in the "residence of relatives or friends where the homeless child resides out of necessity because his or her family lacks a regular or permanent residence of its own."
>
> Thus, conducting a homelessness evaluation to determine whether a child's home is considered fixed, regular, and adequate requires a fact-specific analysis and "cannot rest upon a simple calculation of the amount of time that children have spent in a particular location or municipality." In conducting such a fact-specific inquiry, the Commissioner must consider the totality of the circumstances, as "[t]he reasons for the children's homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant."
>
> [Internal citations omitted.]

See also Bd. of Educ. of Twp. of Springfield v. Bd. of Educ. of the City of Newark, Agency Docket No. 71-4/19, Comm'r of Educ. (Jan. 26, 2023) ("The Commissioner notes that while homelessness determinations are fact-specific, there was never an evaluation of the family's living conditions at any one of the Newark, Irvington, or Dover addresses. No one looked into what parts of the home the family could use, where the children were sleeping, or what efforts [the children's mother] was taking to secure permanent housing."); Bd. of Educ. of Twp. of Pennsauken v. Pugh-Bassett, Interim Exec. Cnty. Superintendent, Agency Docket No. 94-5/19, Comm'r of Educ. (June 16, 2022) (A.L.J. stating that "[t]he determination of whether a student is considered 'homeless', triggering the protections for homeless students available under the law, is fact-sensitive"); Bd. of Educ. of the Borough of Hawthorne v. Bd. of Educ. of the Borough of Prospect Park, Agency Docket No. 247-10/13, Comm'r of Educ. (May 12, 2014) (Commissioner noting that "an inquiry into the circumstances surrounding the . . . family's move is essential to the homelessness determination").

B. District of residence and district's financial responsibility

"For school funding purposes," N.J.S.A. 18A:7B-12 provides, in pertinent part, that "the Commissioner of Education shall determine district of residence as follows":

> (b) The district of residence for children who are in residential State facilities, or who have been placed by State agencies in group homes, skill development homes, private schools or out-of-State facilities, shall be the present district of residence of the parent or guardian with whom the child lived prior to his most recent admission to a State facility or most recent placement by a State agency.
> (c) The district of residence for children whose parent or guardian temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless. . . .
> (d) If the district of residence cannot be determined according to the criteria contained herein, if the criteria contained herein identify a district of residence outside of the State, or if the child has resided in a domestic violence shelter, homeless shelter, or transitional living facility located outside of the district of residence for more than one year, the State shall assume fiscal responsibility for the tuition of the child.
>
> [N.J.S.A. 18A:7B-12]

See also N.J.A.C. 6A:17-1.2 (defining "'school district of residence' for a homeless child or youth" as "the school district in which the parent or youth resided prior to becoming homeless").

N.J.A.C. 6A:23A-19.2 outlines the method of determining the district of residence for "a child in a residential State facility," as defined in N.J.S.A. 18A:7F-45, "a child placed by a State agency in a group home, skill development home, approved private school for students with disabilities or out-of-State facility," and a child for whom "the State [has] become[] the child's legal guardian after the date of the child's initial placement by a State agency." N.J.A.C. 6A:23A-19.2. For the first category of child, the "present district of residence" is "the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16." N.J.A.C. 6A:23A-19.2(a)(1). For a child placed by a State agency, "the present district of residence" is "the New Jersey district of

residence of the child's parent(s) or guardian(s) as of the date of the child's most recent placement by the State agency." N.J.A.C. 6A:23A-19.2(a)(2). "In subsequent school years spent in the educational placement made by a State agency," the district of residence is determined in the same manner outlined in (a)(1). N.J.A.C. 6A:23A-19.2(a)(2).

Since the DCF residentially placed E.N. at Bancroft in 2014, E.N.'s "present district of residence" is determined by "the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16" pursuant to N.J.A.C. 6A:23A-19.2(a)(1) and (a)(3). But if S.A.'s residence had only temporarily changed as a result of being homeless, the prior year's district of residence would apply. See N.J.S.A. 18A:7B(c).

C. "Homeless" but domiciled

N.J.S.A. 18A:38-1 codifies children's right to a free education and the obligation of school districts to provide a free education to children "domiciled" within their borders.[12]

Under N.J.S.A. 18A:38-1(d), "[a]ny person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district . . . ." This language has been interpreted to mean that a family, though considered "homeless" under McKinney-Vento and the applicable regulations, becomes legally domiciled in a school district after being in that district for a year. Bd. of Educ. of Twp. of Egg Harbor v. Bd. of Educ. of Mainland Reg'l Sch. Dist., EDU 06680-09, Initial Decision (Oct. 15, 2010), <https://njlaw.rutgers.edu/collections/oal/html/initial/edu06680-09_1.html>, adopted, Comm'r of Educ. (Dec. 30, 2010). Domicile can be established in less than a year by a

[12] N.J.S.A. 18A:38-1(b)(2) provides: "If the superintendent or administrative principal of a school district finds that the parent or guardian of a child who is attending the schools of the district is not domiciled within the district and the child is not kept in the home of another person domiciled within the school district and supported by him gratis as if the child was the person's own child . . . . The parent or guardian may contest the board's decision before the commissioner . . . and shall have the burden of proof by a preponderance of evidence . . . ."

family's intent to make its home its permanent residence. Bd. of Educ. of Borough of Wood-Ridge v. Bd. of Educ. of Bogota, EDU 16570-18, Initial Decision (Aug. 5, 2020), <https://www.nj.gov/education/legal/commissioner/2020/290-20.pdf>, adopted, Comm'r of Educ. (Dec. 21, 2020). "Financial responsibility of the district of residence terminates when the family is deemed 'domiciled' in another district." Bd. of Educ. of Twp. of Pennsauken v. Pugh-Bassett, Interim Exec. Cnty. Superintendent, EDU 00744-21, Initial Decision on Remand (Mar. 24, 2022), <https://njlaw.rutgers.edu/collections/oal/html/initial/edu00744-21_1.html>, adopted, Comm'r of Educ. (June 16, 2022) (on remand from EDU 16086-19).

In Bd. of Educ. of the Twp. of Pennsauken, Camden Cnty., Agency Docket No. 94-5/19, Comm'r of Educ. (June 16, 2022), A.A. and her child, A.L. lived in Haddon Township from 2012 through 2016 when they were evicted because they could not afford rent. They temporarily lived with a friend in Bellmawr and subsequently moved into A.A.'s mother's home in Pennsauken in the summer of 2017. A.L. continued to attend school in Haddon Township, and in March of 2019, the executive county superintendent determined that the mother was homeless because "the family lost their apartment due to financial hardship and was residing with relatives out of necessity." The ALJ determined that all three people living in the home had their own bedrooms, that the mother and child had access to the kitchen, bathroom, and living room, and that therefore, "the Pennsauken home [was] a fixed, regular, and adequate place to live and that A.L. [could] no longer be considered homeless." The Commissioner affirmed this decision, stating, in relevant part:

> Here, the family's circumstances demonstrate that they all depend on each other in the manner of a traditional household unit, supporting the conclusion that A.A. and A.L.'s residence has become fixed in its current arrangement and location. In the Pennsauken home, A.A. acts as caregiver for her mother, who is disabled and who would need to hire help if A.A. did not assist with her activities of daily living. In turn, A.A. relies on her mother to pay for the family's living expenses. A.A. testified that if she moved out of the Pennsauken home, she would want to take her mother with her, demonstrating that the living arrangement of A.A., her mother, and A.L. residing in the same home has become fixed. Furthermore, there is no indication that the residence is inadequate. A.A. and A.L. enjoy the use of the entire Pennsauken home, including the

> kitchen, bathroom, and living rooms, and they each have their own bedroom. While A.A. indicated that she intends to return to Haddon Township, given that her mother would continue to live with her, that intention appears to be based solely on a preference for location and not a need for additional space to avoid doubling up or to otherwise rectify any inadequacy in the Pennsauken home. Moreover, the ALJ found that there was no proof to support A.A.'s attempts to find housing in Haddon Township, and her stated intention is insufficient to support a finding of homelessness. Based on these facts, the Commissioner concludes that the Pennsauken home is a fixed, regular, and adequate residence, which has become the family's permanent residence, and A.L. is therefore no longer homeless.

Unlike A.A., who was evicted, here, there was no loss of an apartment and nothing that necessitated S.A.'s move from the Mansfield apartment to her cousin's home. S.A. was emphatic that she was not evicted, nor even asked to leave the Mansfield address. Rather, she wanted to move back to Newark, which her mother disapproved of, and so they were conflicted over this. The invitation to move in with her cousin's family and help with childcare in exchange for rent was appealing to her, and there was no limit on how long she could live there. She was never asked to leave.

D. Burden of proof in disputes over homelessness

Neither the McKinney-Vento Act, the regulations, nor state laws addressing the education of homeless children explicitly allocate the burden of proof in disputes over a person's homeless status. In cases dealing with such disputes under the McKinney-Vento Act, New Jersey courts have placed the burden of proof on the party claiming homelessness, though they rarely use the words "burden of proof."

For example, in A.M. & M.S. on behalf of minor children A.S. & L.S. v. Bd. of Educ. of Town of Dover, Agency Docket No. 546-9/10, Comm'r of Educ. (June 14, 2011) (OAL decision not available online), the ALJ concluded that petitioners (the parents) did not demonstrate a continued state of homelessness to meet the criteria for their children to attend Dover schools at the public expense. The Commissioner disagreed, concluding that petitioners' five years of residence in a motel in Mine Hill met the definition of

homelessness under N.J.A.C. 6A:17-2.3(a)(1)(i) (recodified as N.J.A.C. 6A:17-2.2 in 2014).

If there has been a determination of homelessness by an agency with the authority to make such a determination (i.e., the executive county superintendent), then the party challenging that determination has the burden of proving its allegations. In Bd. of Educ. of Borough of Hawthorne v. Bd. of Educ. of Prospect Park, EDU 16270-13, Initial Decision (Mar. 26, 2014), <https://njlaw.rutgers.edu/collections/oal/html/initial/edu16270-13_1.html>, adopted, Comm'r of Educ. (May 12, 2014), the executive county superintendent initially ruled that Hawthorne was the last district of residence when the N.A. family temporarily moved in with N.A.'s parents in Prospect Park, making N.A. and her children legally homeless. Hawthorne appealed that determination, arguing that the family "was not homeless because it was not forced out of its Hawthorne residence and did not leave or reside with N.A.'s parents out of necessity." Testimony during the hearing revealed that N.A. was not evicted or asked to leave her Hawthorne residence, and that she told her Hawthrone landlord she planned to move to Florida. The ALJ, noting that Hawthorne had "the burden of proving its allegations by a preponderance of the . . . evidence," concluded that Hawthrone "sustained its burden." The children were deemed not homeless because their temporary residence with N.A.'s parents "was not out of necessity . . . but rather by the willful and voluntary act of their mother as part of fulfilling her plan to move to Florida."

Multiple cases from the New York Department of Education follow a similar pattern, where parents are appealing a determination by the local school board that their child is not homeless within the meaning of the McKinney-Vento Act. The DOE has consistently placed the burden of proof on the parents in such cases. See, e.g., Appeal of F.C., 57 Ed Dept Rep, 2017 NY Educ. Dept. LEXIS 223 at *6, Decision No. 17,243 (concluding that the parent "failed to meet her burden to show that the student is homeless under either State or federal law"). See also Appeal of G.S., 52 Ed Dept Rep, 2012 NY Educ. Dept. LEXIS 58, Decision No. 16,388; Appeal of H.H., 57 Ed Dept Rep, 2017 NY Educ. Dept. LEXIS 121, Decision No. 17,141; Appeal of A.S., 58 Ed Dept Rep, 2018 NY Educ. Dept. LEXIS 255, Decision No. 17,559; Appeal of Student with a Disability, 60 Ed Dept Rep, 2020 NY Educ. Dept. LEXIS 185, Decision No. 17,910.

Here, the respondents—Hackettstown and the DOE—argue that S.A. is homeless. Thus, while recognizing the unique procedural history of this case, respondents typically would have the burden of proving homelessness as an initial matter. Whether the burden has since shifted to petitioner to prove that S.A. was not homeless depends on whether there has been a valid determination of homelessness.

II. Contrary to (1) N.J.A.C. 6A:3-1.3's 90-day limit for appeals, (2) N.J.A.C. 6A:17-2.7's rules for disputes regarding the determination of homelessness, and (3) N.J.A.C. 6A:23A-19.2(c)–(g)'s procedure for contesting the Department's determination of district of residence, more than a year passed between the Department's most recent decision and the executive county superintendent's determination of homelessness.

N.J.A.C. 6A:3-1.3(i) requires a petitioner to "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." And while the 90-day limit does "not apply in instances where a specific statute, regulation, or court order provides for a period of limitation shorter than 90 days," N.J.A.C. 6A:17-2.7—dealing with disputes regarding homeless status—specifies that "appeal[s] shall be submitted to the Commissioner pursuant to N.J.A.C. 6A:3." N.J.A.C. 6A:17-2.7(a); N.J.A.C. 6A:17-2.7(b)(2).

More specifically, N.J.A.C. 6A:17-2.7 provides as follows:

> (a) **When a dispute occurs regarding the determination of homelessness** or the determination of the school district of enrollment made by the school district of residence, the chief school administrator(s), or the chief school administrator's designee(s), of **the involved school district(s) . . . shall immediately notify the executive county superintendent.** In consultation with the Department's McKinney-Vento Homeless Education Coordinator, or the coordinator's designee, **the executive county superintendent shall immediately decide** the child's or youth's status. If a dispute remains between the parent and the involved school district(s)

> following the executive county superintendent's determination, the parent or the involved district board(s) of education may appeal to the Commissioner for determination pursuant to N.J.A.C. 6A:3, Controversies and Disputes.
>
> (b) **When a school district designated as the school district of residence disputes its designation as the school district of residence**, or where no designation can be agreed upon by the involved school districts, the chief school administrator(s), or the chief school administrator's designee(s), of **the involved school districts shall immediately notify the executive county superintendent. The executive county superintendent shall make a determination immediately, if possible, but no later than within 48 hours** and, when necessary, in consultation with the Department's Homeless Education Coordinator, or the Coordinator's designee.
>
> . . . .
>
> 2. If an appeal of a determination of the school district of residence also includes an appeal of the determination of homelessness and/or school district of enrollment, the appeal shall be submitted to the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.
>
> (c) Any dispute or appeal shall not delay the homeless child's or youth's immediate enrollment or continued enrollment in the school district. The homeless child or youth shall be enrolled in the school district in which enrollment or continued enrollment is sought by the parent, pending resolution of the dispute or appeal.
>
> [N.J.A.C. 6A:17-2.7(a)–(c) (emphasis added).]

If the issue of homelessness is raised after a residency appeal has been filed with the Department, "the determination of homelessness must first be brought to the Executive County Superintendent of Schools." L.E.H. v. Bd. of Educ. of Twp. of W. Orange, EDU 03787-09, Initial Decision (May 19, 2009), rejected, Comm'r of Educ. (July 2, 2009) <https://njlaw.rutgers.edu/collections/oal/final/edu3787-09.pdf> at n.1 (remanding residency appeal that had been dismissed for parent's failure to appear at OAL hearing; petitioner claimed to not have notice of hearing and her exceptions intimated possible homelessness). An untimely appeal of an executive county superintendent's homelessness determination will be dismissed. North Brunswick Twp.

Bd. of Educ. v. Bd. of Educ. of Somerville, EDU 10499-07, Initial Decision (Jan. 17, 2008), adopted, Comm'r of Educ. (Mar. 3, 2008), <https://njlaw.rutgers.edu/collections/oal/final/edu10499-07.pdf>.

With respect to decisions and disputes regarding the district of residence, N.J.A.C. 6A:23A-19.2 provides:

> (c) The district board of education shall be notified by the Department of the determination of the district of residence. In order to prevent a lapse in the child's education and/or child study services, the district board of education shall be bound by such determination unless and until it is reversed on redetermination or appeal pursuant to the provisions of (e) and (f) below.
>
> (d) A district board of education contesting the Department's determination of district of residence shall submit a written notification of a dispute to the Office of School Facilities and Finance within 30 days of the receipt of a final notice that a child was determined to be a resident of the district for purposes of State funding. As part of this written notice, the following information shall be submitted:
>
> 1. A written statement detailing the effort of the district board of education to verify the determination of the Department;
> 2. Written rationale for rejecting the determination of the Department; and
> 3. Any additional information the district board of education has obtained that might enable redetermination of the district of residence.
>
> (e) The Office of School Facilities and Finance shall attempt to resolve the dispute administratively and shall notify the district board of education whether a redetermination of district of residence will be made within 90 days of the receipt of written notification that a dispute exists.
>
> (f) A district board of education may initiate a formal proceeding before the Commissioner to resolve such a dispute if the Office of School Facilities and Finance is unable to resolve a dispute within the 90-day time limit, by filing a Petition of Appeal with the Commissioner pursuant to the provisions of N.J.A.C. 6A:3, Controversies and Disputes.

> (g) As prescribed by N.J.S.A. 18A:7B-12, the "district of residence" for a homeless child whose parent(s) or guardian(s) temporarily moves from one school district to another is the district in which the parent(s) or guardian(s) last resided prior to becoming homeless. This district shall be designated as the district of residence for as long as the parent(s) or guardian(s) remains homeless.
>
> [N.J.A.C. 6A:23A-19.2(c)–(g).] (19.2(a)–(b) were addressed in Part I-B, above.)

N.J.A.C. 6A:23A-19.2(d) is of special importance. It requires a district contesting the Department's determination of the district of residence to abide "by such determination unless and until it is reversed on redetermination or appeal pursuant to the provisions of (e) and (f)" so as "to prevent a lapse in the child's education and/or child study services." N.J.A.C. 6A:23A-19.2(c). This echoes language in N.J.A.C. 6A:17-2.7(c) that "[a]ny dispute or appeal shall not delay the homeless child's" education.

Hackettstown, in contravention of these regulations, did not immediately notify the executive county superintendent that it believed S.A. might be homeless. The August 1, 2019, letter to Deputy Assistant Commissioner Forney, on which the executive county superintendent was copied, makes no reference to homelessness. It merely rehashes arguments previously made as to why Hackettstown believes the Department's residence determination was wrong. Nor did Hackettstown timely appeal the July 30, 2019, determination by Deputy Assistant Commissioner Forney of the DOE as required by the rules. Instead, on September 10, 2019, respondent reached out to Anthony Hearn, an official in the DOE's Office of Fiscal and Data Services, who opined that respondent's characterization of S.A.'s residence—which did not include any supporting documents—would make S.A. homeless and E.N. eligible for relief under McKinney-Vento. Respondent did not copy petitioner or the executive county superintendent on this correspondence.

Months later, on January 1, 2020, respondent represented Hearn's non-binding, informational opinion to the Bancroft School as a determination of homelessness rendering Warren Hills financially responsible for E.N. during the 2018–19 school year. Respondent demanded the return of any money it had paid to the school. Respondent

again failed to copy petitioner on this correspondence. Then, on August 1, 2020, an official from the Bancroft School emailed Tania Mongioi, special education specialist for Warren County, advising that because no payments had been made for E.N., she would be disenrolled from Bancroft within thirty days. Based on this letter from Bancroft, on August 26, 2020, Mongioi issued a new homelessness determination letter for S.A., declaring that Warren Hills would be responsible for E.N.'s educational expenses because S.A. did not reside in Hackettstown for a year. Surprised by the reversal, Warren Hills objected, and Mongioi claimed that Forney's July 2019 decision had been overturned by Hearn. Finally, on January 19, 2021, the person with actual authority to make homelessness determinations—Interim Executive County Superintendent Rosalie Lamonte—issued a letter upholding Mongioi's decision.[13]

This series of events initiated by Hackettstown completely ignores established formalized administrative procedures, including statutes of limitation, and threatened to disrupt E.N.'s education in precisely the manner prohibited by law. A formal determination of homelessness was not made "immediately" or "within 48 hours" of respondent obliquely raising the issue to the proper authority via carbon copy. Hearn and Mongioi lacked the authority to make homelessness determinations, and the interim executive county superintendent did not officially weigh in until more than a year after the DOE's last residence ruling, which was not timely appealed. Moreover, the executive county superintendent failed to engage in ANY fact-finding, deferring entirely to the opinions of Hearn and Mongioi. As such, respondent bears the burden of proving that the July 2019 decision was arbitrary, capricious, or unreasonable.

Here, there was no loss of an apartment and nothing that necessitated S.A.'s move from the Mansfield apartment to her cousin's home. S.A. was emphatic that she was not evicted or even asked to leave the Mansfield address. Rather, she wanted to move back to Newark, and her mother disapproved, so they were conflicted over this.

[13] Hackettstown claims that Mongioi emailed Warren and Hackettstown to advise that there had been a finding of homelessness on the part of E.N. and S.A. as of the 2017–2018 school year in Warren Hills. This is not true (J-11).

At the Mansfield apartment, S.A. shared a bedroom with her adult daughter. I **FIND** that she was not evicted from that apartment and was never asked to leave. I **FIND** that she had planned to move to Newark, and then the invitation to move in with her cousin's family and help with childcare in exchange for rent was made. I **FIND** there was no limit on how long she could live there. Her other family members residing at the Mansfield apartment remained there for at least four additional months after S.A. moved out.

At her cousin's home, S.A. had her own bedroom, and the living conditions were very good there. She worked two part-time jobs in addition to caring for her cousin's baby. I **FIND** that she could have remained at either residence and there was no 'emergency' requiring her to move to her cousin's home. Her testimony amply, credibly, candidly, and consistently established that she was not homeless when she chose to move out of the apartment she shared with family at Mansfield to her cousin's private home at Herbert Lane. I **FIND** that her residency at Herbert Lane was "fixed, regular and adequate," and more comfortable than her shared Mansfield apartment was, where she had to share a bed with her daughter. The Herbert Lane home was a comfortable, split-level home. There was no testimonial or documentary evidence offered to suggest that S.A. was seeking housing elsewhere while residing with her cousin. I **FIND** that the ability to "afford a shared apartment but not [her] own home," as was S.A.'s testimony, does not make her homeless. I **FIND** that she clearly intended to remain at Herbert Lane indefinitely and had changed the address on her drivers' license to the Herbert Lane address (P-2). As in Pennsauken, everyone residing at the Herbert Lane address depended on each other as a household unit. S.A. watched the baby in exchange for rent while her cousin worked without needing to arrange for outside childcare. She was not living there "out of necessity." She was never asked to leave, and only moved out after her cousin and husband had an unexpected emergency when an in-law died unexpectedly, and his spouse, the cousin's mother-in-law, needed to move in because she could not care for herself. Indeed, S.A. testified that her cousin's father-in-law died at the end of July and that she remained after that date, and after her cousin's mother-in-law subsequently moved in, she stayed in the playroom and continued to watch the baby. I **FIND** that not only did the cousin NOT want her to leave, she took the extraordinary,

highly exceptional, and remarkable step of reaching out to her own son, who is in the military, to see whether she could give away his room to S.A.

CONCLUSION

Based on the foregoing, I **CONCLUDE** that respondents have the burden of proving that S.A. was homeless during the school year in question and further **CONCLUDE** that they have failed to do so. I **CONCLUDE** that S.A. was not homeless when she moved out of an apartment with family, to a single family home with other family. There is no basis whatsoever to find homelessness, and the ECS determination is reversed and Deputy Assistant Commissioner Forney's decision reinstated. Hackettstown is responsible for the tuition for E.N. from 2018 forward totaling $160,739.88.

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.

July 18, 2024
DATE

LESLIE Z. CELENTANO, ALJ

Date Received at Agency: July 18, 2024

Date Mailed to Parties: July 18, 2024

dr

APPENDIX

WITNESS LIST

For Petitioner

David Guth

For Hackettstown

Guy Jorstad

For Department of Education

S.A.

A.N.

Rosalie Lamonte

Anthony Hearn

Dennis Morgan

EXHIBIT LIST

Joint Exhibits

J-1 Mansfield Village Residency Application

J-2 Mansfield Village Lease dated September 30, 2016

J-3 March 9, 2018 residence determination made by DOE (Cindy Lee)

J-4 Warren proof of payment to Bancroft for 2017–2018 ($107,363.16)

J-5 Mansfield Village lease renewal December 1, 2017 to November 30, 2018

J-6 November 12, 2018 notice of vacating form for Mansfield Village

J-7 March 15, 2019 residence determination made by DOE (Cindy Lee) finding Hackettstown responsible for the 2018–2019 tuition at Bancroft

J-8 July 30, 2019 letter from Deputy Assistant Commissioner Forney affirming the DOE decision of March 15, 2019 (J-7)

J-9 August 1, 2019 letter from Hackettstown seeking reconsideration of Deputy Assistant Commissioner Forney's determination

J-10 August 1, 2020 letter from Bancroft to Warren County Office of Education regarding outstanding tuition for E.N.

J-11 August 26, 2020 letter from Tania Mongioi at the Warren County Office of Education determining that S.A. was homeless in 2017–2018

J-12 January 19, 2021 letter from Rosalie Lamonte, Executive County Superintendent determining that S.A. was homeless in 2017–2018.

J-13 Hackettstown interrogatory responses

J-14 DOE interrogatory responses

For Petitioner

P-1 Residency Investigation Report dated November 26, 2018

P-2 Copy of Driver's License for S.A.

For Hackettstown

RH-6 Emails between Guy Jorstad and Tri County CMO re possible MKV. – 2019.04.23 (RH039-RH040).

RH-7 Email to NJDOE and Hackettstown Board of Education re Appeal of District of Residence (Note: Misdated letter). – 2019.04.24 (RH042-RH079).

RH-12 Emails re homelessness determination. – 2019.09.11 (RH109-RH112).

RH-13 Email and letter to Warren Hills re MKV determination. – 2019.09.11 (RH114-RH116).

RH-14 Letter to NJDOE re homelessness determination. – 2019.09.11 (RH118-RH126).

For Department of Education

R-4 Mansfield Village Non-Renewal (lease expired on November 30, 2018)

R-6 Letter from X.S. dated February 19, 2019

R-7 Letter from X.S. dated March 25, 2019

R-15 Email from Bancroft regarding outstanding balance

426-24
Agency Dkt. No. 173-5/24

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Anthony Leone, Board of Education of the Town of Kearny, Hudson County

This matter was opened before the Commissioner of Education on May 28, 2024, by way of an Order to Show Cause served by petitioner (Board of Education of the Town of Kearny) upon respondent (Anthony Leone), requiring respondent to show cause why an order should not be entered suspending his teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8 for resigning without giving the notice required by law.

Initially, petitioner served respondent at an address in Pompton Plains. By notice dated June 14, 2024, the Office of Controversies and Disputes (Office) acknowledged proof that the Order to Show Cause had been served upon respondent at the Pompton Plains address and directed him to answer within 20 days. No answer having been received, on July 8, 2024, the Office sent respondent a second and final notice – via certified and regular mail – directing that he file an answer within ten days. The notice advised that, pursuant to *N.J.A.C.* 6A:3-1.5(e), failure to answer would cause each allegation in petitioner's papers to be deemed admitted and might result in summary decision by the Commissioner. Because the notices sent to the Pompton Plains address were returned to the Office by the United States Postal Service (USPS)

as undeliverable and unable to forward, the Office contacted petitioner and asked for another mailing address for respondent.

On September 19, 2024, petitioner provided the Office with a new address for respondent in Fairfield and served him with the Order to Show Cause again. By notice dated September 24, 2024, the Office acknowledged proof that the Order to Show Cause had been served upon respondent at the Fairfield address and directed him to answer within 20 days. No answer having been received, on October 22, 2024, the Office sent respondent a second and final notice – via certified and regular mail – directing that he file an answer within ten days. The notice advised that, pursuant to *N.J.A.C.* 6A:3-1.5(e), failure to answer would cause each allegation in petitioner's papers to be deemed admitted and might result in summary decision by the Commissioner. Tracking information obtained from USPS indicates that the certified letter was delivered to the Fairfield address on October 25, 2024. To date, respondent has not answered the Order to Show Cause.

The petition and supporting exhibits indicate that: respondent entered into an employment contract to work as a counselor at Kearny High School for the 2023-2024 school year for the period of September 1, 2023 through June 30, 2024; the contract provides that it can be terminated by either party upon sixty days' written notice; and, on April 17, 2024, respondent sent correspondence to petitioner indicating that he was resigning to pursue a career opportunity in another field, effective April 30, 2024, thereby providing less than the required 60 days' notice. Respondent has not denied these allegations; therefore, the Commissioner deems such allegations to be admitted pursuant to *N.J.A.C.* 6A:3-1.5(e) and further deems them sufficient to

justify suspension of respondent's teaching certificates pursuant to *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

Accordingly, summary decision is hereby granted to petitioner, and respondent's teaching certificates are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 15, 2024
Date of Mailing: November 20, 2024

[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.

432-24

New Jersey Commissioner of Education

Final Decision

Sharonda Wadley, Helen Clement, Planties Simon, Crystal Williams, Melissa Wilson, and Omar Ballard,

Petitioners,

v.

Board of Education of the City of Newark, Essex County, and Yakima Jackson,

Respondents.

Synopsis

Petitioners – who are teachers, parents, and noninstructional staff – alleged that respondent Yakima Jackson, a school principal, has failed to adequately perform her duties and therefore should be removed pursuant to *N.J.A.C.* 6A:9-3.4, Professional Standards for School Leaders; and that the Newark Board of Education (Board) has failed to take corrective action regarding Jackson's job performance. The respondents maintain that petitioners may not bypass the Board of Education and are not entitled to seek relief directly from the Commissioner of Education. The parties filed opposing motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; because the dispute herein arises under *N.J.A.C.* 6A:9-3.4, a rule of the State Board, the Commissioner lacks jurisdiction since the plain text of *N.J.S.A.* 18A:6-9 denies the Commissioner jurisdiction over matters concerning the rules of the State Board; rather, jurisdiction here lies with the local board of education pursuant to *N.J.S.A.* 18A:28-5, *N.J.S.A.* 18A:27-4 and *N.J.S.A.*18A:27-4.1; the removal of a school principal, regardless of tenure status, can occur only when a school's chief administrator has recommended such an action and it is subsequently approved by the local board of education. Accordingly, the ALJ granted respondents' motion for summary decision and denied petitioners' opposing motion.

Upon review, the Commissioner concurred with the ALJ that the petition must be dismissed because there is no statute or regulation authorizing petitioners' requested relief. In so deciding, however, the Commissioner clarified that, pursuant to *N.J.S.A.* 18A:6-9, the Commissioner does have jurisdiction to adjudicate disputes arising under the rules of the State Board, with the exception of those disputes arising under the laws governing higher education – which does not apply in this case. Accordingly, the Initial Decision was adopted as the final decision in this matter, with clarification regarding the issue of jurisdiction.

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.

432-24
OAL Dkt. No. EDU 01944-23
Agency Dkt. No. 9-1/23

New Jersey Commissioner of Education

Final Decision

Sharonda Wadley, Helen Clement, Planties Simon, Crystal Williams, Melissa Wilson, and Omar Ballard,

Petitioners,

v.

Board of Education of the City of Newark, Essex County, and Yakima Jackson,

Respondent.

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.

In this matter, petitioners – who are teachers, parents, and noninstructional staff – allege that respondent Yakima Jackson failed to perform her duties as a school principal, and therefore should be removed. Petitioners rely on *N.J.A.C.* 6A:9-3.4, Professional Standards for School Leaders, as the basis for jurisdiction in this matter.

The Administrative Law Judge (ALJ) rejected petitioners' claim, reasoning that the plain text of *N.J.S.A.* 18A:6-9 denies the Commissioner jurisdiction over matters concerning the rules of the State Board. The ALJ concluded that since the dispute herein arises under *N.J.A.C.* 6A:9-3.4, a rule of the State Board, the Commissioner lacks jurisdiction. Instead, the ALJ determined that jurisdiction lies with the local board of education pursuant to *N.J.S.A.* 18A:28-5,

N.J.S.A. 18A:27-4, and *N.J.S.A.*18A:27-4.1. The ALJ further concluded that the removal of a school principal, regardless of tenure status, can occur only when a school's chief administrator has recommended such an action and it is subsequently approved by the local board of education. Accordingly, the ALJ dismissed petitioners' motion for summary decision for failing to state a legal basis on which petitioners would be entitled to a judgment in their favor as a matter of law.

Upon review, the Commissioner wishes to clarify the issue of jurisdiction. The Initial Decision states that "controversies and disputes arising under the rules of the State Board are outside the jurisdiction of the Commissioner." Initial Decision at 11. Under *N.J.S.A.* 18A:6-9, the Commissioner has jurisdiction to hear "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." The exception to the Commissioner's jurisdiction applies only to disputes arising under the laws governing higher education and does not extend to disputes concerning the rules of the State Board.[1] As such, the Commissioner has jurisdiction to adjudicate disputes arising under the rules of the State Board.

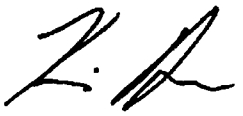
Nonetheless, the Commissioner concurs with the ALJ that the petition should be dismissed because there is no statute or regulation authorizing petitioners' requested relief – the Commissioner's removal of respondent Jackson from her position as school principal for allegedly violating *N.J.A.C.* 6A:9-3.4. Furthermore, the Commissioner concurs with the ALJ that removal of a school principal, tenured or untenured, can only occur following specific action by the local

[1] This reading is one of grammatical construction. If the phrase offset by commas were removed from the statute, it would state that the Commissioner has jurisdiction to hear all controversies and disputes arising under the school laws or under the rules of the State Board or of the Commissioner.

board of education, which did not occur here. *See, e.g., N.J.S.A.* 18A:28-5; *N.J.S.A.* 18A:27-4.1; *N.J.S.A.* 18A:6-10; *N.J.S.A.* 18A:6-11.

Accordingly, the Initial Decision is adopted as the final decision in this matter, as clarified herein. Petitioners' Motion for Summary Decision is denied, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]



ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 21, 2024
Date of Mailing: November 22, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 01944-23
Agency Ref. No. 9-1/23

SHARONDA WADLEY, HELEN CLEMENT, PLANTIES SIMON, CRYSTAL WILLIAMS, MELISSA WILSON AND OMAR BALLARD,[1]
Petitioners,

vs.

CITY OF NEWARK BOARD OF EDUCATION, ESSEX COUNTY AND YAKIMA JACKSON,
Respondents.

Sharonda Wadley, for petitioners, pursuant to UAPR 1:1-5.4 and 5.5

John Burke, Esq., for respondents

Record Closed: August 23, 2024 Decided: October 16, 2024

BEFORE **JOHN P. SCOLLO,** ALJ:

STATEMENT OF THE CASE

[1] Pursuant to UAPR1:1-5.4 and 5.5, the Tribunal has recognized (set forth all six names) as *pro se* litigants, with Sharonda Wadley as their chief spokesperson. Throughout the pendency of his matter the Tribunal has been in contact with all six *pro se* litigants and chiefly with Sharonda Wadley as the chief spokesperson for the six *pro se* litigants .

The Petitioners allege that Respondent Yakima Jackson, a school principal, has failed to adequately perform her duties and therefore should be removed; and that the Newark Board of Education has failed to take corrective action regarding Jackson's job performance. The BOE and Jackson maintain that the Petitioners are not entitled to bypass the Board of Education and are not entitled to seek relief directly from the Commissioner of the Department of Education.

THE ISSUE AT BAR

The issue before this Tribunal is whether or not the Petitioner's Complaint against Yakima Jackson and the Newark Board of Education seeking a decision from the Commissioner of the New Jersey Department of Education can be based on N.J.A.C. 6A:9-3.4 (Professional Standards for School Leaders). Put another way, the issue is whether the Petitioners can ignore the process set forth in N.J.S.A. 18A:28-5 and N.J.SA.18A:27-4.1 and thereby bypass the Newark Board of Education in the pursuit of their goal of removing Yakima Jackson from the position of Principal of the Grover Cleveland Elementary School.

PROCEDURAL HISTORY

On January 9, 2023, the *pro se* Petitioners filed their action by means of a "*Pro Se* Petition of Appeal". They allege that Yakima Jackson, the principal of the Grover Cleveland Elementary School in the Newark School District, has failed to show competency in performing her duties as a school principal (e.g., failing to hold meetings and failing to address crime issues in the school) and that she has created a hostile workplace (e.g., by yelling at parents and non-instructional staff).

On February 28, 2023, the BOE 's staff attorney, Sabrina Styza, Esq., filed an Answer to the Petition on behalf of the BOE and on behalf of Yakima Jackson.

The N.J. Department of Education, Office of Controversies and Disputes transmitted the matter docketed as 9-1/23 to the Office of Administrative, where it was

filed on March 2, 2023 as a contested case pursuant to N.J.S.A. 52: 14B-1 to -15 and N.J.S.A. 14F-1-13.

The matter was given OAL Docket Number EDU-01944-23 and was assigned to John P. Scollo, ALJ on March 23, 2023. On March 23, 2023, Judge Scollo held a Pre-Trial telephone Conference and issued his Pre-Hearing Order dated March 24, 2023, which contained a schedule for the discovery process, for the filing of motions, etcetera. Judge Scollo discussed the fact that the six Petitioners were proceeding *pro se*. Judge Scollo made it clear to the Petitioners that they had the right to hire an attorney of their choosing and also made it clear to the Petitioners that they were bound to follow the Uniform Administrative Procedure Rules just as if they had legal counsel. The Petitioners decided to proceed without legal counsel. The Pre-Hearing Order required the parties to submit an Outline of their respective positions. In their May 5, 2023 Outline, the Petitioners claimed that the OAL had original jurisdiction to decide this matter under N.J.A.C. 6A:9-3.3 (Professional Standards for Teachers) and 6A:9-3.4 (Professional Standards for School Leaders). In her July 12, 2023 correspondence, Sharonda Wadley, the unofficial chief spokesperson for the Petitioners, clarified the Petitioners' position on jurisdiction by stating that jurisdiction was based solely on N.J.A.C. 6A:9-3.4, not on N.J.A.C. 6A:9-3.3.

The parties exchanged discovery requests (Interrogatories and Document Requests) and responded to each other's discovery requests by June 5, 2023 (after the Tribunal granted the parties a one-month extension of time). The Tribunal monitored the discovery process and received copies of each side's discovery requests and their respective responses to same. There were no complaints from either side regarding inadequate responses to their respective discovery requests. Neither side sought relief from the Tribunal during the discovery period by means of a motion to compel discovery. The two sides responded to each other's discovery requests and completed the discovery process.

On June 19, 2023, the Tribunal granted both sides leave to file dispositive motions. Due to Respondent counsel's illness, the due date for motions was extended to August, 2023. The Tribunal later re-visited the matter, having not received any

motion papers, and learned that the Respondents (BOE and Jackson) had substituted-in new counsel, John Burke, Esq, of Antonelli, Kantor, Rivera. It appeared that both sides wanted to file dispositive motions. Nonetheless, at that time the Tribunal scheduled hearing dates for November, 2023. (Subsequently, the Hearing dates were re-scheduled due to schedule conflicts and other reasons, to February, 2024. For the same reasons, the Hearing dates were re-scheduled to April, 2024; and later re-scheduled to October 15 and 16, 2024.)

On March 4, 2024, the Petitioners filed a Motion to Re-Open Discovery because the Respondents obtained new counsel and because the petitioners realized that they needed documents in addition to the documents requested in their earlier discovery requests. The Tribunal denied the motion on March 20, 2024.

On March 12, 2024, Wadley, on behalf of the Petitioners, filed a Motion for Summary Decision (which the Tribunal deems to be a Motion for Summary Decision). On March 15, 2024, Attorney Burke responded by filing the Respondents' Motion for Summary Decision. A few days later, these Motions were placed in abeyance due to the laptop issue (see next paragraph). However, in July, 2024, the Tribunal allowed the parties to proceed with these Motions.

On March 27, 2024, Petitioner Wadley wrote to the Tribunal about a seemingly unrelated controversy regarding her April 30, 2024 planned departure from employment with the BOE, the fact that the BOE told her that her last day at the school would be on March 25, 2024, and the fact that Wadley wanted to obtain documents pertaining to the within litigation from her school-issued laptop computer.

In an attempt to help the parties solve the laptop issue (which is not the issue that this Tribunal has been asked to decide), on March 27, 2024 the Tribunal issued an order instructing both sides to formulate and agree to a plan for safeguarding the documents and to arrange for the BOE to transmit them to Wadley.

The BOE's counsel wrote to the Tribunal on March 29, 2024 responding that Wadley had no right to place her personal documents pertaining to this litigation onto

her school-issued laptop, but the BOE agreed not to open said documents, and agreed to send the documents to Wadley if she would identify the file names associated with the desired documents. Wadley replied on March 30, 2024 that she would cooperate with the BOE when the Tribunal ordered her to do so. Also, on April 8, 2024, Wadley wrote to the Tribunal complaining that Attorney Burke was making false statements.

On April 17, 2024, Wadley filed a Motion seeking to compel the BOE to transfer her documents from the school-issued laptop to her and seeking to have the Tribunal hold Attorney Burke in contempt. Since the relief sought in Wadley's April 17, 2024 Motion was not related to the issue at bar in this matter, and since the Tribunal had already issued an Order that was not being followed, the Tribunal deferred that Motion indefinitely. The parties did not subsequently inform the Tribunal about whether or not they resolved the laptop issue. Wadley never pursued her motion. This Tribunal does not know if the two sides ever agreed to formulate a plan for the transfer of Wadley's documents, which the Tribunal had instructed them to do in its Order dated March 27, 2024. Having already issued an order which provided the parties with the means to resolve the laptop issue, the Tribunal decided to take no further action regarding the motion since the laptop issue is not the issue that this Tribunal has been tasked to decide.

On April 18, 2024, Wadley made a request to the Tribunal to grant her time to seek legal counsel to represent the Petitioners. Hopeful that the addition of legal counsel for the Petitioners would help move the case along, the Tribunal granted Wadley's request. On April 26, 2024, Wadley wrote to the Tribunal saying that she had not yet found legal counsel. To date, the Tribunal has not received any notice from Wadley about the hiring of legal counsel to represent the Petitioners.

On July 16, 2024, Attorney Burke asked the Tribunal to allow the parties to proceed with the Motions that they had filed in March, 2024. On that same date, the Tribunal granted Attorney Burke's request to allow the parties to proceed with the Motions or to file new dispositive Motions. On July 29, 2024, the Tribunal, due to the death of Wadley's brother, granted additional time for the Petitioners to make additional submissions. On August 4, 2024, the Tribunal received a document from Wadley

captioned "Reply to Defendant's Opposition to Plaintiffs' Motion for Summary Judgment". The Tribunal waited to see if the parties would further supplement their submissions. They did not do so. The judge surmised that the parties did not intend to make any further submissions, and therefore on August 9, 2024 the Tribunal wrote to the parties advising them that their Exhibits, if any, would be due on August 23, 2024 and that the Tribunal would proceed to decide the Motions that had been filed in March, 2024. The Tribunal further advised them that, depending on the outcome of the Motions, the hearing, if necessary, would take place on October 15 and 16, 2024. No Exhibits were received by August 23, 2024 and so, the Tribunal closed the record on that date.

On October 12, 2024, the Tribunal advised the parties by email that the hearing dates were being cancelled to allow the judge time to decide the motions. This writing is the Tribunal's Initial Decision – Summary Decision.

FACTUAL DISCUSSION

There are no material issues of fact outstanding.

APPLICABLE LAW

The issue of subject matter jurisdiction can be raised at any time. Macysyn v. Hensler, 329 N.J. Super. 476, 481 (App. Div. 2000); Murray v. Comcast Corp., 457 N.J. Super. 464, 470 (App. Div. 2019); Willingboro Educ. Ass'n v. Bd. of Educ, 2023 N.J. Super. Unpub. LEXIS 1893 (App. Div. Oct. 25, 2023).

N.J.S.A.18A:6-9 states:

> 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. [Italics supplied]

In the matter at bar, the Petitioners claim that jurisdiction is based on N.J.A.C. 6A:9-3.4 (Professional Standards for School Leaders). NJ.A.C. 6A:9-3.4 reads as follows:

> School leader preparation, district induction, and professional development programs shall align their learning opportunities with the Professional Standards for Educational Leaders 2015, developed by the National Policy Board for Educational Administration (NPBEA), incorporated herein by reference, available at http://www.npbea.org/wp/wp-content/uploads/2014/11/ProfessionalStandardsforEducationalLeaders2015forNPBA FINAL-2.pdf.

The text of N.J.A.C. 6A:9-3.4 states that school leader preparation, district induction, and professional development programs shall align their learning opportunities with the Standards for Educational Leaders 2015, developed by the National Policy Board for Educational Administration. Those standards are incorporated by reference into this regulation. The Tribunal having reviewed the website, suffice it to say that incorporated document sets forth ten standards for School Leaders in the same fashion as those set forth for teachers in N.J.A.C. 6A:9-3.3. There are ten standards, which are captioned as follows: Standard One: Mission, Vision, and Core Values; Standard Two: Ethics and Professional Norms; Standard Three: Equity and Cultural Responsiveness; Standard Four: Curriculum, Instruction, and Assessment; Standard Five: Community of Care and Support for Students; Standard Six: Professional Capacity of School Personnel; Standard Seven: Professional Community for Teachers and Staff; Standard Eight: Meaningful Engagement of Families and Community; Standard Nine: Operations and Management; and Standard Ten: School Improvement.

N.J.A.C .6A:9-3.4 with the incorporated document sets forth a set of aspirational standards and it contains no enforcement provisions which allow for the removal of school leaders who do not meet said standards.

The term "School Leader" is defined in N.J.S.A. 18A:26-8.2 (13)(a) as:

> a school district staff member who holds a position that requires the possession of a chief school administrator, principal, or supervisor endorsement.

The Tenured Employees Hearing Law, N.J.S.A. 18A:6-10, et seq., states:

> No person shall be dismissed or reduced in compensation If he is or shall be under tenure ... except for inefficiency, incapability, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this subarticle, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of the complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided.

N.J.S.A.18A:28-5 states:

> The services of all teaching staff members ... in the positions of teacher, principal, ... shall not be dismissed ... except for Inefficiency, incapacity, unbecoming conduct such teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this title ....

N.J.S.A.18A:27-4.1 states:

> Notwithstanding the provisions of any law, rule, or regulation to the contrary,
>
> (a) A board of education shall appoint, transfer, or remove a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board.

LEGAL ANALYSIS

The plain text of N.J.S.A. 18A:6-9, while stating that the Commissioner of Education has jurisdiction over all controversies and disputes arising under the school laws, specifically denies jurisdiction to the Commissioner over matters concerning the Rules of the State Board. The Petitioners claim that their sole basis for jurisdiction in this matter are the provisions of N.J.A.C. 6A:9-3.4. N.J.A.C. 6A:0-3.4 is a rule of the State Board. It therefore follows that the Commissioner does not have jurisdiction over the controversy or dispute in this matter since, by the Petitioners' own admission, their

action is based on something outside the Commissioner's jurisdiction - a rule of the State Board.

Pursuant to N.J.S.A. 18A:6-10, tenure prevents a teacher or other school staff member from being fired or disciplined unless the school gives him/her notice and can prove specific misconduct. A tenured employee is entitled to a hearing before the local Board of Education. At such a hearing the school district must prove that a teacher has shown evidence of inefficiency, incapacity, unbecoming conduct or other just cause. If a tenured employee loses before the BOE, he has the right to appeal to the State Commissioner of Education.

When non-tenured teachers or staff members have been terminated or non-renewed, the BOE must give them notice of said termination or non-renewal and the reason for doing so. Non-tenured teachers or staff members may ask for an informal hearing before the BOE to find out the reasons for their termination or non-renewal, but it is not a formal adversarial hearing. At most, the employee may use the hearing to persuade the BOE to consider keeping him/her on staff.

Pursuant to N.J.S.A. 18A:28-5, a tenured staff member can only be dismissed (i.e., removed) after he/she has been in due course charged with misconduct such as inefficiency, incapacity, conduct unbecoming, or other just cause. If, by a recorded majority vote of the full BOE, the employee is found guilty of misconduct, then the employee may file an appeal with the Commissioner of the Department of Education.

Pursuant to N.J.S.A. 18A:27-1, a teaching staff member can only be appointed by a majority vote of the full BOE, which shall be a recorded vote. Likewise, in regard to removal of a certified or non-certified employee, pursuant to N.J.S.A.18A:27-4 and 4.1, the BOE must follow its own rules. After receiving the recommendation of the chief school administrator (usually the school superintendent) to remove the employee, the BOE shall vote on whether or not to remove him/her. In taking such a vote, it is required that any action adverse to the employee's interest must pass by a majority vote of the full BOE and the vote must be recorded.

Thus, by a reading of the above-referenced statutes, it is clear that the removal of an officer, such as a school principal, whether that principal be tenured or untenured, can occur only when the school's chief administrator has recommended that such an adverse action be taken and it is approved by the local BOE. Then and only then may the adversely-affected employee file an appeal with the Commissioner of Education.

The above-referenced statutes provide that disciplinary actions against a school officer, such as a principal, must be initiated by school management and voted on by the BOE. The above-referenced statutes contain no provisions allowing disciplinary action against a school principal to be initiated directly with the Commissioner of the Department of Education.

In reviewing the Petitioner's Motion for Summary Decision (which Ms. Wadley labelled as a Motion for Summary Judgment under Rule 56 of the Federal Rules of Civil Procedure), I see no basis in the law on which the Petitioners would be entitled to a judgment as a matter of law. The Motion was inarticulately drafted. The motion seems to claim that Jackson's status as a tenured or untenured school principal determines the outcome of this matter. As noted in the analysis of N.J.S.A. 18A:28-5 and N.J.S.A. 18A:27-4.1, Jackson's status as a tenured or untenured school principal is irrelevant. The issue in this matter is whether the Petitioners can rely on N.J.A.C. 6A:9-3.4 as the basis of the disciplinary charges which the Petitioners seek to bring against Jackson.

As already noted, N.J.A.C. 6A:9-3.4 is a set of merely aspirational standards and cannot serve as the basis for disciplinary charges. N.J.S.A.18A:28-5 and N.J.S.A.18A:27-4.1 are the applicable statutes governing the bringing of charges against both tenured and untenured employees. Petitioners' Motion for Summary Decision also seems to claim that certain documents should have been produced by the Respondents. If that is the Petitioner's argument, then the motion is actually a discovery motion and it is out-of-time.

CONCLUSIONS

The Petitioners have conceded that their action is based on N.J.A.C. 6A:9-3.4, a rule of the State Board; and since N.J.S.A. 18A:6-9 clearly states that controversies and disputes arising under the rules of the State Board are outside the jurisdiction of the Commissioner, I **CONCLUDE** that the Commissioner does not have jurisdiction over the action brought by the Petitioners.

Having read the text of N.J.A.C. 6A:9-3.4 with its incorporated document and having determined that it is aspirational in nature and having determined that it does not contain an enforcement provision, I **CONCLUDE** that N.J.A.C. 6A:9-3.4 cannot serve as the basis for disciplinary charges against a school principal. At most, the standards set forth in N.J.A.C. can be used to measure whether or how well school personnel, including principals, are striving to achieve the aspirational goals set forth therein, but that is not a matter of discipline.

The above-referenced statutes (N.J.S.A. 18A:28-5 and N.J.S.A. 18A:27-4 and 4.1) show that the local BOE cannot be bypassed. Therefore, I **CONCLUDE** that jurisdiction for the action at bar lies with the local BOE.

I also **CONCLUDE** that the filing of the present Petition with the Commissioner of Education was not in accordance with the governing statutes cited above.

I also **CONCLUDE** that the Commissioner's referral of same to the Office of Administrative Law was merely incidental and I **CONCLUDE** that the Commissioner did not overtly or impliedly assert that he had jurisdiction over this matter when he referred it to the OAL.

The Respondents, having proven that jurisdiction for the present controversy does not belong with the Commissioner and belongs with the local school authorities, I therefore **CONCLUDE** that they are entitled to a grant of Summary Decision in their favor.

However, all is not lost for the Petitioners. Having reached the above-stated conclusions, the Tribunal notes that there is nothing that prevents the Petitioners from bringing their grievances against Yakima Jackson to the superintendent of the Newark School District. It would then be in the superintendent's discretion to bring the matter before the local BOE.

I **CONCLUDE** that the Petitioners' Motion for Summary Decision does not state a legal basis on which the Petitioners would be entitled to a judgment in their favor as a matter of law. Therefore, I **CONCLUDE** that Petitioner's Motion for Summary Decision must be, and hereby is, **DENIED**.

ORDER

Based upon the foregoing, it is on this Sixteenth (16th) day of October, 2024 **ORDERED** that the Petitioners' Motion for Summary Decision is hereby **DENIED**; and it is further

ORDERED that the Respondent's Motion for Summary Decision is hereby **GRANTED**; and it is further

ORDERED that all Hearing dates are hereby cancelled; and it is further

ORDERED that this **ORDER** shall be served upon all parties today by email.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

October 16, 2024
DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

433-24

New Jersey Commissioner of Education

Final Decision

Y.C., on behalf of minor child, A.F.,

Petitioner,

v.

Board of Education of the City of Perth Amboy, Middlesex County,

Respondent.

Synopsis

Petitioner challenged the long-term suspension and expulsion imposed by the respondent Board upon her eighth-grade son, A.F., following a February 27, 2023 incident wherein A.F. pulled a fire alarm that caused an unnecessary evacuation of the Samuel E. Shull Middle School. Petitioner contended that the Board, *inter alia*, failed to follow applicable statutes and regulations when imposing a long-term suspension upon A.F., rendering its decision arbitrary, capricious, and unreasonable. Petitioner sought, *inter alia*, orders compelling the Board: to allow A.F. to return to the general education setting immediately; to compel the Board to expunge any reference to a long-term suspension from A.F.'s student record; and to allow A.F. to return in person to Perth Amboy High School at the start of the 2023-2024 school year. The Board filed a motion to dismiss. Petitioner filed opposition and a cross-motion for summary decision.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact in this case, and matter is ripe for summary decision; the issue in this case is whether the Board followed the procedural mandates in *N.J.A.C.* 6A:16-7.3 and -7.4 before expelling A.F.; these regulations mandate an informal hearing, timely written notice of a formal hearing, and a summary of the testimonial evidence presented at the formal hearing prior to terminating a student from school; here, A.F. was not provided an informal hearing prior to his long-term suspension as required under *N.J.A.C.* 6A:16-7.3(a)2; the Board failed to give petitioner written notice of the suspension within two school days of the beginning of the suspension; the Board held a formal hearing more than 30 calendar days after the suspension had begun, in violation of *N.J.A.C.* 6A:16-7.3(a)10iii; and the Board's May 1, 2023 letter to petitioner, notifying her of the Board's decision to expel A.F., did not include a summary of testimonial evidence, in violation of *N.J.A.C.* 6A:16-7.3(a)11ii. The ALJ concluded that due to the Board's procedural violations, the Board's decision to expel A.F. was arbitrary, capricious and unreasonable and A.F.'s expulsion must be expunged. Accordingly, petitioner's motion for summary decision was granted.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, with modification. The Commissioner found it unnecessary to reach a determination regarding the language of the disciplinary hearing notice. Petitioner's motion for summary decision was granted.

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

433-24
OAL Dkt. No. 07049-23
Agency Dkt. No. 178-6/23

New Jersey Commissioner of Education

Final Decision

Y.C., on behalf of minor child, A.F.,

Petitioner,

v.

Board of Education of the City of Perth Amboy, Middlesex County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner and the Perth Amboy Board of Education ("Board"), and their replies thereto.

Petitioner's child, A.F., was expelled by the Board following an incident on February 27, 2023, wherein he pulled a fire alarm, causing the evacuation of Samuel E. Shull Middle School (Shull).[1] Petitioner challenges the Board's expulsion for failure to adhere to the procedural mandates under *N.J.A.C.* 6A:16-7.3 and *N.J.A.C.* 6A:16-7.4. Specifically, petitioner alleges that A.F. was not provided an opportunity to share his version of events in an informal hearing prior to his suspension; that the Board failed to provide petitioner with a written notice

[1] On the same day, students at Perth Amboy's high school staged a walk-out protest regarding the stabbing of another Shull student earlier in the month.

of suspension within two school days of the start of the suspension; that the Board did not schedule a disciplinary hearing for A.F. within 30 days of the February 28, 2023 suspension; and that the Board's decision letter, dated May 1, 2023, lacks a summary of the testimonial and documentary evidence upon which the Board relied in reaching its decision.

After the matter was transmitted to the OAL, the Board filed a motion to dismiss, arguing that it permitted A.F. to re-enroll in the district, rendering petitioner's claims moot. Petitioner filed opposition and a cross-motion for summary decision, arguing that her claims were not moot because justiciable issues remained, such as A.F.'s improper expulsion and the Board's violation of A.F.'s due process rights. Further, petitioner asserted that her petition is not moot given the continued harm A.F. experiences due to the presence of an illegal expulsion on his disciplinary record. Petitioner also contended that the Board's decision to expel A.F. was arbitrary, capricious, and unreasonable.

The ALJ denied the Board's motion to dismiss, concluding that when all inferences are drawn against the moving party and in favor of the opposing party, petitioner's facts – if true – could constitute a cause of action. In reaching her conclusion, the ALJ pointed to factual allegations unrefuted by the Board, namely that A.F. was not provided an informal hearing prior to his long-term suspension pursuant to *N.J.A.C.* 6A:16-7.3(a)(2), and that the Board failed to give petitioner written notice about the suspension within two school days of the beginning of the suspension. The ALJ also found that the Board held a formal hearing more than 30 calendar days after the suspension had begun, in violation of *N.J.A.C.* 6A:16-7.3(a)(10)(iii). Lastly, the ALJ found that the Board's May 1, 2023 letter to petitioner, notifying her of the Board's decision to expel

A.F., did not include a summary of the testimonial evidence, in violation of *N.J.A.C.* 6A:16-7.3(a)(11)(ii).

Next, the ALJ granted petitioner's motion for summary decision. The ALJ found several procedural deficiencies in the Board's suspension and expulsion of A.F. In addition to the deficiencies noted above, the ALJ found that the Board improperly expelled A.F. even though he had never served a long-term suspension for a prior incident as required by *N.J.A.C.* 6A:16-7.4(a). Accordingly, the ALJ held that the expulsion must be expunged from A.F.'s student record; additionally, his student record must be changed to show that A.F. was suspended due to the February 27, 2023 incident and that petitioner transferred him to a charter school for the 2023-2024 school year. The ALJ further concluded that the Board's decision to expel A.F. was arbitrary, capricious, and unreasonable for failing to consider options less drastic than discontinuing A.F.'s educational program. The ALJ concluded that petitioner may enroll A.F. in the Perth Amboy School District for the 2024-2025 school year. Finally, the ALJ held that since A.F. is not a special education student, the requirement that a disciplinary hearing notice be provided in a language that the parent understands does not apply to petitioner.

The Board takes exception to the ALJ's finding that as a result of the two incidents that occurred on February 27, 2023 — A.F. pulling the fire alarm and the walk-out protest by Perth Amboy high school students — "there were hundreds of students on the streets, which impacted the Shull administration's deployment of staff." The Board contends that A.F.'s false pulling of the fire alarm during the protest brought hundreds more students to the street, not only impacting the deployment of staff but also jeopardizing the safety of students and staff and taking emergency teams away from monitoring safety during the walk-out at the high school.

The Board argues that it is from this context that they considered what disciplinary options to impose, and it takes exception to the ALJ's finding that the Board did not consider less extreme disciplinary actions.

The Board also challenges the ALJ's finding that it is unrefuted that A.F. was not given an informal hearing prior to his suspension. Further, the Board takes exception to the ALJ's finding that most of the March 10, 2023 meeting between petitioner and the Shull principal and assistant superintendent was conducted in English despite petitioner notifying the assistant superintendent of her limited English. Lastly, the Board argues that the ALJ incorrectly concluded that *N.J.A.C.* 6A:16-7.4 requires a student to have served a long-term suspension for a previous incident before they can be expelled. The Board maintains that the plain meaning of *N.J.A.C.* 6A:16-8.3 and *N.J.S.A.* 18A:37-2 should be applied, arguing that there is no requirement that prior to being expelled, a student must have served a long-term suspension for a previous infraction.

In response, petitioner contends that none of the Board's exceptions to the ALJ's factual findings are material to the outcome of the instant matter and that the ALJ's fact finding sufficiently conveys the seriousness of A.F.'s offense. Petitioner also asserts that the ALJ correctly deemed the Board's failure to hold an informal suspension hearing as unrefuted since neither certification filed by the Board's assistant superintendent confirms that an informal suspension hearing was held. Citing to case law, petitioner contends that the ALJ correctly determined that a student must serve a long-term suspension for a previous incident in order to be expelled pursuant to *N.J.A.C.* 6A:16-7.4.

Petitioner takes exception to the ALJ's determination that since A.F. is not a special education student, petitioner is not entitled to receive a disciplinary notice hearing notice in a language she understands. Petitioner contends that it was unnecessary for the ALJ to have reached this determination since neither party raised issues about the Board's obligations to translate and interpret disciplinary notices in their motions or briefs. In reply, the Board argues that the issue of the language of the disciplinary hearing notification remains a disputed question of fact and as such, this matter should be remanded to the OAL for a hearing.

Upon review, the Commissioner adopts the ALJ's Initial Decision as the final decision in this matter, with the following modification. While the Commissioner concurs with the ALJ that the Board failed to adhere to the procedural requirements under *N.J.A.C.* 6A:16-7.3 and *N.J.A.C.* 6A:16-7.4 before expelling A.F., the Commissioner finds it unnecessary to reach a determination regarding the language of a disciplinary hearing notice.[2]

It is well recognized that school districts have the authority to expel and suspend students. *N.J.S.A.* 18A:37-2. That authority, however, is not unlimited, as the regulations provide for sufficient safeguards to protect the student's fundamental right to an education. Under *N.J.A.C.* 6A:16-7.4(a)(1), "a district board of education may expel a general education student from school, pursuant to *N.J.S.A.* 18A:37-2, only after the district board of education has provided ... [t]he procedural due process rights set forth at *N.J.A.C.* 6A:16-7.1(c)3 and 7.3 [and] subsequent to a long-term suspension, pursuant to *N.J.A.C.* 6A:16-7.3 ...". A long-term suspension is defined

[2] The Commissioner's findings are sufficient to grant petitioner's motion for summary decision, and the Commissioner declines to address an issue that was not fully briefed by the parties when it is not necessary to the outcome of this matter.

as the "removal of a student for more than 10 consecutive school days from the general education program". *N.J.A.C.* 6A:16-1.3.

Prior to suspending a student long-term, *N.J.A.C.* 6A:16-7.3(a)(2) requires the Board to hold an informal hearing wherein the student can present his version of events. In addition, *N.J.A.C.* 6A:16-7.3(a)(5) mandates that a parent be given written notice by the chief school administrator or their designee within two school days of the beginning of the suspension. The notice must state the specific charges, the facts upon which the charges are based, and the student's due process rights, and must include a notification that further engagement by the student in conduct warranting expulsion shall amount to a knowing and voluntary waiver of the student's right to a free public education. A student is also entitled to a formal board hearing that must take place no later than 30 calendar days after the day the student is suspended. *N.J.A.C.* 6A:16-7.3(a)(10)(iii). Following the close of the formal hearing, the Board must provide the student's parents with a written statement regarding the Board's decision. The statement must include a "summary of the documentary or testimonial evidence" presented by the student and the administration and "[f]actual findings relative to each charge and the [Board's] determination of each charge." *N.J.A.C.* 6A:16-7.3(a)(11).

Here, the Board failed to provide A.F. with an informal hearing prior to the start of his suspension. It is undisputed that the Board's written suspension notice, dated March 14, 2023, was provided to petitioner more than two school days after February 28, 2023, the first day of A.F.'s suspension. It is also undisputed that the formal hearing was held on April 27, 2023, more than 30 days after the commencement of A.F.'s suspension. Furthermore, the Board's May 1, 2023 letter, informing petitioner of the disposition of the formal hearing, did not include

a summary of documentary or testimonial evidence on which the Board relied or factual findings relative to each charge. Instead, the letter lists the kinds of evidence the Board considered in reaching its determination that A.F. violated the Board's policy. Lastly, the Board expelled A.F. despite him never having served a long-term suspension for a prior incident. Accordingly, the Commissioner concurs with the ALJ that the Board violated A.F.'s due process rights by failing to provide the procedural protections mandated by *N.J.A.C.* 6A:16-7.3 and *N.J.A.C.* 6A:16-7.4.

The Commissioner does not find the Board's exceptions to be persuasive. The Commissioner rejects the Board's argument that *N.J.A.C.* 6A:16-7.4 does not require a student to have served a long-term suspension for a previous incident in order to be expelled. The Commissioner has previously found that, under *N.J.A.C.* 6A:16-7.5, expulsion can only take place after a student has "engaged a second time in conduct warranting possible suspension or expulsion, after having first served a duly imposed long-term suspension for an earlier infraction." *M.R., v. Board of Trustees of the Hoboken Charter School,* Commissioner Decision No. 89-10, decided March 22, 2010. In this matter, it is undisputed that A.F. has never served a long-term suspension for any other incident, thereby precluding the Board from expelling A.F.

In addition, the Board contends that the ALJ incorrectly found that it was unrefuted that A.F. was not provided with an informal suspension hearing prior to being suspended. The Board argues that it refuted this claim in its Answer wherein the Board denied any allegation that it failed to comply with the applicable law. However, nothing in the record – including the Board's Certification of Assistant Superintendent Delvis Rodriguez – indicates that A.F. had an informal hearing where he was afforded the opportunity to relay his version of events prior to his suspension. The Board merely suggests that it had conversations with petitioner in March 2023

to discuss options moving forward. *N.J.A.C.* 6A:16-7.3(a)(2) mandates an informal hearing where the *student*, not the parent, be given an opportunity to share his version of events before the suspension begins; further, A.F.'s suspension began on February 28, 2023, whereas the Board's discussions with petitioner occurred in March 2023. Thus, the Commissioner concurs with the ALJ that it is unrefuted that A.F. was not provided with an informal hearing prior to his suspension on February 28, 2023.

The Commissioner is not persuaded by the Board's argument that the ALJ erred in finding that 1) due to A.F. pulling the fire alarm and the walk-out protests, "there were hundreds of students on the streets, which impacted the Shull administration's deployment of staff," and 2) that the Board did not consider less extreme disciplinary actions. The Board contends that the pulling of the fire alarm jeopardized the safety of students and staff and took emergency and administrative teams away from monitoring the walkout, and that it is from this context that the Board considered the disciplinary options to implement. The Commissioner notes the seriousness of A.F.'s actions as presented by the Board, but nonetheless agrees with petitioner that this specific finding of fact is not material to the resolution of this matter. Further, the seriousness of A.F. pulling the fire alarm does not justify the many procedural violations the Board has committed in the instant matter. Regarding the second finding of fact, the record is devoid of any indication that the Board considered other disciplinary options prior to expelling A.F. The Commissioner therefore agrees with the ALJ's conclusion that the Board's decision to expel A.F. was arbitrary, capricious, and unreasonable for failing to consider other options prior to ending A.F.'s educational program.

Accordingly, the Initial Decision, as modified herein, is adopted as the Final Decision in this matter. The Board is ordered to correct A.F.'s records to remove references to the expulsion, as detailed by the ALJ. Additionally, to the extent that it has not already permitted same, A.F. shall be re-enrolled in the district.

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 21, 2024
Date of Mailing: November 22, 2024

[3] 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 07049-23
AGENCY DKT. NO. 178-6/23

Y.C. ON BEHALF OF MINOR CHILD A.F.,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF PERTH AMBOY, MIDDLESEX COUNTY,
Respondent.

Meredith Kilburn, Esq., appearing for petitioner (Education Law Center, attorneys)
Isabel Machado, Esq., appearing for respondent (Machado Law Group, attorneys)

Record closed: June 14, 2024 Decided: August 27, 2024

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

The Perth Amboy Board of Education (respondent/Board) expelled A.F., the minor son of Y.C., (petitioner) for pulling the school fire alarm. At issue is whether the Board followed the procedural mandates in N.J.A.C. 6A:16-7.3 and -7.4 before expelling A.F. These State regulations mandate an informal hearing, timely written notice of a formal hearing, and a summary of the testimonial evidence presented at the formal hearing prior to terminating a student from school. The respondent failed to provide these and, thus, violated A.F.'s procedural due process rights.

PROCEDURAL HISTORY

By letter dated May 1, 2023, the Board notified the petitioner that A.F. was expelled and would be on home instruction pending an alternative school placement. On June 29, 2023, the petitioner filed a Petition of Appeal. The respondent filed its Answer on July 19, 2023, and the matter was transmitted as a contested case to the Office of Administrative Law (OAL), where it was filed on August 3, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

After a series of unsuccessful settlement attempts, the respondent filed a motion to dismiss dated April 19, 2024, asserting that the controversy was rendered moot because the Board was allowing A.F. to re-enroll for the 2024-25 school year. Petitioner opposed the motion to dismiss and filed a cross-motion for summary decision on May 6, 2024, asserting that she was entitled to prevail as a matter of law because the Board violated A.F.'s due process rights under the school laws, and expelled him illegally. Respondent filed a reply on May 28, 2024, and the petitioner filed a reply in opposition on June 14, 2024.

DISCUSSION AND FINDINGS OF FACT

The following facts are not in dispute and thus, I **FIND**:

A.F. is the minor son of the petitioner Y.C. Both A.F. and Y.C. reside within the Board's public school district boundaries. A.F. is a rising ninth grader. During the 2022-23 school year, A.F. attended the Samuel E. Shull Middle School (Shull), and on February 27, 2023, A.F. pulled the fire alarm, which triggered an evacuation of the school. On the same day, Perth Amboy high school students had a walk-out to protest the stabbing of another Shull student earlier in February. As a result of these two incidents, there were hundreds of students on the streets, which impacted the Shull administration's deployment of staff.

The respondent's Student Code of Conduct listed false public alarm as a Level III behavioral offense subject to expulsion. (Exhibit A, Rodrigez Certification.)

The petitioner was notified on the afternoon of February 27, 2023, that A.F. had to go to the Perth Amboy Police Department for questioning. On February 28, 2023, the petitioner contacted the respondent and was told that A.F. could not return to school until the principal authorized A.F.'s return.

The petitioner met with Shull's principal and the assistant superintendent on March 10, 2023. Most of this meeting was conducted in English although the petitioner had notified the assistant superintendent of her limited English. However, the assistant superintendent did tell the petitioner in Spanish that A.F. would never return to Perth Amboy public schools. The respondent offered an out-of-district placement in lieu of a Board disciplinary hearing. The petitioner was not given a written suspension notice during this meeting and A.F. was not given an opportunity to tell his side of the story. The petitioner refused to sign a form authorizing an out-of-district placement for A.F.

On March 22, 2023, the petitioner visited the Board's offices and was given a letter dated March 14, 2023, which was the notice of suspension. (Exhibit B, Petitioner's Motion for Summary Decision (PMSD).) This letter did not include the facts on which the charges were based or explain A.F.'s due process rights as required by N.J.A.C. 6A:16-7.3(a)5ii and iii. Instead, the letter stated that by signing the letter and attached waiver form, the petitioner was waiving the expulsion hearing. Id. Specifically, this letter stated:

> As a summary of our meeting regarding this matter and in lieu of an expulsion hearing, we have agreed to the following:
>
> - [A.F.] will continue to be homeschooled until such time as the District can locate an alternative placement. Instruction will be provided at home.
>
> - [A.F.] will be strictly prohibited from entering school premises for any reason, until notified otherwise, if so. This prohibition will apply to all school premises, athletic fields, and administrative buildings. In addition, [A.F.] will not be able to attend any event hosted by the Perth Amboy Public School, whether the event is held on school property or elsewhere,
>
> - On behalf of [A.F.] you agree to waive Board disciplinary hearings as provided in N.J.S.A. Section [sic] 18A:37-2, and N.J.A.C. Sections [sic] 6A:16-7.2, 7.3, 7.4 and 7 [sic].
>
> - In the event [A.F.] fails to abide by the terms of this agreement and/ or re-engages in conduct warranting extended suspension or expulsion by virtue of the Section [sic] 18A:37-2 of N.J.S.A., it will correspond to a resignation on the part of [A.F.] as an informed and voluntary way [sic] to his right to receive public free education if the Board makes a decision to expel the student pursuant to N.J.S.A. sections [sic] 18A:37-2 and N.J.A.C. 6A:16-7.5.
>
> [Ibid.]

The letter further gave the petitioner until March 20, 2023, to sign the attached waiver form. The petitioner did not sign the letter or waiver form.

A Board employee attempted to hand-deliver a letter to the petitioner on April 21, 2023, however, the letter was in English, and the Board employee would not tell or explain to the petitioner the contents of the letter. The petitioner refused to sign for the letter.

A formal Board hearing was held on April 27, 2023, in which the Board approved the recommendation to expel A.F. and find an alternative educational program. Neither the petitioner nor A.F. attended the hearing. The petitioner received a letter dated May 1, 2023, written in English, notifying the petitioner that the Board had considered A.F.'s prior disciplinary record, and heard witness testimony along with other evidence. (Exhibit C, PMSD.) Based upon this evidence, the Board concluded that A.F. had violated Board policies No. 7610 and 5600 and, therefore, A.F. was expelled and would be on home instruction pending an out-of-district placement. Home instruction did not start until March 28, 2023.

The formal hearing was held beyond the thirty-day limit required by State law.[1] The notice of suspension was not provided to the petitioner within two school days of the suspension as required by State law.[2] There is no evidence that A.F. was provided an opportunity to share his version of the events prior to the suspension.[3] The home instruction was not provided within the five-school day period as mandated by school law.[4]

A.F.'s Behavior Detail Report for the 2022-23 school year shows the following infractions and consequences:

- before/after school suspension for being out of school uniform;

[1] N.J.A.C. 6A:16-7.3(a)10iii.
[2] N.J.A.C. 6A:16-7.3(a)5.
[3] N.J.A.C. 6A:16-7.3(a)2.
[4] N.J.A.C. 6A:16-7.3(a)9i.

- conference with administrator for refusal to put phone way during class after multiple warnings;
- verbal warning for walking out of the gym without permission;
- three-day after school detention for cutting class; and
- one day out of school suspension for participating in a physical fight. (Exhibit A, PMSD.)

A.F. did not attend the Perth Amboy School District for the 2023-24 school year, or participate in the eighth-grade graduation, but was enrolled by the petitioner in the Academy for Urban Leadership Charter School (Charter School). There were no reports of behavioral infractions at the Charter School.

In a letter dated April 12, 2024, the respondent notified the petitioner that she could enroll A.F. in the Perth Amboy schools for the 2024-25 school year. In addition, the respondent provided A.F.'s eighth-grade graduation completion certificate. (Exhibit D, PMSD.)

LEGAL DISCUSSION AND CONCLUSIONS

The legal question presented is whether A.F. should be returned to school and his record expunged due to the Board's procedural due process violations. In this regard, the petitioner seeks an Order:

1. reinstating A.F. as a Perth Amboy student for as long as he is entitled to a public education,

2. expunging the expulsion from A.F.'s record, and changing his record to reflect that a suspension was imposed and that his parent transferred him to a charter school for the 2023-24 school year,

3. precluding the Board from imposing any further disciplinary actions against A.F. related to the incident at issue, compensatory education, and attorneys' fees.[5]

In addition, the petitioner seeks declaratory rulings that: (1) the respondent's conduct was illegal and violated A.F.'s rights to a free public education; and (2) the disciplinary hearing notice to Y.C. was inadequate and notice of a disciplinary hearing must be provided to parents in a language they understand.

Respondent's Motion to Dismiss

A motion to dismiss is recognized in the Administrative Code at N.J.A.C. 6A:3-1.5(g). The Commissioner of Education (Commissioner) may dismiss a petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute, or other good reason. N.J.A.C. 6A:3-1.10. In assessing such a motion, the claims made by the party who filed the petition must be deemed to be true and all reasonable inferences that such allegations may support must be accepted. The standard utilized by the courts in judging such a motion is traditionally quite liberal towards the non-moving party. Green v. Morgan Props., 215 N.J. 431, 451 (2013).

Here, the respondent contends that the petition must be dismissed because A.F. is now permitted to re-enroll as a student for the 2024-25 school year and thus the issue is moot. The remaining issues regarding expunging his record of the disciplinary charges are ancillary because it is undisputed that A.F. pulled the fire alarm and expulsion was a known consequence for this infraction.

The petitioner, however, contends that the petition should not be dismissed because two justiciable issues remain—namely, A.F.'s due process rights were violated and he was improperly expelled. The petitioner contends that these issues are capable

[5] The requests for compensatory education and attorneys' fees were withdrawn.

of repetition in the future and therefore are not moot. In addition, the petitioner asserts that the respondent's letter dated April 12, 2024, does not guarantee that the respondent will not impose additional punishment on A.F. or that A.F. will be reinstated into the general education population.

N.J.A.C. 6A:16-7.4 provides that a local board of education may expel a general education student only after having provided the student with procedural due-process rights as outlined in N.J.A.C. 6A:16-7.1(c)3 and -7.3, after a long-term suspension and an appropriate educational program or service has been provided by the school district. The procedures for a long-term suspension are outlined in N.J.A.C. 6A:16-7.3(a) 1-11 and mandate that the school district must provide:

- a notice to the student of the charges prior to the student's removal from school;
- an informal hearing prior to the suspension which affords the student an opportunity to tell his/her side of the events;
- immediate notice to the student's parents of the student's removal from school;
- written notification to the parents by the principal or principal's designee within two school days of the start of the suspension stating the specific charges, the facts upon which the charges are based, the student's due process rights, and notice that further engagement by the student in conduct warranting expulsion shall amount to a knowing and voluntary waiver of the student's right to a free public education;
- a list of witnesses and their statements or affidavits, no later than five days prior to the formal hearing;
- information on the right to secure counsel;

- in- or out-of-school educational services within five days of the suspension;

- a formal hearing before the board of education that allows the student to confront and cross- examine witnesses and present the student's defense; and

- a written statement to the student's parents regarding the board of education's decision within five school days after the close of the hearing.

The petitioner herein asserts, and the respondent does not refute, that A.F. was not given an informal hearing prior to being suspended on February 28, 2023, pursuant to N.J.A.C. 6A:16-7.3(a)2. It is also unrefuted that the respondent did not provide written notification from the principal to the petitioner within two school days of the start of the suspension with information about the basis for the suspension. The evidence shows that the petitioner did not get a letter from the respondent until March 14, 2023, which was eleven school days after the suspension. The formal hearing was held on April 27, 2023, which was more than thirty calendar days after the suspension which violates N.J.A.C. 6A:16-7.3(a)10iii. Finally, the respondent's notice to the petitioner containing the respondent's decision did not include a summary of the testimonial evidence, in violation of N.J.A.C. 6A:16-7.3(a)11ii.

Accordingly, drawing all inferences against the moving party and in favor of the opposing party, the petitioner's facts, if true, may make out a cause of action. For these reasons, I hereby **ORDER** that the respondent's motion to dismiss is **DENIED**.

Petitioner's Cross-motion for Summary Decision

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party in order to prevail must demonstrate by affidavit that there is a

genuine issue of fact which can only be determined in an evidentiary proceeding. Ibid. These provisions mirror the summary judgment language of R. 4:46-2 (c) of the New Jersey Court Rules.

The motion judge must "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." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536 (citation omitted).

In this case, I **CONCLUDE** that no genuine issue of material fact exists, and that petitioner is entitled to prevail as a matter of law, for the reasons set forth below.

N.J.S.A. 18A:37-2 grants a local board of education authority to impose discipline, including suspension and expulsion, upon any student who is willfully disobedient, and N.J.S.A. 18A:37-5 allows a principal to suspend any student for good cause. However, disciplined students retain extensive due process rights. Goss v. Lopez, 419 U.S. 565 (1975); N.J.A.C. 6A:16-7.3. Prior to expulsion, a student is entitled to an informal hearing where the student can provide his or her version of the events, a formal board hearing with an opportunity to confront and cross-examine witnesses and provide the student's own defense. N.J.A.C. 6A:16-7.3. In addition, regulations mandate that the parent must be provided notice of a long-term suspension within two school days of the start of the suspension. N.J.A.C. 6A:16-7.3(a)5. Here, the letter was not issued until eleven school days after the start of the suspension. The formal board hearing must be held no later than thirty calendar days following the suspension. N.J.A.C. 6A:16-7.3(a)10iii. After the formal board hearing, the board must provide a written summary to the parent outlining the documentary and testimonial evidence presented by the administration, and factual findings for each charge. N.J.A.C. 6A:16-7.3(a)11ii – iv. None of this was provided to the petitioner.

Moreover, A.F. has not served a long-term suspension for a previous incident as required by N.J.A.C. 6A:16-7.4(a). This regulation provides in relevant part:

> A district board of education may expel a general education student from school, pursuant to N.J.S.A. 18A:37-2, only after the district board of education has provided the following:
>
> > 1.The procedural due process rights set forth at N.J.A.C. 6A:16-7.1(c)3 and 7.3, subsequent to a long-term suspension, pursuant to N.J.A.C. 6A:16-7.3 . . . .
>
> [Emphasis added.]

The respondent attempts to justify the due process violations by stating that the petitioner failed to cooperate in scheduling the expulsion hearing. However, the relevant regulation regarding holding the formal hearing is clear, and it is well established that a regulation is subject to the same rules of construction as a statute and should be construed according to the plain meaning of its language. Medford Convalescent & Nursing Ctr. v. Division of Med. Assistance & Health Servs., 218 N.J. Super. 1, 5 (App. Div. 1985). N.J.A.C. 6A:16-7.3(a)10iii states that the formal hearing before the board of education "shall . . . [t]ake place no later than 30 calendar days following the day the student is suspended from the general education program . . . ." This language is mandatory, and, thus, the Board was duty bound to hold the hearing on or before March 30, 2023. When the petitioner did not respond by March 20, 2023, as instructed in the respondent's March 14, 2023 letter, the respondent should have scheduled the hearing or documented an adjournment, along with efforts to reschedule the hearing.

It is undisputed that A.F. was suspended on February 28, 2023, and the expulsion hearing was not held until April 27, 2023, which is fifty-eight calendar days from the initial suspension. Failing to adhere to the thirty-day period contravened the regulation. Accordingly, I **CONCLUDE** that drawing all inferences against the moving party and in favor of the opposing party, there are no genuine issues of material fact concerning whether the Board followed the procedural mandates outlined in N.J.A.C. 6A:16-7.3 and

-7.4 before expelling A.F., and the petitioner is entitled summary decision. I further **CONCLUDE** that due to the procedural violations, the expulsion must be expunged from A.F.'s pupil records and changed to reflect that he was suspended as a result of an incident occurring on February 27, 2023, and the petitioner transferred him to a charter school for the 2023-24 school year.

In addition, the petitioner asserts that the Board's decision to expel A.F. was arbitrary, capricious, and unreasonable because the Board did not consider less extreme disciplinary options. Petitioner relies upon Scher v. Bd. of Educ. of West Orange, Essex County, 1968 S.L.D. 92, in which the Commissioner ruled that a hearing was required before a student could be expelled as well as being evaluated by a mental health team. Specifically, the Commissioner stated:

> Termination of a pupil's right to attend the public schools of a district is a drastic and desperate remedy which should be employed only when no other course is possible. It involves a momentous decision which members of a board of education, most of whom have had little specific training in education, psychology, or medicine are called upon to make. The board's decision should be grounded, therefore, on competent advice. Such advice can be obtained from its staff of educators, from its school physician and school nurse, from its psychologist, psychiatrist, and school social worker, from its counsel, and from other appropriate sources. . . . It is obvious that a board of education cannot wash its hands of a problem by recourse to expulsion. . . . The Commissioner urges boards of education, therefore, to recognize expulsion as a negative and defeatist kind of last-ditch expedient resorted to only after and based upon competent professional evaluation and recommendation.
>
> [Id. at 96-97.]

Here, there is no evidence that the Board considered any other less drastic options than discontinuing A.F.'s educational program. For example, there was no referral to the Intervention and Referral Services team, counseling, or professional evaluation of any kind. Without question, A.F.'s decision to pull the fire alarm resulted in pandemonium for

other students and staff and warranted discipline. However, it appears that the respondent was merely "washing its hands of a problem" by failing to consider other options. Accordingly, I **CONCLUDE** that the Board's decision to expel A.F. was arbitrary, capricious, and unreasonable.

I am not persuaded, however, that the respondent's letter dated April 12, 2024, which allows A.F. to re-enroll in the Perth Amboy School District for the 2024-25 school year, allows the respondent to rescind the letter, reinstate A.F.'s expulsion, or place him in an alternative education program, leaving A.F. unable to challenge the underlying expulsion, as the petitioner contends. This is conjecture and is not supported by the evidence. It is axiomatic that each local board of education has an affirmative duty not to act in bad faith, to ensure that its discretionary decisions are rationally based and not "induced by improper motives." Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288, 296 (App. Div. 1960). If these duties are breached, the petitioner maintains her continuous rights under N.J.A.C. 6A:3-1.3 and -1.4 to file a petition before the Commissioner. Accordingly, I **CONCLUDE** the petitioner may enroll A.F. in the Perth Amboy School District for the 2024-25 school year.

Declaratory Rulings

The petitioner seeks declaratory rulings that: (1) the respondent's conduct violated the petitioner's rights under regulatory, statutory, and constitutional law; (2) the expulsion was illegal; (3) the disciplinary hearing notice to Y.C. was inadequate, and notice of a disciplinary hearing must be provided to parents in a language they understand. The respondent objects, stating that the petition seeks consequential relief and, thus, a request for a declaratory ruling is improper under the regulations. N.J.A.C. 6A:3-2.1 allows any interested person to file a petition with the Commissioner for a declaratory ruling with respect to the rights, responsibilities, and status arising from any statute or rule within the Commissioner's jurisdiction. In addition, this regulation provides:

> A request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts that are future, contingent, uncertain, or disputed.
>
> [N.J.A.C. 6A:3-2.1(a)1.]

The petitioner counters that she is not seeking declaratory relief under this regulation, but rather is merely asking this tribunal to decide if, based on the facts alleged, the Board violated these rights and responsibilities. Given the findings and conclusions above, which grant petitioner's motion for summary decision on the basis that the Board failed to adhere to the procedural requirements of N.J.A.C. 6A:16-7.3 and -7.4, and that the decision to expel A.F. was arbitrary, capricious, and unreasonable, I **CONCLUDE** that it is unnecessary to reach this issue, with the exception of the petitioner's request for a declaratory ruling stating that notice for a disciplinary hearing must be provided to parents in a language they understand. Such a requirement is only mandated for special education students. See N.J.A.C. 6A:14-2.3(g) and -2.4. Accordingly, I **CONCLUDE** that since A.F. is not a special education student, the requirement that disciplinary hearing notice must be provided to parents in a language the parent understands does not extend to the petitioner.[6]

ORDER

For the foregoing reasons, I hereby **ORDER** that the petitioner's motion for summary decision is **GRANTED**.

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

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[6] N.J.A.C. 6A:15-1.12 requires notice in the parent's primary language when a student has been identified as a multilingual learner eligible for a language instruction educational plan. This does not apply here.

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

August 27, 2024 — Kim C. Belin

DATE — **KIM C. BELIN**, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

EXHIBITS

For petitioner

- Response to respondent's Motion to Dismiss and Cross-Motion for Summary Decision with certification and exhibits, dated May 6, 2024
- Reply to respondent's opposition to petitioner's Cross-Motion for Summary Decision with supplemental certification, dated June 14, 2024

For respondent

- Motion to Dismiss, dated April 19, 2024
- Reply to petitioner's opposition to respondent's Motion to Dismiss and in opposition to the petitioner's Cross-Motion for Summary Decision, dated May 28, 2024

434-24

New Jersey Commissioner of Education

Final Decision

School Hero,

Petitioner,

v.

Board of Education of the Camden County Educational Services Commission, Camden County, and Patrick Madden, Business Administrator,

Respondent.

Synopsis

Petitioning school bus company, School Hero, filed an appeal on December 18, 2023 alleging that the respondent Board and Madden violated the School Ethics Act (Act) by failing to comply with Chapter 39 of Title 18A of the New Jersey Statutes, as well as with certain regulatory provisions contained in Chapter 27 of Title 6A of the New Jersey Administrative Code, when they prohibited School Hero from placing bids with the Board, removing the company from the quote notification list and failing to provide School Hero with bid specifications. Respondents contended that the petition should be dismissed with prejudice as untimely pursuant to *N.J.A.C.* 6A:3-1.3(i).

The ALJ found, *inter alia*, that: the process for filing a petition of appeal with the Department of Education is described in *N.J.A.C.* 6A:3-1.3, which includes the limitation that a petition must be filed no later than the 90th day from the date of receipt of notice of a final order or ruling that is the subject of the contested case; it is undisputed that petitioner received an email notice on July 18, 2023 that the Board would not accept any bids from School Hero; the company subsequently filed the within petition on December 18, 2023, which was two months beyond the deadline for initiating a contested case before the Commissioner in this matter; there is no basis to relax the 90 day statute of limitations; petitioner's argument that the Board violated the Act, and because of those allegations the statute of limitations is 180 days rather than 90 days, is without merit. Accordingly, the ALJ granted the Board's motion to dismiss the petition.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion and adopted the Initial Decision of the Office of Administrative Law as the final decision in this matter. The respondents' motion to dismiss was granted, and the petition was dismissed.

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.

434-24
OAL Dkt. No. 03039-24
Agency Dkt. No. 346-12/23

New Jersey Commissioner of Education
Final Decision

School Hero,

Petitioner,

v.

Board of Education of the Camden County Educational Services Commission, Camden County, and Patrick Madden, Business Administrator,

Respondent.

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) — for the reasons presented in the Initial Decision — that School Hero's petition is time-barred pursuant to *N.J.A.C.* 6A:3-1.3(i). In addition, the Commissioner agrees with the ALJ's conclusion that the 180-day filing limit provided under the School Ethics Act does not apply in the instant matter.

Accordingly, the Initial Decision is adopted as the final decision in this matter. Respondents' motion to dismiss is granted and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 21, 2024
Date of Mailing: November 22, 2024

[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 GRANTING MOTION TO DISMISS
OAL DKT. NO. EDU 03039-24
AGENCY DKT. NO. 346-12/23

SCHOOL HERO,
Petitioner,
v.
BOARD OF EDUCATION OF THE CAMDEN COUNTY EDUCATIONAL SERVICES COMMISSION, CAMDEN COUNTY, AND PATRICK MADDEN, BUSINESS ADMINISTRATOR.
Respondents.

Elizabeth J. Hampton, Esq., and **Dennis M. Tuohy, Jr.**, Esq., for petitioner (Fox Rothschild, LLP, attorneys)

Sanmathi Dev, Esq., for respondent (Capehart Scatchard, P.A., attorneys)

Record Closed: September 10, 2024 Decided: October 10, 2024

BEFORE **KIMBERLEY M. WILSON**, ALJ:

STATEMENT OF THE CASE

Petitioner School Hero filed a petition with the Commissioner of the New Jersey Department of Education (DOE), alleging that respondents Board of Education of the Camden County Educational Services Commission (Board) and Patrick Madden (Madden), Business Administrator, violated the School Ethics Act (Act) when they failed to abide by certain statutes and regulations. The Board and Madden filed a motion to dismiss in lieu of an answer.[1]

PROCEDURAL HISTORY

On or around December 18, 2024, School Hero filed its petition with the DOE. On or around March 1, 2024, the Board and Madden filed a motion to dismiss in lieu of an answer. On March 4, 2024, the matter was transmitted to the Office of Administrative Law, for a hearing as a contested case. N.J.S.A. 54:14B-1 to -15 and N.J.S.A. 14F-1 to -23.

After a status conference on May 15, 2024, School Hero filed their opposition to the motion on or around June 5, 2024. The Board and Madden filed their reply papers on or around June 17, 2024, and oral argument was heard on September 10, 2024.

FACTUAL DISCUSSION AND FINDINGS

I **FIND** the following as **FACT,** as it is undisputed:

1. On or around November 29, 2022, Francesca Hoke (Hoke), transportation coordinator for the Board, sent School Hero an email stating that School Hero was approved to award route 2183Q. Saleeba Cert., Ex. A. School Hero was to begin the route on December 1, 2022. Ibid.

[1] Pursuant to N.J.A.C. 6A:3-1.5(g).

2. On or around December 4, 2022, School Hero sent an email to Hoke, stating, "[t]he parent has refused to transport the children to school on Thursday and Friday as she claimed that the children are being transferred to a different school." Ibid. In the email, School Hero sought guidance from the Board. Ibid.

3. On or around December 5, 2022, Hoke responded to School Hero's request by email, advising School Hero to send an email to a specific email address for information from parents regarding students changing schools or addresses. Ibid.

4. On or around February 2, 2023, at 9:52 a.m.,[2] School Hero sent an email to Hoke, stating that route 2183Q was still running and inquiring about payment. Ibid.

5. On or around February 2, 2023, at 10:15 a.m., School Hero sent an email to Hoke, stating that it received no notice to stop the route. Ibid.

6. On around February 2, 2023, at 4:47 p.m., Hoke sent an email to School Hero, asking whether School Hero was inquiring about when payment would be sent or asking about the route. Ibid.

7. On or around February 2, 2023, at 4:53 p.m., Hoke sent an email to School Hero, stating, "[H]ow, there aren't any students assigned since 12/7/22?" Ibid.

8. On or around February 7, 2023, Hoke sent an email to School Hero advising that the students on route 2183Q were dropped on December 7, 2022, and that the route should not have been running past that date. Ibid. Hoke also

[2] The February 2, 2023, emails attached to George Saleeba's Certification, do not logically follow based on the time of the emails. I will cite to the emails based on the time listed on each email.

advised that the Board was evaluating what, if any, payment was owed. Ibid.

9. On or around July 18, 2023, at 11:00 a.m., Chad M. Sherwood, Esq. (Sherwood) sent an email to Madden confirming that School Hero received payment. Ibid. In this email, Sherwood asked whether Madden was indicating that the Board would reject all future bids from School Hero as a result of what occurred. Ibid.

10. On or around July 18, 2023, at 12:24 p.m., Madden sent an email to Sherwood stating the following: "Thank you for confirming receipt of payment. Correct, we will not accept any bid submissions or quote responses from School Hero or its owners moving forward." Ibid.

11. On or around August 22, 2023, at 2:29 p.m., Jack Plackter, Esq. ("Plackter"), counsel for School Hero, sent an email to Robert A. Muccilli, Esq. (Muccilli), stating that the Board improperly debarred School Hero from bidding on transportation matters and requested a meeting to resolve the issue. Ibid.

12. On or around August 25, 2023, at noon, Muccilli sent an email to Plackter indicating that the Board had not debarred School Hero and that the financial issue regarding route 2183Q had been resolved. Ibid. Muccilli indicated that, as a result, a meeting was not necessary. Ibid.

13. On August 28, 2023, at 1:44 p.m., Plackter sent an email to Muccilli, indicating that School Hero had been excluded from obtaining the quote list from the Board. Ibid.

14. On August 28, 2023, at 2:57 p.m., Muccilli stated that School Hero did not "have a right to be on a 'quote list' but it certainly may respond to bid advertisements from the [Board] if it wished to do so." Ibid.

15. On or around December 18, 2023, at 4:58 p.m., School Hero filed its petition with the DOE, submitted to the email address controversiesdisputesfilings@doe.nj.gov.

16. In its petition, School Hero alleges that the Board and Madden "have violated the [Act] by failing to comply with Chapter 39 of Title 18A of the New Jersey Statutes and the regulatory provisions contained in Chapter 27 of Title 6A of the New Jersey Administrative Code." Among the statutes and regulations that the Board and Madden allegedly violated are N.J.A.C. 6A:27-9.3, N.J.S.A. 18A:39-2.1, N.J.S.A. 18A:39-5, N.J.S.A. 18A:39-11.3 and N.J.S.A. 18A:39-21.

17. According to School Hero, Madden and the Board prohibited it from placing bids with the Board without the property authority, and they discriminated against it by removing School Hero from the quote notification list and failing to provide School Hero with bid specifications. Madden and the Board also removed School Hero from the quote list and the notification list.

LEGAL ANALYSIS AND CONCLUSION

The Board and Madden argue that School Hero's petition should be dismissed with prejudice as untimely for School Hero's alleged failure to abide by the ninety-day statute of limitations contained in N.J.A.C. 6A:3-1.3(i). Pet'r's Br. at 1. In opposition, School Hero argues that it satisfied the applicable statute of limitations, as the claims in the petition were brought under the Act. Resp't's Br. at 4. School Hero also argues that the ninety-day statute of limitations should be relaxed, as the facts here justify that result. Id. at 5.

As will be discussed at length, School Hero did not abide by the ninety-day statute of limitations found in N.J.A.C. 6A:3-1.3, and there is no basis by which the statute of limitations should be relaxed. Finally, there are no facts in this record indicating that School Hero filed or attempted to file its petition with the School Ethics Commission for review, under whose jurisdiction matters must be filed within 180 days. For these reasons, the motion to dismiss filed by the Board and Madden will be granted.

1. The applicable statute of limitations is set forth in N.J.A.C. 6A:3-1.3.

The process for filing a petition of appeal with the DOE is discussed in N.J.A.C. 6A:3-1.3, in relevant part, as follows:

> (a) To initiate a contested case for the Commissioner's determination of a controversy or dispute arising pursuant to the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements at N.J.A.C. 6A:3-1.4 and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. The petitioner then shall file proof of service on each respondent, the telephone numbers and email addresses, where available, of the petitioner and each respondent, and the petition and supporting materials, if any, by emailing the documents to the email address designated by the Office of Controversies and Disputes or mailing the documents 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. In no case shall a petitioner submit materials to the Commissioner that have not been served upon each respondent.
>
> . . . .
>
> (i) 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.
>
> [Emphasis added.]

This rule "provides a measure of repose, an essential element in the proper and efficient administration of the school laws," giving school districts the "security of knowing" that an aggrieved party cannot challenge its actions after ninety days. Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993).

Courts strictly construe and consistently apply the ninety-day limitation period. Kaprow, 131 N.J. at 588–89; Nissman v. Bd. of Educ. of Twp. of Long Beach Island, 272 N.J. Super 373, 380–81 (App. Div. 1994); Riely v. Bd. of Educ. of Hunterdon Central High Sch., 173 N.J. Super. 109, 112–14 (App. Div. 1980). The limitation period begins to run when the petitioner "learn[s] from the Local Board the existence of that state of facts that would enable him to file a timely claim." Kaprow, 131 N.J. at 588–89. Indeed, the notice of a final order, ruling or other action is "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. Notably, a petitioner need not receive official and formal notification that they may have a valid claim to begin the ninety-day limitation period. Id. at 588.

Here, the Board and Madden advised School Hero in writing that it would not accept any bids from it on July 18, 2023. School Hero acknowledges the July 18, 2023, email is notice of the Board and Madden's adverse action against it. See Pet'r's Br. at 5 ("Thus, because [School Hero's] Complaint was filed within 180 days of the email received July 18, 2023, informing [School Hero] for the first time that [School Hero's] bids would no longer be accepted or considered by the [Board], this Complaint is timely and there is no basis for dismissal.") and at 6 ("Through the July 18th email, and that email correspondence alone, [the Board and Madden] notified [School Hero] that [the Board] would no longer accept any bid submissions or quote responses from [School Hero].") All the same, School Hero did not file its petition with the DOE until December 18, 2024, 153 days later.

Based on the plain language of N.J.A.C. 6A:3-1.3, School Hero's petition was untimely, and for this reason alone, it should be time-barred.

2. There is no basis to relax the ninety-day statute of limitations in N.J.A.C. 6A:3-1.16.

School Hero argues that the ninety-day statute of limitations should be relaxed here because of the underlying injustice resulting from the Board and Madden's actions. Pet'r's Br. at 5–6.

Pursuant to N.J.A.C. 6A:3-1.16, any of the rules in the applicable regulations may be relaxed when "strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice." Relaxation of the ninety-day filing requirement is reserved only for situations where the party presents a substantial constitutional issue or a matter of significant public interest beyond concern only to the parties. Portee v. Bd. of Educ. of Newark, EDU 5855-93, 1994 N.J. Agen. Lexis 1363, *12–13 (February 24, 1994), aff'd., Comm'r Decision (April 14, 1994). According to School Hero, the matter of significant public interest is the alleged discrimination against it. Pet'r's Br. at 5–6 ("Moreover, if this matter is not heard by the OAL, [the Board and Madden's] discriminatory action will repeat itself in perpetuity against [School Hero], as they intend to wrongfully deprive [School Hero] of the bidding process year after year, without following the procedures to do so, on the impermissible basis of national origin no less.").

There is no evidence that the dispute between the Board and Madden and School Hero raises a substantial constitutional issue. While unlawful discrimination is a significant public interest, as described by School Hero, it is its own interest at stake here, rather than one beyond concern to only the parties. For these reasons, there is no basis to relax the statute of limitations in N.J.A.C. 6A:3-1.3 pursuant to N.J.A.C. 6A:3-1.16.

For the foregoing reasons, I **CONCLUDE** that School Hero's petition against the Board and Madden is time-barred.

3. The Act and its enabling legislation do not apply here.

School Hero argues in the alternative that the Board and Madden violated the Act, and because of those allegations, the statute of limitations is 180 days rather than ninety days. Pet'r's Br. at 4.

The Legislature passed the Act in 1991. See L. 1991 c. 393 § 7. In signing the Act into law, the Governor stated that the Act based the school ethics criteria on the same ethical standards for local officials—standards already incorporated in the ethics code for state employees. Office of the Governor, News Release, January 16, 1992 (https://repo.njstatelib.org/server/api/core/bitstreams/9c9ed384-7f4c-4138-8102-1fa6d67f44d5/content, last visited on October 4, 2024). The Legislature found and declared:

> a. In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.
>
> b. To ensure and preserve public confidence, school board members and local school administrators should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.
>
> [N.J.S.A. 18A:12-22]

The Act also created the School Ethics Commission specifically for the purpose of enforcing ethical standards through a procedure for reviewing complaints of ethical violations, investigating those complaints, and ultimately rendering recommendations to the Commissioner of Education as to the imposition of sanctions when violations are established. N.J.S.A. 18A:12-28; N.J.S.A. 18A:12-29. The School Ethics Commission has jurisdiction over claims arising under the Act. N.J.A.C. 6A:28-1.4.

There is no evidence in the record that School Hero attempted to file its petition with the School Ethics Commission. The only reference to the Act or the School Ethics Commission is a scant reference in School Hero's petition. Without an actual petition filed with the School Ethics Commission, School Hero cannot avail itself of the statute of

limitations allowed in the Act. For these reasons, I **CONCLUDE** that the 180-day statute of limitations in the Act does not apply here.

Based on the foregoing, I further **CONCLUDE** that the motion to dismiss filed by the Board and Madden should be **GRANTED**.

ORDER

Accordingly, I **ORDER** that the motion to dismiss filed by the Board and Madden should be and hereby is **GRANTED**.

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

This recommended decision may be adopted, modified or rejected by the **ACTING 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 **ACTING 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.

October 10, 2024
DATE

KIMBERLEY M. WILSON, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMW/dw

APPENDIX

Exhibits

For petitioner:

- Brief, Certification of George Saleeba in Opposition to Respondent's Motion to Dismiss, Proof of Service, received on June 5, 2024

For respondents:

- Brief, dated May 1, 2024
- Reply Brief, dated June 17, 2024

435-24

New Jersey Commissioner of Education

Final Decision

Student One Transport,

Petitioner,

v.

Board of Education of the Camden County Educational Services Commission, Camden County, and Patrick Madden, Business Administrator,

Respondent.

Synopsis

Petitioning school bus company, Student One Transport, filed an appeal on January 7, 2024 alleging that the respondent Board and its Business Administrator violated the School Ethics Act (Act) by failing to comply with certain statutes and regulations when they barred Student One Transport from bidding on transportation routes. Respondents contended that the petition should be dismissed with prejudice as untimely pursuant to *N.J.A.C.* 6A:3-1.3(i).

The ALJ found, *inter alia*, that: the process for filing a petition of appeal with the Department of Education is described in *N.J.A.C.* 6A:3-1.3, which includes the limitation that a petition must be filed no later than the 90th day from the date of receipt of notice of a final order or ruling that is the subject of the contested case; petitioner received clear notice via email dated July 13, 2023 that the Board would not be accepting bids from Student One Transport; the company subsequently filed the within petition on January 7, 2024, which was more than two months beyond the deadline for initiating a contested case before the Commissioner in this matter; there is no basis to relax the 90 day statute of limitations; further, there is no merit to petitioner's argument that the Board violated the Act, which includes a statute of limitations of 180 days rather than 90 days, as there is no evidence that petitioner filed or attempted to file its petition with the School Ethics Commission. Accordingly, the ALJ granted the Board's motion to dismiss the petition.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion and adopted the Initial Decision of the Office of Administrative Law as the final decision in this matter. The respondents' motion to dismiss was granted, and the petition was dismissed.

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.

435-24
OAL Dkt. No. 03046-24
Agency Dkt. No. 3-1/24

New Jersey Commissioner of Education
Final Decision

Student One Transport,

Petitioner,

v.

Board of Education of the Camden County Educational Services Commission, Camden County, and Patrick Madden, Business Administrator,

Respondent.

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) —for the reasons presented in the Initial Decision — that Student One Transport's petition is time-barred pursuant to *N.J.A.C.* 6A:3-1.3(i). In addition, the Commissioner agrees with the ALJ's conclusion that the 180-day filing limit provided under the School Ethics Act does not apply in the instant matter.

Accordingly, the Initial Decision is adopted as the final decision in this matter. Respondents' motion to dismiss is granted and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 21, 2024
Date of Mailing: November 22, 2024

[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 GRANTING MOTION TO DISMISS
OAL DKT. NO. EDU 03046-24
AGENCY DKT. NO. 3-1/24

STUDENT ONE TRANSPORT,
Petitioner,
v.
BOARD OF EDUCATION OF THE CAMDEN COUNTY EDUCATIONAL SERVICES COMMISSION, CAMDEN COUNTY AND PATRICK MADDEN, BUSINESS ADMINISTRATOR,
Respondents.

Elizabeth J. Hampton, Esq., for petitioner (Fox Rothschild, LLP, attorneys)

Sanmathi Dev, Esq., for respondents (Capehart Scatchard, P.A., attorneys)

Record Closed: September 10, 2024 Decided: October 10, 2024

BEFORE **KIMBERLEY M. WILSON**, ALJ:

STATEMENT OF THE CASE

Petitioner Student One Transport (Student One) filed a petition with the Commissioner of the New Jersey Department of Education (DOE), alleging that respondents Board of Education of the Camden County Educational Services Commission (Board) and Patrick Madden (Madden), Business Administrator, violated the School Ethics Act (Act) when they failed to abide by certain statutes and regulations. The Board and Madden filed a motion to dismiss in lieu of an answer.[1]

PROCEDURAL HISTORY

On or around January 7, 2024, Student One filed its petition with the DOE. On or around March 1, 2024, the Board and Madden filed a motion to dismiss in lieu of an answer. On March 4, 2024, the matter was transmitted to the Office of Administrative Law, for a hearing as a contested case. N.J.S.A. 54:14B-1 to -15 and N.J.S.A. 14F-1 to -23.

After a status conference on April 29, 2024, Student One filed its opposition to the motion on or around June 3, 2024. The Board and Madden filed their reply papers on or around June 17, 2024, and oral argument was heard on September 10, 2024.

FACTUAL DISCUSSION AND FINDINGS

I **FIND** the following as **FACT**, as it is undisputed:

1. On or around October 19, 2022, at 11:01 a.m., Student One sent an email to Rita Carfagno (Carfagno), Transportation Supervisor for the Board, asking for a return call to respond to a question. Mansi Cert., Ex. B.

2. On or around October 20, 2022, Carfagno sent an email to Student One, stating that Routes 684 and 1711 were contracted routes and Student One

[1] Pursuant to N.J.A.C. 6A:3-1.5(g).

would be in breach of the contract if it were unable to provide the required transportation. Ibid. Student One would potentially have its bond revoked. Ibid. Carfagno also advised that Route 2040Q was a quoted route that was bound by the terms of the bid specifications. Ibid.

3. On October 31, 2022, at 11:02 a.m., Student One sent an email to Carfagno, indicating that the Board would be requoting Route 684 due to a driver issue. Ibid.

4. On October 31, 2022, at 11:15 a.m., Carfagno responded to Student One's email regarding Route 684, stating that Student One was required to send the Board official notification that it could not fulfill the terms for transportation for a contracted route effective upon a certain date. Ibid. The Board would require the specifics of the student's transportation requirements, and it would then determine whether to seek quotations for the route. Ibid. Student One would potentially be held liable for the difference between the quoted rate and the contracted per diem rate. Ibid.

5. On October 31, 2022, at 11:47 a.m., Student One responded to Carfagno by email, stating that there was no specific date for Route 684 to be discontinued. Ibid. Student One advised that its potential liability was not discussed in a conversation that morning. Ibid.

6. On November 1, 2022, at 9:39 a.m., Carfagno sent an email to Student One regarding Route 684, stating the following: "I do believe we discussed the possibility of a 'gap' between the current contracted per diem and the quoted per diem if one is received. We also discussed the need to supply any special accommodations the student is receiving, which you told me you needed to contact the driver for the information. I cannot proceed without the information." Ibid.

7. On November 1, 2022, at 9:56 a.m., Student One sent an email to Carfagno with the information she requested. Student One stated the following: "The 'gap' possibility was not discussed. The goal of the discussion is to avert

the negative outcome for the company, student and district which you have also mentioned in your previous email." Ibid.

8. On November 1, 2022, at 3:13 p.m., Student One sent an email to Carfagno, stating, "The latest quotes emailed today were not received. Please email." Ibid.

9. On November 1, 2022, at 3:56 p.m., Madden sent an email to Student One addressed to Michael, stating, "Student One is not receiving an opportunity to quote on any new routes at this time. The reason is that your company is claiming that you cannot fulfill a route that you bid on—this is a problem." Ibid.

10. On November 1, 2022, at 5:18 p.m., Student One responded to Madden's email of the same day as follows: "This is the first occurrence of this problem due to the current severe shortage of school bus drivers nationally. This was conveyed to [Carfagno] previously on 10/31/2022. Please advise on the reinstatement of the company to your quote list." Ibid.

11. On July 11, 2023, at 3:12 p.m., Madden sent an email to Student One, stating the following: "The [Board] will not be accepting any bids submitted by Student One Transport LLC for the upcoming school year. If a bid is submitted or presented, it will be returned unopened." Ibid.

12. By email on July 11, 2023, at 3:34 p.m., Student One asked Madden for a reason for the denial. Ibid.

13. On July 12, 2023, Madden sent Student One an email advising that the Board received a bid packet in the mail from Student One and that it was not opened and would be returned unopened. Ibid. According to Madden, the Board would not accept any bids from Student One "due to a negative prior experience caused by a breach of contract during the 2022–2023 school year." Ibid.

14. On July 13, 2023, at 9:43 a.m., Student One sent an email to Madden regarding a bid. Id.; Mansi Cert., Ex. A. On the same day at 9:58 a.m., Madden sent an email to Student One stating the following: "In response to your email this morning including the attached I will restate our message from yesterday," reiterating that it would not be accepting bids from Student One. Ibid. Attached to Madden's email was a document titled Camden county ccesc 7-13-23 bid-compressed-compressed.pdf. Ibid.

15. On or around January 7, 2024, Student One filed its petition with the DOE. Mansi Cert., Ex. B. The DOE acknowledged receipt of the petition on January 30, 2024. Counsel Cert., Ex. A.

LEGAL ANALYSIS AND CONCLUSION

The Board and Madden argue that Student One's petition should be dismissed with prejudice as untimely for Student One's alleged failure to abide by the ninety-day statute of limitations contained in N.J.A.C. 6A:3-1.3(i). Pet'r's Br. at 1. In opposition, Student One asserts that it satisfied the applicable statute of limitations, as the petition's claims were brought under the Act. Resp't's Br. at 2–3. Finally, Student One claims that the ninety-day statute of limitations should be relaxed, as the facts here justify that result. Id. at 6.

As will be discussed further, Student One did not abide by the ninety-day statute of limitations found in N.J.A.C. 6A:3-1.3, and there is no basis to relax the statute of limitations. Last, there are no facts in this record indicating that Student One either filed or attempted to file its petition with the School Ethics Commission for review, where the applicable statute of limitations is 180 days. For these reasons, the motion to dismiss filed by the Board and Madden will be granted.

1. The applicable statute of limitations is set forth in N.J.A.C. 6A:3-1.3.

The process for filing a petition of appeal with the DOE is discussed in N.J.A.C. 6A:3-1.3, in relevant part, as follows:

> (a) To initiate a contested case for the Commissioner's determination of a controversy or dispute arising pursuant to the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements at N.J.A.C. 6A:3-1.4 and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. The petitioner then shall file proof of service on each respondent, the telephone numbers and email addresses, where available, of the petitioner and each respondent, and the petition and supporting materials, if any, by emailing the documents to the email address designated by the Office of Controversies and Disputes or mailing the documents 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. In no case shall a petitioner submit materials to the Commissioner that have not been served upon each respondent.
>
> . . . .
>
> (i) 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. . . . 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.
>
> [Emphasis added.]

This rule "provides a measure of repose, an essential element in the proper and efficient administration of the school laws," giving school districts the "security of knowing" that an aggrieved party cannot challenge its actions after ninety days. Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993).

Courts strictly construe and consistently apply the ninety-day limitation period. Kaprow, 131 N.J. at 588–89; Nissman v. Bd. of Educ. of Long Beach Island Twp., 272 N.J. Super. 373, 380–81 (App. Div. 1994); Riely v. Bd. of Educ. of Hunterdon Central High Sch., 173 N.J. Super. 109, 112–14 (App. Div. 1980). The limitation period begins to run

when the petitioner "learn[s] from the Local Board the existence of that state of facts that would enable him to file a timely claim." Kaprow, 131 N.J. at 588–89. Indeed, the notice of a final order, ruling or other action is "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. Notably, a petitioner need not receive official and formal notification that they may have a valid claim to begin the ninety-day limitation period. Id. at 588.

The facts here show that as early as November 1, 2022, the Board would not allow Student One to bid on public transportation contracts. Later, in its July 13, 2023, email, Madden clearly indicated that the Board would not accept any bids from Student One, and he returned a bid that Student One submitted to the Board. These contacts from Madden and/or the Board are more than sufficient notice to Student One of adverse action against it. Student One, however, did not file its petition with the DOE until January 7, 2024, more than 179 days after the July 13, 2023, email from Madden. From the plain language of N.J.A.C. 6A:3-1.3, Student One's petition was not timely filed, and for this reason alone, it should be barred.

2. There is no basis to relax the ninety-day statute of limitations in N.J.A.C. 6A:3-1.16.

Student One argues that the ninety-day statute of limitations should be relaxed here because the Board and Madden failed to follow state law to prevent it from bidding on transportation contracts. Pet'r's Br. at 6.

Pursuant to N.J.A.C. 6A:3-1.16, any of the rules in the applicable regulations may be relaxed when "strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice." Relaxation of the ninety-day filing requirement is reserved only for situations where the party presents a substantial constitutional issue or a matter of significant public interest beyond concern only to the parties. Portee v. Bd. of Educ. of Newark, EDU 5855-93, 1994 N.J. Agen. Lexis 1363, *12–13 (February 24, 1994), aff'd, Comm'r Decision (April 14, 1994). According to Student One, the compelling reason to relax the ninety-day statute of limitations is respondents' failure to comply with the debarment process.

This reason, however, does not present a substantial constitutional issue or a matter of significant public interest; it is only of concern to Student One. There is no basis to relax the statute of limitations in N.J.A.C. 6A:3-1.3, pursuant to N.J.A.C. 6A:3-1.16. For the foregoing reasons, I **CONCLUDE** that Student One's petition against the Board and Madden is time-barred.

3. The Act and its enabling legislation do not apply here.

Student One argues in the alternative that the Board and Madden violated the Act, and because of those allegations, the statute of limitations is 180 days rather than ninety days. Pet'r's Br. at 2–3.

The Legislature passed the Act in 1991. See L. 1991 c. 393 § 7. In signing the Act into law, the Governor stated that the Act based the school ethics criteria on the same ethical standards for local officials, standards already incorporated in the ethics code for state employees. Office of the Governor, News Release, January 16, 1992 (https://repo.njstatelib.org/server/api/core/bitstreams/9c9ed384-7f4c-4138-8102-1fa6d67f44d5/content, last visited on October 4, 2024). The Legislature found and declared:

> a. In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.
>
> b. To ensure and preserve public confidence, school board members and local school administrators should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.
>
> [N.J.S.A. 18A:12-22]

The Act also created the School Ethics Commission specifically to enforce these ethical standards through a procedure for reviewing complaints of ethical violations, investigating

those complaints, and ultimately rendering recommendations to the Commissioner of Education as to the imposition of sanctions when violations are established. N.J.S.A. 18A:12-28; N.J.S.A. 18A:12-29. The School Ethics Commission has jurisdiction over claims arising under the Act. N.J.A.C. 6A:28-1.4.

There is no evidence in the record that Student One filed or attempted to file its petition with the School Ethics Commission. The only reference to the Act or the School Ethics Commission is a scant reference in Student One's petition. Without an actual petition filed with the School Ethics Commission, Student One cannot avail itself of the statute of limitations allowed in the Act. For these reasons, I **CONCLUDE** that the 180-day statute of limitations in the Act does not apply here.

Based on the foregoing, I further **CONCLUDE** that the motion to dismiss filed by the Board and Madden should be **GRANTED**.

ORDER

Accordingly, I **ORDER** that the motion to dismiss filed by the Board and Madden should be and hereby is **GRANTED**.

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

This recommended decision may be adopted, modified or rejected by the **ACTING 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 **ACTING 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.

October 10, 2024
DATE

KIMBERLEY M. WILSON, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMW/dw

APPENDIX

Exhibits

For petitioner:

- Brief, Certification of Michael Mansi in Opposition to Respondent's Motion to Dismiss, Certification of Counsel and Proof of Service, received on June 3, 2024

For respondent:

- Brief, dated March 1, 2024
- Reply Brief, dated June 17, 2024

436-24

New Jersey Commissioner of Education

Final Decision

Nware Burge,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent New Jersey State Board of Examiners (SBE) denying his request for a third extension of his provisional teaching certificates, which were first issued in 2016. The SBE filed a motion to dismiss, arguing that there is no legal basis to permit another renewal of petitioner's provisional certificates and that such action is explicitly barred by *N.J.A.C.* 6A:9B-8.5 et seq.

The ALJ found, *inter alia*, that: petitioner was issued his first provisional certificate in 2016; it was then renewed for two years in August 2018 and again, in October 2020, for another two years; the last renewal expired in July 2022; petitioner requested another renewal of his provisional certificate in 2023, which was rejected by the SBE in January 2024; after filing the within appeal, petitioner appeared for an initial conference but then failed to appear for two subsequent telephone conferences and further failed to offer any explanation for his failure to appear; he also failed to oppose the SBE's motion to dismiss; the SBE noted in its order denying petitioner's request for a third renewal that a full certificate had not been granted under his previous provisional certificates because petitioner had failed to earn sufficient "effective" or "highly effective" ratings in the evaluation process; and *N.J.A.C.* 6A:9B-8.5(c) states that "The two-year provisional certificate may be renewed twice for a maximum provisional period of six years...". The ALJ concluded that the SBE's decision to deny petitioner's request for a third extension was not arbitrary, capricious, or unreasonable. Accordingly, the ALJ granted the SBE's motion to dismiss the petition.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ and adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

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.

436-24
OAL Dkt. No. 08755-24
Agency Dkt. No. 171-5/24

New Jersey Commissioner of Education

Final Decision

Nware Burge,

Petitioner,

v.

New Jersey Department of Education,
State Board of Examiners,

Respondent.

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 that petitioner has already been granted two renewals of his provisional certificate, the maximum permitted by law.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The State Board of Examiners' motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 21, 2024
Date of Mailing: November 22, 2024

[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

DISMISSAL

OAL DKT. NO. EDU 08755-24

AGENCY DKT. NO. 171-5/24

NWARE BURGE,

Petitioner

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

STATE BOARD OF EXAMINERS,

Respondent.

Nware Burge, pro se

David Kalisky, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: October 11, 2024 Decided: October 23, 2024

BEFORE: **MATTHEW G. MILLER, ALJ**

STATEMENT OF THE CASE

Appellant, Nware Burge appeals the March 1, 2024 denial of his third renewal request of his provisional teaching certificates that had first been issued in 2016, then

renewed for two years in August, 2018 and then for an additional two years in October, 2020.

PROCEDURAL HISTORY

In October 2016, petitioner, Nware Burge, was issued provisional teacher's certificates in Social Studies and Students with Disabilities. Those certificates were first renewed by the New Jersey State Board of Examiners in August 2018 and then again in October 2020, with that renewal expiring in July 2022. In 2023, Mr. Burge requested another renewal of his provisional certificates. That request was denied during the meeting of January 19, 2024 and that decision was ratified on March 1, 2024.

On May 29, 2024, Mr. Burge emailed a Petition for Appeal to the State Department of Education's Office of Controversies & Disputes ("OCD"). That appeal was transmitted to the Office of Administrative Law ("OAL") where it was received on June 26, 2024 for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Prior to the matter being forwarded to the OAL, on June 16, 2024, in reply to the filing, the State Board of Examiners filed a Motion to Dismiss in Lieu of Answer.

An initial conference was held on August 15, 2024 at which time, after a detailed discussion of the case, a briefing schedule was set with Mr. Burge being given until September 19, 2024 to either hire an attorney, file opposition to the Motion to Dismiss or withdraw his appeal. A follow-up telephone conference was scheduled for September 19, 2024 and Mr. Burge failed to appear or contact the Court. The matter was scheduled for another telephone conference on October 11, 2024 and Mr. Burge similarly failed to appear or contact the Court.

Having given Mr. Burge more than sufficient time in which to communicate with the Court and having not heard from him, the record on the Motion was formally closed on October 21, 2024.

INITIAL FINDINGS OF UNDISPUTED FACT

The following **FACTS** of the case are not in dispute:

1. In October 2016, appellant, Nware Burge was issued provisional Teacher of Social Studies and Teacher of Students with Disabilities ("TOSD") certificates by the State Board of Examiners as well as Certificates of Eligibility with Advanced Standing ("CEAS") in both areas.

2. Per N.J.A.C. 6A:9B-8.5(a), in August 2018 and October 2020, Mr. Burge's provisional certificates were renewed since he had not yet completed the requirements for the standard certificates. The last renewal expired in July, 2022.

3. During the 2016-17, 2017-18 and 2018-19 school years, Mr. Burge was employed by the Camden School District. In the 2019-20 and 2020-21 school years, he worked at the LEAD Charter School in Newark. After taking a break from working in the public school system, Mr. Burge was hired by Barringer High School in Newark as a substitute teacher.

4. On or about December 20, 2023, Mr. Burge applied for another two-year renewal of his certificates. That application was initially denied since he had failed to earn two consecutive summative evaluations of "effective" or "highly effective".

5. Mr. Burge appealed that denial and at its January 19, 2024 meeting, that appeal was denied by the State Board of Examiners. That decision was formalized in an Order dated March 1, 2024. (Exhibit R-2.)

6. That decision was appealed by Mr. Burge on or about May 29, 2024. (Exhibit R-3.)

7. To date, Mr. Burge has yet to complete the requirements for standard certificates and he has failed to oppose the Board's Motion to Dismiss.

APPEAL

In his appeal to the Board, Mr. Burge wrote:

> My name is Nware R. Burge and I am sending in another appeal because I did not disclose the direct affect and reasons for the ineffective and partial effective evaluation ratings. From 2016 to 2022, I have been in a constant and consistent court battle for custody of my children as well as divorce proceedings. So much so that I enclosed a letter from a New York State Senator who gave me support during these trying times. To add, as an educator and documentary filmmaker, I recently completed a film titled: "For Mothers who won't let Fathers see their Children" which discusses some of the lows that fathers endure due to such tragedy. I will add the link to documentary for record evidence. During this period, this stressful ordeal directly affected my attendance as well as evaluations, reviews, and meetings. I have added some of the judicial documentation as evidence and records.
>
> I did not wish to disclose this information for the initial State appeal due to the private and personal nature of this matter. I also did not disclose these records as I felt that my resume, bio and years of experience and accomplishments as an educator in urban schools, programs, and high ed., would serve as good merits. Because of my time away from teaching in High School, to work as an Adjunct Professor, I did not have access to any former records. To add there was a lack of correspondence for records as I consistently sent emails and made calls for records with no correspondence. The only records I found was a copy of an effective rating that I luckily and randomly copy and posted from an old computer.
>
> Since 2021 I have gained valuable teaching knowledge as I continue to teach, work and live in an urban setting. I am also in a better mental space regarding my child custody and divorce. If given a successful appeal and a provisional certificate so that I can eventually earn my standard certificate, I will only receive effective rating which will in turn allow me to continue teaching and serving communities of need. I hope that the committee understands the severity of the evidence given and how it directly impacts my evaluations.

(Exhibit P-1.)

MOTION

Respondent filed a Motion to Dismiss arguing that there is no legal basis to permit another renewal of appellant's provisional certificate and that same is explicitly barred by N.J.A.C. 6A:9B-8.5 et seq., which provides the Commissioner of Education no discretion in considering the application.

It is argued that the Motion to Dismiss is appropriate here since, per N.J.A.C. 6A:3-1.10, even if appellant's factual allegations are all found to be true, there is no legal basis for his appeal.

Mr. Burge has not responded to the Motion. However, he did present argument in his initial appeal which will be reviewed below.

TIMELINE

A more visceral view of Mr. Burge's provisional certificate history is best demonstrated by the following timeline:

October, 2016 – Issuance of two-year provisional certificates

August, 2018 – Grant of application for a first renewal of provisional certificates

October, 2020 – Grant of application for a second renewal of provisional certificates

July, 2022 – Expiration of second renewal of provisional certificates

December 20, 2023 – Application for a third renewal of provisional certificates

January 19, 2024 – Denial of application for a third renewal of provisional certificates

March 1, 2024 – Formal decision denying the third renewal of provisional certificates

May 29, 2024 – Appeal filed with Board of Examiners

LAW AND ANALYSIS

A Motion to Dismiss filed per N.J.A.C. 6A:3-1.5(g) is the functional equivalent of a Motion to Dismiss for Failure to State a Claim filed in civil court per R. 4:6-2(e). Graves v. State Operated Sch. Dist. of Newark & Cami Anderson, 2017 N.J. Super. Unpub. LEXIS 2417 (App Div., Sept. 26, 2017). The Court stated the standard for the granting of same:

> When reviewing a Rule 4:6-2(e) motion, a court must determine the adequacy of the pleading and decide whether a cause of action is "suggested" by the facts. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). The court must "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)).
>
> Id. at *7.

The rules covering the renewal of provisional teaching certificates is N.J.A.C. 6A:9B-8.5, which reads as follows:

> (a) The school district may recommend a provisional teacher for renewal of the teacher's two-year provisional certificate if the candidate has not yet completed the requirements for the standard certificate within the first two years of employment, pursuant to N.J.A.C. 6A:9A-8.7.
>
> 1. A provisional teacher who meets the criteria at (a) above but is not renewed for employment within the same school district following the two-year provisional certificate may seek and accept, under the same

endorsement, a position with another school district, pursuant to N.J.A.C. 6A:9B-8.4(d).

(b) Except as indicated at N.J.A.C. 6A:9B-8.8, 10, and 11[1], a candidate shall meet the following requirements to be eligible for one renewal of a provisional certificate:

1. Hold a CE or CEAS in the endorsement area required for the teaching assignment;

2. Be employed or accept an offer of employment in a position that requires an instructional certificate;

3. Complete a district mentoring program;

4. Be enrolled in or have completed a CE educator preparation program, if the candidate has a CE; and

5. Be recommended for renewal by the candidate's principal pursuant to N.J.A.C. 6A:9B-8.6.

(c) The two-year provisional certificate may be renewed twice for a maximum provisional period of six years if the candidate fulfills the renewal requirements at (b) above and one of the following criteria:

1. Holds a CE with a teacher of students with disabilities endorsement, or a CE with a bilingual/bicultural endorsement, and a CE with an endorsement appropriate to the subject or grade level to be taught; or holds a CE with an English as a second language endorsement. The duration of the CE educator preparation program and required coursework for the endorsement(s) also extends beyond the four-year provisional period; or

2. Does not receive from the school district, by July 31 of the fourth year, the annual summative rating as required for a standard certificate, pursuant to N.J.A.C. 6A:9B-8.4.

[1] None of which apply in this instance.

> (d) A candidate issued a temporary instructional certificate, pursuant to N.J.A.C. 6A:9B-8.10, shall not be eligible for a renewal of a temporary provisional certificate in the specific endorsement area issued pursuant to N.J.A.C. 6A:9B-8.4(f)

It should also be noted that per N.J.A.C. 6A:9B-8.4(c):

> A provisional certificate shall last a maximum of two school years and shall expire on July 31 of the second year regardless of issuance date.

MARCH 1, 2024 ORDER

On or about December 20, 2023, more than a year following the expiration of his second two-year extension in July, 2022, Mr. Burge applied for another renewal of his provisional certificates. This application was considered by the Board during its meeting of January 19, 2024 and was formally denied by Order dated March 1, 2024. In that Order, the Board cited the relevant administrative code provisions and noted that the Office of Certification's records reflect the following summative ratings;

- 2016-2017 school year: Partially Effective
- 2017-2018 school year: Effective
- 2018-2019 school year: Ineffective
- 2019-2020 school year: Partially Effective
- 2020-2021 school year: Ineffective

The Board noted his two prior provisional certificate renewals (in August, 2018 and October, 2020), with a full certificate not being granted given his failure "to earn a second effective or highly effective rating" in the relevant time period.

The substance of the Order reads as follows;

> While Burge does not address his ratings directly in his submission, he included his effective rating from Camden for the 2017-2018 school year as well as favorable observations and evaluations as an adjunct professor at Essex County College, Kean University, and the City University of New York. As the observations and evaluations as an adjunct professor do not constitute formal ratings as a K-12 public school setting, the Board cannot consider them to meet the regulatory requirement in N.J.A.C. 6A:9B-8.6(b). Furthermore, the Board notes that Burge has exceeded the limitation of two renewals of his provisional certificates set forth in N.J.A.C. 6A:9B-8.5(c).
>
> As Burge only earned one effective rating during his five years of teaching in public schools and has already been given two renewals of his provisional certificates which gave him sufficient time to earn the required ratings, the Board will not grant Burge an additional renewal of his provisional Teacher of Social Studies and TOSD certificates.
>
> [Exhibit R-1.]

As detailed above, Mr. Burge has already been granted two renewals of his provisional certificate, which, per N.J.A.C. 6A:9B-8.5, is the maximum permitted by law. Further, his provisional certificate has covered six school years (2016-17, 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22), also the maximum permitted by the Code.

While there is little relevant law concerning this issue, it was addressed in Cash v. New Jersey Dept. of Educ.; OAL Dkt. No. EDU 01325-23 (Initial Decision, July 18, 2023), aff'd. Comm'r, 2023 N.J. Agen. LEXIS 422 (Aug. 22, 2023). In Cash, the appellant alleged that he was misinformed by his district employer regarding the necessity for completing various requirements to obtain full certification under the alternate route program. His initial provisional certification was issued in August, 2018. After being granted an initial extension through August, 2022, his application for a second extension was denied by the Board the following month.

The Court found that despite Mr. Cash's accomplishments and the fact that he had completed many of the requirements to obtain a full certificate, he simply did not meet the requirements for a second extension. It was noted that neither the judge nor the Board "have the discretion to consider the totality of the circumstances to extend/renew his

status." Id. at 5. This decision was affirmed by the Commissioner in Cash v. New Jersey Dept. of Educ., 2023 N.J. Agen. LEXIS 422 (Aug. 22, 2023). See also Finlay v. New Jersey Dept. of Educ., OAL Dkt. No. EDU 09353-23 (Initial Decision, Apr. 9, 2024), aff'd Comm'r, 2024 N.J. Agen. LEXIS 226 (May 15, 2024).

In his appeal to the Board, Mr. Burge advises that he "did not disclose the direct affect and reasons for the ineffective and partial effective evaluation ratings" that he received. Those included a divorce and a child custody dispute, evidence of which he has supplied. These issues "directly affected (his) attendance as well as evaluations, reviews, and meetings." He also claimed to have been unable to access "any former records", except, perhaps not coincidentally, the only "effective" summative review rating he received.

Finally, he argues that since 2021, he has "gained valuable teaching knowledge...in an urban setting" and the outside stressors in his life have eased. He truly believes that if given the opportunity, he would "only receive effective ratings", which would allow him "to continue teaching and serving communities of need."

Here however, the factual scenario facing Mr. Burge is even less favorable than that facing appellant in Cash. Whether he was qualified for the second extension or not, Mr. Cash at least had a viable administrative pathway to obtain it. Here, similar to the appellant in Finlay, Mr. Burge has already exhausted all of the options afforded by the Code. I agree with respondent's counsel that given the limitations on the number and duration of the extensions, even if Mr. Burge had demonstrated good cause for an extension (and, frankly, he has not), as noted in Cash, there is "(no) discretion to consider the totality of the circumstances to extend/review his status."

Given the above, I **FIND** that Mr. Burge is ineligible for a third extension of his provisional certificate. Ultimately, I **CONCLUDE** that given the respondent's decision to deny appellant's request for the third extension was appropriate and that no facts have been presented to demonstrate that it was unreasonable, arbitrary or capricious or that it was inconsistent with the applicable statutory and regulatory provisions. Walder v. New

Jersey Dept. of Educ., St. Bd. of Exam'rs, 2014 N.J. Agen. LEXIS 1259 at *4-*5 (Dec. 29, 2014)

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's Motion to Dismiss be and is hereby **GRANTED** and;

It is further **ORDERED** that Mr. Burge's appeal be and is hereby **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 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.

October 23, 2024
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency: October 23, 2024

Date Mailed to Parties: October 23, 2024
sej

APPENDIX

EXHIBITS

FOR APPELLEE:

None

FOR RESPONDENT:

R-1 Board of Examiners decision (March 1, 2024)

R-2 Petitioner's Credential Review Summary Appeal Packet (December 20, 2023)

R-3 Petitioner's Petition of Appeal (May 29, 2024)

440-24
Agency Dkt. No. 38-2/23

New Jersey Commissioner of Education

Final Decision

Board of Education of the Borough of Bloomsbury, Hunterdon County,

Petitioner,

v.

Board of Education of the Town of Phillipsburg, Warren County,

Respondent.

In this matter, petitioner Bloomsbury Board of Education (Bloomsbury) filed a petition seeking a severance of its sending-receiving relationship with respondent Phillipsburg Board of Education (Phillipsburg), which provides for Bloomsbury's high school students to be educated at Phillipsburg High School. Bloomsbury proposes to enter a sending-receiving relationship with the North Hunterdon-Voorhees Regional High School District Board of Education (North Hunterdon-Voorhees) to send its high school students to North Hunterdon High School.

After the matter was transmitted to the Office of Administrative Law as a contested case, Phillipsburg withdrew its opposition to the request for severance of the sending-receiving relationship and the formation of a new sending-receiving relationship with North Hunterdon-Voorhees. Accordingly, the file was returned to the Commissioner so that it could proceed as an uncontested case, in compliance with the procedural requirements set forth in *N.J.A.C.* 6A:3-6.1.

The Legislature has bestowed upon school districts lacking high school facilities of their own, such as Bloomsbury, the power to decide how and where their students should be

educated. *Bd. of Educ. of Ho-Ho-Kus v. Bd. of Educ. of Midland Park*, 96 *N.J.A.R.2d(EDU)* 964 (1996). To that end, *N.J.S.A.* 18A:38-11 permits the affected board of education to designate a high school or high schools for its pupils to attend on a tuition basis. Once a sending district makes the decision to educate its students in another district, it must obtain approval from the Commissioner to terminate or otherwise modify the sending-receiving relationship. *N.J.S.A.* 18A:38-11.

The modification of an existing sending-receiving relationship is governed by *N.J.S.A.* 18A:38-13, which provides, in pertinent part:

> The commissioner shall make equitable determinations based upon consideration of all the circumstances, including the educational and financial implications for the affected districts, the impact on the quality of education received by pupils, and the effect on the racial composition of the pupil population of the districts. The commissioner shall grant the requested change in designation or allocation if no substantial negative impact will result therefrom.

Thus, in ruling on an application for modification, the Commissioner must evaluate whether granting the requested modification will have a "substantial negative impact" upon 1) the quality of education, 2) the financial condition, or 3) the racial composition of the pupil populations of the districts involved. If, upon consideration of all the circumstances, no substantial negative impact is found, the application must be granted. *Bd. of Educ. of Englewood Cliffs v. Bd. of Educ. of Englewood*, 257 *N.J. Super.* 413, 459 (App. Div. 1992), *aff'd*, 132 *N.J.* 327 (1993).

Bloomsbury obtained a feasibility study in October 2022 and a supplemental expert report in November 2023 to thoroughly address the requisite statutory criteria. The detailed reports include analysis of the involved districts' demographics, historical enrollment trends,

projected future enrollment, enrollment by race, curricula, course offerings, educational programs, facilities, building capacity, student outcomes, budgets, state aid, tax implications, debt, tuition rates, and more. Citing the feasibility study, expert report, and relevant case law, Bloomsbury contends that severance of the sending-receiving relationship with Phillipsburg will not cause a substantial negative impact on the quality of education, the financial condition, or the racial composition of the districts involved.

The Commissioner received numerous public comments regarding the proposed severance from parents, educators, Bloomsbury Board of Education members, and others from the community. Twenty commenters strongly support the proposed severance for similar reasons, including that North Hunterdon-Voorhees offers an expanded range of quality educational opportunities, three rigorous Academy programs where students can earn college credit, and a new Polytech facility opening in September 2025. They emphasize that, when compared to Phillipsburg, North Hunterdon-Voorhees students have a superior four-year graduation rate, higher SAT/ACT scores, increased enrollment in AP and IB courses, and more individualized placement opportunities for special education students.

As a practical matter, the commenters in support of the severance note that Bloomsbury students will attend high school in the same county where they attend elementary school, and where they often participate in sports and other extracurricular activities. Additionally, they explain that because Bloomsbury is a small community of approximately 800 residents with just one school for grades K-8, Bloomsbury students can feel lost at Phillipsburg High School (one of the largest in New Jersey) because most Phillipsburg students already know each other. They feel that attending North Hunterdon-Voorhees would be advantageous because, as a regional

school district, it has a proven record of integrating a diverse group of students from 12 small towns and creates a more inclusive and supportive environment for incoming students.

The commenters in support of the severance also express that Bloomsbury would achieve immediate cost savings in tuition because North Hunterdon-Voorhees has agreed to a reduced tuition rate for four years. They believe this will ease the financial burden on taxpayers while increasing property values. Furthermore, they note that North Hunterdon-Voorhees is amenable to exploring regionalization if the petition is granted, which would afford Bloomsbury even greater financial stability. Currently, Phillipsburg's unpredictable tuition increases force reductions in Bloomsbury's K-8 school budget and have even resulted in consolidation of certain grade levels at their elementary school.

While none of the commenters expressly opposed the severance, one commenter is disappointed that Bloomsbury students might not attend Phillipsburg High School in the future. Her children currently attend Bloomsbury Elementary School via the Interdistrict Public School Choice Program (Choice Program). As a resident of Phillipsburg, she intends to have her children attend Phillipsburg High School. If the severance is granted, then her children will be separated from their peers. However, she would be less apprehensive about the severance if North Hunterdon-Voorhees would consider accepting similarly situated students via the Choice Program so that all children educated at Bloomsbury Elementary School can remain with their peers during high school.

Upon a comprehensive review of the record in this matter including the public comments, the feasibility study, expert report, and the parties' submissions, the Commissioner agrees that severance of the sending-receiving relationship will not have a substantial negative impact on

the quality of education, the financial condition, or the racial composition in Bloomsbury, Phillipsburg, or North Hunterdon-Voorhees. Of note, Phillipsburg has decided not to challenge the severance, and North Hunterdon-Voorhees fully supports the creation of a new sending-receiving relationship with Bloomsbury.

Regarding the quality of education in the districts, Phillipsburg will not suffer a substantial negative educational impact. Bloomsbury's approximately 28 students who attend Phillipsburg each year represent 1.6% of Phillipsburg High School's student population, or 7 students per grade from graduating classes of over 400 students each.[1] Thus, the removal of Bloombsury students from Phillipsburg High School will have little to no impact on course offerings, sports, or other extracurricular programs offered to Phillipsburg students. Moreover, the addition of Bloomsbury students will not result in a substantial negative educational impact to North Hunterdon High School. Because the number of Bloomsbury students is so small when compared to the average total student population of over 1400 students, the impact on class size will be minimal, and it is unlikely that North Hunterdon-Voorhees will need to hire additional staff.[2] Finally, Bloomsbury students will benefit from the additional quality educational opportunities available in North Hunterdon-Voorhees.

Regarding the financial impact to the districts, Phillipsburg's lost tuition revenue is small when compared to the size of its annual budget and annual tax levy. Specifically, Phillipsburg's

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[1] Between the 2017-18 and 2022-2023 school years, Bloomsbury sent an average of 21.67 white students and 6.67 non-white students (28.33 students in total) to Phillipsburg High School each year, comprising 1.7% of the average total student body of 1721.

[2] Between the 2017-2018 and 2022-2023 school years, North Hunterdon High School had an average student population of 1406.

lost tuition revenue of approximately $79,000 annually during the four-year phase-out of Bloomsbury students represents only 0.6% of Phillipsburg's $12.7 million tax levy and 0.08% of Phillipsburg's annual budget of $100 million. Thus, while some negative financial impact will occur if the severance is granted, it will not be substantial. As for the financial impact on Bloomsbury, any additional tuition costs will not result in a substantial negative impact. Moreover, the parties have agreed upon a reduced tuition rate for four years—which is less than Phillipsburg's tuition rate and will result in a cost savings of approximately $1800 per student for Bloomsbury during that time period. Finally, North Hunterdon-Voorhees will benefit financially upon receiving tuition revenue for Bloomsbury students.

Regarding the impact upon the districts' racial composition, Bloomsbury Elementary School, Phillipsburg High School, and North Hunterdon High School are all majority-white schools. The number of white students has declined at both high schools within the past six years.[3] In 2017-2018, 1059 of 1619 students enrolled at Phillipsburg High School, or about 65%, were white. By 2022-2023, the number of white students decreased to 921 of 1775 students, or about 52%. As for North Hunterdon High School, in 2017-2018, 1376 of 1608 students enrolled, or about 86%, were white. By 2022-2023, the number of white students decreased to 979 of 1217 students, or about 80%.

On average, between 2017-2018 and 2022-2023, Bloomsbury sent 22 white students and 7 non-white students[4] (75.86% white, 24.14% non-white) to Phillipsburg. Comparatively,

[3] This decline is consistent with the changing demographics in the areas served by each school district.
[4] The Commissioner notes that these figures, and the percentages that follow in this paragraph and the next, are different than those presented in Bloomsbury's submissions due to the manner in which Bloomsbury rounded average figures. For purposes of clarity, the Commissioner has used only whole numbers of students in the portion of this decision addressing racial impact, and the percentages have

Phillipsburg had an average student population of 1721, with 1021 white students and 700 non-white students (59.33% white, 40.67% non-white). Using these figures, the removal of Bloomsbury students from Phillipsburg High School would result in an average increase in Phillipsburg's non-white population from 40.67% to 40.96%, a difference of 0.29%.[5] This is not a substantial change, and because students will be removed one grade at a time, the year-to-year impact will be reduced. From a statistical perspective, the removal of so few students from such a large student population will not have a substantial negative impact on the racial composition of Phillipsburg High School. Phillipsburg High School students will continue to be educated in a diverse environment.

Similarly, the enrollment of Bloomsbury students at North Hunterdon High School will not have a substantial negative impact on the school's racial composition. Between 2017-2018 and 2022-2023, North Hunterdon had an average student population of 1406, with 1167 white students and 239 non-white students (83.00% white, 17.00% non-white). Using these figures, the addition of Bloomsbury students would result in an average increase in North Hunterdon's non-white population from 17.00% to 17.14%, a difference of 0.14%.[6] This is not a substantial change. From a statistical perspective, the addition of so few students to a large student population will not have a substantial negative impact on the racial composition of

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been recalculated accordingly; the very slight differences in percentages are not consequential to the analysis.

[5] This calculation reflects a total student population of 1692 (1721 minus 29) and a non-white population of 693 (700 minus 7).

[6] This calculation reflects a total student population of 1435 (1406 plus 29) and a non-white population of 246 (239 plus 7).

North Hunterdon High School. North Hunterdon High School students will continue to be educated in a diverse environment.

That said, statistical changes alone are not dispositive of whether a significant negative impact will result from severance. The Commissioner must analyze the significance of those statistical changes in light of all relevant circumstances, mindful that "there is no substitute for the educational benefits afforded by the opportunities for interaction both in and out of the classroom where the student population is diverse." *Bd. of Educ. of Merchantville v. Bd. of Educ. of Pennsauken*, State Bd. of Educ. Decision at 7, 15 (Jan. 7, 1998). Thus, the impact of the severance upon Bloomsbury students—who will, if the severance is granted, attend a high school with a student population that is not as diverse as that of Phillipsburg High School—must be considered.

For instance, in *Merchantville*, the State Board rejected Merchantville's request to terminate its sending-receiving relationship with Pennsauken and to establish a new relationship with Haddonfield "where the statistical change in the racial composition of the current receiver" was not significant, but Pennsauken was diverse, Haddonfield was "almost exclusively white," and Merchantville was "predominantly white." *Id.* at 2, 14-15. The State Board concluded that severance in favor of a new sending-receiving relationship with Haddonfield would cause a "substantial negative impact" by depriving Merchantville students of "the educational benefits afforded by the opportunities for interaction both in and out of the classroom where the student population is diverse." *Id.* at 15.

However, in *Board of Education of the Township of Winfield v. Board of Education of the City of Rahway*, the Commissioner granted Winfield's request to terminate its sending-receiving

relationship with Rahway and to enter a new sending-receiving relationship with Kenilworth even though Kenilworth's high school was somewhat less diverse than Rahway's high school. *Bd. of Educ. of Winfield v. Bd. of Educ. of Rahway*, OAL Dkt. No. EDU 7138-98, Initial Decision (Jan. 18, 2000), *adopted*, Commissioner Decision No. 7600 (March 2, 2000). At the time, Winfield was a predominantly white community with about 1600 residents; the percentage of non-white students attending Rahway High School was approximately 55%, and the percentage of non-white students attending David Brearly High School in Kenilworth was approximately 20%. The Commissioner agreed with the Administrative Law Judge (ALJ) that the circumstances in *Winfield* differed from *Merchantville* in that Kenilworth was "diverse, just not *as* diverse as the current receiving district. In *Merchantville*, the proposed receiving district was *not* at all diverse." *Winfield*, Initial Decision at 30. Accordingly, the ALJ in *Winfield* held, and the Commissioner concurred, that because "the new receiving district is also diverse (and apparently more diverse than the Winfield community)," there would be "no substantial negative impact on the quality of the education of the Winfield students" if the severance was granted. *Id.* at 31.

As was true in *Winfield*, if a new sending-receiving relationship is established between Bloomsbury and North Hunterdon-Voorhees, Bloomsbury students will continue to be educated in a diverse environment, albeit a less diverse environment than Phillipsburg High School. On average between 2017-2018 and 2022-2023, Phillipsburg High School had a 40% non-white student population and North Hunterdon High School had a 17% non-white student population. However, the percentage of non-white students at North Hunterdon High School increased each year during that timeframe; by 2022-2023, the non-white population at North Hunterdon High

School had increased to almost 20%.[7] Although the severance of its relationship with Phillipsburg will result in some negative impact to Bloomsbury students, the Commissioner does not find it to be a substantial negative impact. Diversity at North Hunterdon High School is expected to continue to increase in the coming years. Furthermore, the record does not contain evidence of the aggravating circumstances at issue in *Englewood Cliffs*, such as a trend of rapidly declining white enrollment in Phillipsburg, projected symbolic loss, or a high percentage of projected change in the gross white student population upon severance.

Absent a showing of substantial negative impact on the quality of education, the financial condition, or the racial composition of the districts involved, the Commissioner is required to grant the requested severance. Accordingly, Bloomsbury's application for severance of its sending-receiving relationship with Phillipsburg is hereby granted, subject to its entering into a new sending-receiving relationship with North Hunterdon-Voorhees for a minimum duration of five years.

IT IS SO ORDERED.[8]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 5, 2024
Date of Mailing: December 5, 2024

[7] In 2022-2023, 995 white students and 241 non-white students were enrolled at North Hunterdon High School.

[8] 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.

441-24E
OAL Dkt. No. 16783-24
Agency Dkt. No. 378-11/24

New Jersey Commissioner of Education

Final Decision on Emergent Relief

D.R. and S.R., on behalf of minor child, M.R.,

Petitioners,

v.

Board of Education of the Kingsway Regional School District, Gloucester County,

Respondent.

The record of this emergent matter and the Initial Decision on Emergent Relief of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has demonstrated entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the recommended Initial Decision of the OAL granting petitioner's application for emergent relief is adopted.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 5, 2024
Date of Mailing: December 5, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING
EMERGENT RELIEF
OAL DKT. NO. EDU 16783-24
AGENCY DKT. NO. 378-11/24

D.R. AND S.R. ON BEHALF OF
MINOR CHILD M.R.,
Petitioners,
v.
BOARD OF EDUCATION OF THE
KINGSWAY REGIONAL SCHOOL DISTRICT,
GLOUCESTER COUNTY,
Respondent.

Marc H. Zitomer, Esq., for petitioners, (Scheck, Price, Smith & King, LLP, attorneys)

Jeffrey P. Catalano, Esq., and **Susan Hodges**, Esq., for respondent (Parker McCay P.A., attorneys)

BEFORE **MAMTA PATEL,** ALJ:

STATEMENT OF THE CASE

On September 30, 2024, M.R., a Kingsway Regional High School student, posted a comment to Snapchat that the Board of Education (BOE) perceived as a threat. All

mental health professionals determined that M.R. was not a threat then or now to the school community. Can the BOE suspend M.R. until the end of the school year? No. A BOE's decision cannot be upset unless "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. Of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960).

PROCEDURAL HISTORY

On October 1, 2024, Farid Syed, Assistant Principal of Kingsway School District (Kingsway), sent a notice to D.R. and S.R., the parents of M.R., advising them that M.R. was suspended from school from October 1, 2024, through October 17, 2024, for violations of Kingsway disciplinary code: "Jeopardizing the Safety of Others/Hazardous, Reckless, or Physically Dangerous Conduct, Unauthorized Social Media Posting/Inappropriate Use of Technology-Including but not limited to images taken within the school." (P-C.) On October 2, 2024, Stefanie M. Fox-Manno, Principal of Kingsway, sent M.R.'s parents a letter reiterating M.R.'s suspension and informed them that M.R. was not permitted on school property or permitted to attend any school-related function (home or away) and about the coordination of schoolwork during the suspension. (P-D.) The letter further stated, "Re-entry to school will be dependent upon a psychiatric evaluation which will be coordinated by the building assistant principal." (P-D.) By letter dated October 4, 2024, Dr. James Lavender, Superintendent, advised M.R.'s parents that a hearing before the BOE was scheduled for November 21, 2024, to determine whether a long-term suspension of M.R. was warranted. On October 16, 2024, Lavender sent a revised letter, rescheduling the hearing before the BOE to October 17, 2024, and citing the following three infractions of the Student Code of Conduct, which amounted to a twenty-day suspension:

- Tier IV. D-Unauthorized Social Media/Inappropriate Use of Technology: Four (4) days OSS.
- Tier III. B-Jeopardizing Safety of Others/Hazardous (Heightened Response): Eight (8) days OSS.

- Tier IV. L-Terroristic Threat (written, verbal, or electronic): Eight (8) days OSS.

(P-E.)

In the interim, M.R. continued to be suspended.

The disciplinary hearing was held on October 17, 2024. On October 21, 2024, Lavender sent M.R.'s parents a letter sustaining the charges and imposing an out-of-school suspension for the remainder of the 2024–2025 school year. (P-H.) During the November 21, 2024, BOE meeting, the BOE voted to continue M.R.'s suspension for the remainder of the school year. (P-M.)

On November 27, 2024, M.R.'s parents, on behalf of M.R., filed a petition of appeal and a motion for emergent relief with the Office of Controversies and Disputes of the New Jersey Department of Education (DOE). On November 29, 2024, without a response from the BOE, the petition of appeal and motion for emergent relief were transmitted to the Office of Administrative Law (OAL) under N.J.A.C. 6A:3-1.6(c)(3), where they were filed as a contested case under N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. On December 2, 2024, the BOE emailed its response to the petitioners' request for emergent relief. The appeal and motion for emergent relief were heard on December 3, 2024, and I closed the record.

FINDINGS OF FACT

Based on the arguments of the parties, together with the documents the parties submitted and my evaluation of their sufficiency, I **FIND** the following as **FACT**:

M.R. is a rising senior at the Kingsway Regional High School, a ninth- through twelfth-grade school. M.R. has attended the school since the ninth grade. M.R. was an outstanding softball player and aspired to apply to and attend a four-year university in 2025. During the summer of 2024, M.R. fractured her leg and was unable to walk for seven weeks. M.R.'s injury has taken a toll on her mental health and physical well-being. Until the incident of September 30, 2024, M.R. had maintained a 4.0-grade point average,

was a member of the National Honor Society and World Language Honor Society, was a student ambassador, enrolled in numerous Advanced Placement and Honors courses, and had no disciplinary history. (P-A.)

In the late evening of September 30, 2024, using her phone, M.R. sent a post on Snapchat that stated, "Everyone shut the fuck up abt [sic] applying to colleges before I shoot up the school" on her "private story." A private story on Snapchat is only viewable by a select group of friends selected by the account holder. Friends not chosen to view private stories do not receive any notification of posts.

Snapchat flagged the message and sent it to the Federal Bureau of Investigation. The local police department of East Greenwich was notified and dispatched to M.R.'s home. Before entering the home, the police department confirmed that no one at the home was a registered gun owner and that there were no firearms in the house. The police formally interviewed M.R. at the police station. M.R. said the posting was a "joke" and was remorseful for posting it. After the questioning, the police drove M.R. and her father back home. (R-2.) M.R. and her father were told that the school had been made aware of the post and that Lavender had advised that M.R. was prohibited from attending school the next day. (R-2.) No criminal charges were filed against M.R., who was instead enrolled in a Stationhouse Adjustment program.[1]

On Tuesday, October 1, 2024, at 1:42 a.m., after law enforcement advised him of the post, Lavender emailed the Kingsway community, reassuring them of the safety of the school and the community. Lavender went on to state that law enforcement ensured that the campus was secure and that there was no credible ongoing threat to the schools. The school opened the following day under regular schedules. (P-B.) Kingsway did not present evidence that anyone in the school community had seen the post.

[1] A stationhouse adjustment is an alternative method a law enforcement agency may use to handle first-time juvenile offenders who have committed minor juvenile delinquency offenses within their jurisdiction. The stationhouse adjustment program intends to provide immediate consequences, such as community service or restitution, and a prompt and convenient resolution for the victim while also benefitting the juvenile by avoiding the stigma of a formal juvenile delinquency record. See Attorney General Guidelines – Stationhouse Adjustment (2005).

On October 1, 2024, Fox-Manno called M.R.'s mother to advise her of the code of conduct violations based on the Snapchat post. She was informed that this would be a long-term suspension with at least twelve days out of school. (R-3.)

On October 3, 2024, Lavender called M.R.'s father to advise him of the code of conduct violations and to inform him that a formal letter with more specific details regarding M.R.'s rights would be forthcoming. (R-3.) The letter, dated October 4, 2024, also required M.R. to submit to a psychiatric evaluation by a psychiatrist selected by the school and that there would be a BOE meeting on November 21, 2024. (P-E.)

On October 16, 2024, Lavender sent a revised letter to Mark Zitomer, Esq., petitioner's counsel, revising the date of the BOE hearing to October 17, 2024, and outlining the Code of Conduct charges assessed against M.R. as follows, suspending her for a total of twenty days:

- Tier IV. D-Unauthorized Social Media/Inappropriate Use of Technology: Four (4) days OSS.
- Tier III. B-Jeopardizing Safety of Others/Hazardous (Heightened Response): Eight (8) days OSS
- Tier IV. L-Terroristic Threat (written, verbal, or electronic): Eight (8) days OSS.

(P-E; R-5.)

On October 9, 2024, M.R. was evaluated by the school-appointed psychiatrist, Dr. Thomas O'Reilly, who cleared M.R. to return to school. In his report, Dr. O'Reilly diagnosed M.R. with adjustment disorder with depressed mood and opined that M.R. "is not at imminent risk of harm to self or others, and I am clearing her to return to an on-grounds educational setting, pending administrative review." M.R. also met with a private therapist and has continued to do so every week since October 23, 2024. A November 3, 2024, report from the private therapist reports that M.R. presents "no suicidal or homicidal ideations, no plan, and no intent to harm herself or others." However, the private therapist noted that M.R. is significantly distressed about falling behind on schoolwork because of limited access to support and/or resources and finds it challenging

to learn the course material through home instruction. (P-K.) A December 2, 2024, report from M.R.'s therapist notes that M.R. expressed isolation and "difficulty maintaining her high standard of grades that accompanies her current at-home learning." (P-O.)

On November 18, 2024, Detective Sergeant Daniel Abate of the East Greenwich Township Police Department sent M.R.'s father an email documenting her successful completion of the Stationhouse Adjustment program and advising him that no criminal charges would be filed and the case would be closed. (P-J.) In addition, Jacob Rodriguez, Counselor, Center for Family Services, also part of the Stationhouse Adjustment program, wrote a letter documenting M.R.'s successful completion of the program and recommending her return to school. (P-K.)

On October 17, 2024, a disciplinary hearing was held before the BOE and summarized in a letter dated October 21, 2024, by Lavender. It was not until October 17, 2024, that M.R., for the first time, addressed the BOE or anyone else at the school to tell her story in her own words. In her statement to the BOE, she expressed sincere remorse for her actions and the toll the suspension is taking on her academic progress and mental health. (P-I.) Fox-Manno spoke on behalf of the school district and acknowledged that M.R. had been an "excellent student with no prior disciplinary" history before this incident. Fox-Manno also spoke about another threat against Kingsway on social media that had occurred on September 8, 2024, as well as several other social media posts in the area threatening a school shooting in an "attempt to cause panic and disrupt the school." No other school community member spoke, nor were any specific complaints from the school community introduced into the record that evidenced that M.R.'s Snapchat post materially and substantially interfered with the school operations. (P-H.) Lavender's letter relayed the BOE's decision to continue M.R.'s long-term suspension through the next BOE meeting on November 21, 2024, when the BOE would re-evaluate. (P-H.)

By letter dated November 22, 2024, Lavender advised that the BOE voted to continue M.R.'s long-term suspension through the remainder of the academic year. In the letter, Lavender wrote about the psychological impact of "such threats" on the school community and indicated they can cause "persistent anxiety, fear, and stress for those involved." Lavender referenced unspecified "studies" and an article from *Psychology*

Today and the *Center for Violence Prevention* to justify continuing M.R.'s long-term suspension. At the hearing, no one from the board or the district presented any evidence that the impact of "such threats" caused any "anxiety, fear, or stress" to anyone. Indeed, no evidence was presented from anyone in the school community, including any student, employee of the school, parent, or community member who either saw M.R.'s post or was profoundly affected by the post.

CONCLUSIONS OF LAW

When the subject matter of a controversy is an action by a board of education, the petitioner may file "a separate motion for emergent relief . . . pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). Here, M.R. has initiated due-process proceedings challenging her long-term suspension, denying her request to return to school.

The standards for granting emergent relief are outlined in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6(b). The petitioner bears the burden of proving all four prongs of the Crowe test stated below:

1. Petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying the petitioner's claim is settled;

3. Petitioner has a likelihood of prevailing on the merits of the underlying claim; and

4. When the equities and the interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

1. Irreparable harm

As the New Jersey Supreme Court explained in Crowe, "[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Indeed, the purpose of emergent relief is to "prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case." Ibid. (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854).)

"Irreparable harm is shown when money damages cannot adequately compensate plaintiff's injuries." Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "More than a risk of irreparable harm must be demonstrated." Cont'l Grp., Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). "The requisite for injunctive relief has been characterized as a 'clear showing of immediate irreparable injury' . . . or a 'presently existing actual threat; [an injunction] may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by the common law.'" Ibid. (citations omitted).

In K.C. and S.C. o/b/o minor child, K.C. v. Board of Education of the Borough of Englewood Cliffs, Bergen Co., EDU 01883-11 (Mar 2, 2011), adopted, Commissioner Decision 117E (Mar 18, 2011), the Commissioner ruled that the student's inability to attend school during the remainder of the school year constituted irreparable harm.

Concerning the first prong, M.R. will suffer irreparable harm if the requested relief is not granted. M.R.'s continued suspension is significantly impacting her academic success and mental health. Significantly, M.R. is a senior, and her hopes of attending a four-year college or university in 2025 diminish with every day she remains out of the school environment. The harm caused by learning at home without the resources available to her in school is immeasurable. Not only is M.R. deprived of academic support, but given that she is a senior and applying to colleges and universities, she is also deprived of the assistance she would receive from school counselors. M.R.'s

therapist has further indicated that she is suffering due to the isolation she is experiencing and would benefit from an in-school instruction environment in which she has excelled in the past. The instruction that M.R. receives at home is not equivalent to what she receives in school, and her grades demonstrate that. In this instance, since M.R. is a senior, the failure to immediately reinstate her on an emergent basis would result in irreparable harm since the school year will likely be over by the time a due process hearing is held and a final decision by the Commissioner is issued.

Accordingly, I **CONCLUDE** that the petitioners have met their burden of proof concerning this prong.

2. Settled Legal Right

N.J.S.A. 18A:37-2 grants a local board of education authority to impose discipline, including suspension and expulsion, upon any willfully disobedient student. However, a local board of education's discretionary authority is only entitled to a presumption of correctness and should not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. Of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960).

In this case, the Kingsway 2024–2025 Student Handbook outlines the various charges by tier and corresponding discipline, including the number of suspension days for violating the stated charge. The handbook typically contemplates a student's return to school after serving the corresponding suspension time. M.R. was charged with:

- Tier IV. D-Unauthorized Social Media/Inappropriate Use of Technology: Four (4) days OSS.
- Tier III. B-Jeopardizing Safety of Others/Hazardous (Heightened Response): Eight (8) days OSS
- Tier IV. L-Terroristic Threat (written, verbal, or electronic): Eight (8) days OSS.

(P-F.)

According to the disciplinary code, M.R. has already served a maximum of twenty out-of-school suspension days for all three violations. The code further states that all three of the violations that M.R. was charged with include, "Date of Return to School May Be Contingent Upon Safety Evaluation and/or Psychological Evaluation and Will Result in One (1) to Three (3) Mandatory Counseling Sessions." Here, not only did the school-appointed psychiatrist recommend M.R.'s return to school, but M.R.'s private therapist and counselor from the Stationhouse Adjustment program also recommended her return to school. M.R. successfully completed the Stationhouse Adjustment program, and she was not criminally charged. Meanwhile, the BOE's justification in its October 21 and November 22 letters to extend M.R.'s suspension to the end of the school year failed to comply with the Kingsway Student Handbook or consider the recommendations of the professionals that are in a position to evaluate M.R.'s mental state of mind. Instead, the BOE relies more heavily on other incidents not involving this student, including a similar threat to the Kingsway School District that occurred on September 8th, and on the fear and anxiety that the threat may cause the school community based on articles in a magazine.

The BOE's argument that it has the discretion to impose a more significant penalty than listed in the code is not persuasive. The BOE Regulation 5600 is not applicable in this case. Regulation 5600 pertains to imposing discipline for conduct not listed or included in the code. The charges M.R. was found to have violated are all listed in the code, and no other charges were assessed against her. In addition, although Kingsway argues that the BOE has the discretion to impose a longer suspension when "incidents that cause a disruption," Lavender's notice dated October 1, 2024, indicated the schools would open and operate on a regular schedule. At this moment, M.R. has served almost three times the length of suspension than listed in the code.

Accordingly, I **CONCLUDE** that the BOE's decision to suspend M.R. through the remainder of the academic school year was arbitrary, capricious, and unreasonable.

3. Likelihood of Success on the Merits

Petitioners have demonstrated that they are likely to succeed on the merits of the underlying claim. Under this emergent relief prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)). This typically "'involves a prediction of the probable outcome of the case' based on each party's initial proofs, usually limited to documents." Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)).

Kingsway's reasons for M.R.'s continued suspension are flawed. School officials cannot expel or suspend a student where the activity that is the subject of the discipline "does not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school . . . ." R.R. v. Shore Reg. H.S. Bd. of Ed., 109 N.J. Super. 337, 343–44 (Ch. Div. 1970). In Scher v. Board of Education of West Orange, Essex County, 1968 S.L.D. 92, the Commissioner ruled that a hearing was required before a student could be expelled and evaluated by a mental health team. Specifically, the Commissioner stated:

> Termination of a pupil's right to attend the public schools of a district is a drastic and desperate remedy which should be employed only when no other course is possible. It involves a momentous decision which members of a board of education, most of whom have had little specific training in education, psychology, or medicine are called upon to make. The board's decision should be grounded, therefore, on competent advice. Such advice can be obtained from its staff of educators, from its school physician and school nurse, from its psychologist, psychiatrist, and school social worker, from its counsel, and from other appropriate sources. . . . It is obvious that a board of education cannot wash its hands of a problem by recourse to expulsion. . . . The Commissioner urges boards of education, therefore, to recognize expulsion as a negative and defeatist kind of last-ditch expedient

> resorted to only after and based upon competent professional evaluation and recommendation.
>
> [Id. at 96–97.]

Here, Kingsway has ignored all of the professionals' recommendations. There has not been one scintilla of evidence that anyone in the school community saw the post, was negatively affected by M.R.'s post, or that the post materially and substantially interfered with school operations.

In addition, disciplined students retain extensive due-process rights. Goss v. Lopez, 419 U.S. 565 (1975). The procedures for a long-term suspension are outlined in N.J.A.C. 6A:16-7.3(a) 1–11 and mandate that the school district include an informal hearing before the suspension, allowing the student to tell their side of the events. M.R. claims that Kingsway violated her due-process rights under N.J.A.C. 6A:16-7.3(a)(2) for failing to provide her with an informal hearing before the initial twelve-day suspension through October 17, 2024.

N.J.A.C. 6A:16-1.3 defines an informal hearing as a discussion between a school administrator and a student during which the student is informed of the alleged misconduct and provided an opportunity to tell their version of the event.

M.R. was suspended on October 1, 2024, and remained suspended until October 17, 2024, when she finally presented her story. Kingsway argues that the telephone conversations Fox-Manno had with M.R.'s mother on October 1, 2024, and Lavender's phone conversation with M.R.'s father on October 3, 2024, are the equivalent of a hearing. Although M.R.'s parents were advised of the charges against M.R. and the BOE claimed that M.R.'s parents accepted M.R.'s responsibility, M.R. never spoke to any school administrator before the start of the suspension. M.R. never got to tell anyone what she felt when she sent the post, why she sent the post, and express remorse in her own words or voice.

Accordingly, I **CONCLUDE** that petitioners have shown a reasonable probability of ultimate success on the merits.

4. Balancing the Equities

The fourth and final emergent relief standard involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

The harm M.R. will suffer if she cannot return to school is immeasurable. This is M.R.'s senior year, during which she is trying to prepare and maintain her grades to gain admission to an appropriate university or college. M.R. has already suffered since October since her education at home is not comparable to that at school, and her grades have already deteriorated. M.R. continues to be harmed both academically and mentally. Meanwhile, there was never a real threat to the school community. In fact, Lavender admits this in his October 1, 2024, notice to the school community: "law enforcement assured that the campus was secure and that there was no credible ongoing threat to the schools." The schools opened the following day under regular schedules. The BOE has failed to provide any evidence that any member of the school community was negatively affected by M.R.'s post or that the operation or the school was adversely affected. Accordingly, I **CONCLUDE** that M.R. will suffer greater harm should emergent relief be denied.

Based upon the above, I **CONCLUDE** that the petitioners meet the requirements outlined in N.J.A.C. 6A:3-1.6(b), warranting an order for emergent relief.

ORDER

For the reasons stated above, I hereby **ORDER** that the petitioners' application for emergent relief is hereby **GRANTED**.

This Order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

December 4, 2024
DATE

MAMTA PATEL, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

MP/jm

APPENDIX

Witnesses

For Petitioner:

Marc H. Zitomer, Esq.

For Respondent:

Jeffrey P. Catalano, Esq.

Susan Hodges, Esq.

Exhibits

For Petitioner:

Exhibit A	M.R.'s 2023–24 Final Report Card
Exhibit B	E-mail from Dr. James Lavender to School District community dated Oct. 1, 2024
Exhibit C	Out-of-School Suspension Letter to Petitioners from Assistant Principal Farid Syed (undated)
Exhibit D	Letter to Petitioners from Principal Stefanie M. Fox-Manno dated Oct. 2, 2024
Exhibit E	Letter to Petitioners from Dr. Lavender dated Oct. 4, 2024
Exhibit F	Kingsway Regional High School Student Handbook Excerpts (2024–2025)
Exhibit G	Letter from Marc H. Zitomer, Esq. to Jeffrey Catalano, Esq. regarding M.R.'s Suspension dated Oct. 14, 2024
Exhibit H	Letter to Petitioners and Mr. Zitomer from Dr. Lavender and Mr. Jason Schimpf dated Oct. 21, 2024
Exhibit I	Statement from M.R. read at Board of Education hearing (undated)

Exhibit J	E-mail from Detective Sergeant Daniel Abate to Petitioner D.R. dated Nov. 18, 2024
Exhibit K	Letter dated from Mr. Zitomer to Mr. Catalano regarding M.R. (with exhibits A – D) Nov. 19, 2024
Exhibit L	Certification of Board Resolution of Oct. 17, 2024
Exhibit M	Letter to Petitioners and Mr. Zitomer regarding long-term suspension of M.R. from Dr. Lavender and Mr. Schimpf dated Nov. 22, 2024
Exhibit N	Commissioner Decision on Emergent Relief of June 14, 2024, in Matter Captioned N.H. on behalf of Minor Child S.A. vs. Board of Education of the Kingsway Regional School District, Agency Docket No. 298-10/23 (2024)
Exhibit O	Letter from Judy Byorick, LAC, dated Dec. 2, 2024

For Respondent:

Exhibit 1	Certification of School Board Resolution from November 22, 2024, Board Meeting
Exhibit 2	Police Reports from East Greenwich Police Department
Exhibit 3	Genesis Printout of Administrative Notes for M.R.
Exhibit 4	Discipline Referral Report dated October 1, 2024
Exhibit 5	Revised Letter to Mark H. Zitomer, Esquire, dated October 16, 2024
Exhibit 6	Courier Post Article, "Teen charged after Kingsway shooting threat," dated March 12, 2018
Exhibit 7	Screenshot of M.R.'s social media post
Exhibit 8	N.H., on behalf of minor child S.A. v. Board of Education of the Kingsway Regional School District, Gloucester County, Order 178-24 (Order on Request for Interlocutory Relief)
Exhibit 9	M.R.'s current grades and home instruction timesheets

444-24
OAL Dkt. No. EDU 03570-22
Agency Dkt. No. 78-4/22

New Jersey Commissioner of Education

Final Decision

J.R., on behalf of minor child, T.R.,

Petitioner,

v.

Board of Education of the Township of Long Hill, Morris County, and Michael Viturello, Principal,

Respondents.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that neither respondents' determination that T.R. committed an act of harassment, intimidation, and bullying, nor the imposition of a six-day suspension, was arbitrary, capricious, or unreasonable, or in violation of T.R.'s First Amendment rights.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2024
Date of Mailing: December 11, 2024

[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 03570-22
AGENCY DKT. NO. 78-4/22

J.R. ON BEHALF OF MINOR CHILD T.R.,
Petitioner,
v.
TOWNSHIP OF LONG HILL BOARD OF EDUCATION, MORRIS COUNTY AND MICHAEL VITURELLO, PRINCIPAL,
Respondents.

Jerald F. Oleske, Esq., for petitioner (Oleske & Oleske, attorneys)

Douglas M. Silvestro, Esq., for respondent (The Busch Law Group, attorneys)

Record Closed: July 18, 2024 Decided: October 28, 2024

BEFORE **MARGARET M. MONACO**, ALJ:

STATEMENT OF THE CASE

Petitioner J.R., on behalf of her son, T.R., challenges the Harassment, Intimidation and Bullying (HIB) determination, and the six-day suspension imposed, by the Township of Long Hill Board of Education (the Board).

PROCEDURAL HISTORY

On April 12, 2022, petitioner filed a Petition of Appeal with the Commissioner of Education (the Commissioner) contesting the Board's HIB determination and six-day suspension. On May 2, 2022, respondents filed an Answer to Petition of Appeal, and the Department of Education transmitted the matter to the Office of Administrative Law, where it was filed for determination as a contested case. A prehearing conference was held on June 23, 2022, during which the hearing was scheduled for December 1, 2, and 5, 2022. The hearing was adjourned to afford respondents the opportunity to file a motion for summary decision. Subsequently, the parties filed cross-motions for summary decision, which I denied by Order dated May 2, 2023. The hearing was held on October 18, 2023, and January 16, 2024, after which the record remained open for the receipt of transcripts of the hearing and post-hearing submissions. The parties filed briefs in support of their respective positions, and the record closed upon receipt of the last submission.

FACTUAL DISCUSSION

At the hearing, petitioner offered testimony by T.R. and his mother, J.R. Michael Viturello and Melissa Backer testified on behalf of the Board. In addition, the parties submitted various joint exhibits and a Joint Statement of Undisputed Facts (Stip.).

Based upon a review of the testimony and the documentary evidence presented and having had the opportunity to observe the demeanor and assess the credibility of the witnesses who testified, I **FIND** the following pertinent **FACTS** and accept as **FACT** the testimony set forth below.

During the relevant period, T.R. was an 8th grade student at the District's Central Middle School (CMS). (Stip. at ¶ 1.)

Michael Viturello (Viturello) is the principal of CMS, a position that he has held for seven years.

Melissa Backer (Backer) has been an assistant principal with the District since 2016. She is also the anti-bullying specialist for all three District buildings, including CMS.

On November 10, 2021, a CMS student (Jane)[1] shared a Snapchat with Viturello. (Stip. at ¶ 3.) Jane had initially brought the matter to the attention of the school counselor. The Snapchat thread contained a number of students from CMS, including T.R., making demeaning comments regarding another CMS student (Susan). (Ibid.; see J-7; J-13.) The comments, including those made by T.R., were vulgar in nature and attacked Susan's appearance, weight, and sexual orientation. (Stip. at ¶ 4; see J-7; J-13.) Viturello described that Jane was "very concerned about . . . all the information that was being shared by students [and] comments that were being made about" Susan.

The comments made by T.R., with some minor exceptions, were generally directed at Susan. (Stip. at ¶ 8.) T.R. knew at the time of the conversation that the other participants were also referring to Susan. (Id. at ¶ 9.) Susan was not a direct participant of the November 9, 2021 Snapchat thread. (Id. at ¶ 10.) Some of the other participants who engaged in the conversation were students who, at that time, attended CMS. (Id. at ¶ 11.) The Snapchat thread also included students from other middle schools located in nearby towns outside of the District. (Ibid.)

In the afternoon on November 10, 2021, Viturello contacted Susan's parents. (See J-14 at R148.) The purpose of that contact was to "make them aware . . . that something pretty significant happened outside of school[.]" Viturello spoke to Susan's mother, who was aware that an incident had occurred with comments made about her daughter and was "very concerned[.]" Susan's mother shared that Susan was "very concerned about just the group in general making comments about her, she was very self-conscious, [and] she was anxious about it," including the involvement of many non-District students.

Jane, the witness who initially reported the incident to CMS staff, reported that she was fearful of retaliation by her classmates for informing adults and school staff of the Snapchat thread. (Stip. at ¶ 18.) Jane's parents signed Jane out of school the day after

[1] Fictitious names are used to identify the student reporter (Jane) and the alleged victim (Susan).

she reported the Snapchat thread to school staff, and Jane remained homeschooled for the remainder of the 2021–2022 school year. (Id. at ¶ 19.) Viturello spoke with Jane's mother, who was "very concerned about the entire situation" and conveyed her intention to withdraw Jane from school due to the Snapchat situation.

On November 11, 2021, Viturello met with all CMS students, including T.R., who had made negative comments about Susan. (See Stip. at ¶ 5; J-14 at R148.) During a meeting with Viturello, T.R. admitted to making all of the statements attributed to him, although he indicated that he did not remember some of them. (Stip. at ¶ 6.)

The CMS "Student Manual and Code of Conduct" sets forth in detail the type of behavior expected of CMS students. (Stip. at ¶ 15; see J-9, page 8.) In September 2021, T.R. was present during a Grade Level Meeting at which Viturello reviewed the CMS "Student Manual and Code of Conduct." (Id. at ¶ 12; see J-9; J-10.) At that Grade Level Meeting, Viturello also explained that the Code of Conduct was available on the school's website for review. (Id. at ¶ 13.) On September 10, 2021, T.R. was sent an e-mail from Viturello that attached a copy of the slide presentation used at the Grade Level Meeting, along with the CMS "Student Manual and Code of Conduct." (See Id. at ¶ 14; J-10.)

Viturello made an initial review of the within matter and determined that T.R. had, at the very least, violated various requirements of Section 2 ("Behavior") of the CMS Code of Conduct in that he failed, without limitation, to: (a) "[m]ake appropriate decisions" and (b) "[c]ommunicate with others in a positive manner without teasing, name calling, or profanity." (Id. at ¶ 16; see J- 9, Sec. 2, page 8; J-4.) Viturello also determined that T.R. had, at the very least, violated various requirements of Section 3 ("Respect") of the Code of Conduct, in that he failed, without limitation, to "[b]e respectful of different cultures, religions, ethnic and racial groups, gender identities and sexual orientations, and physical and mental differences." (Id. at ¶ 17; see J- 9, Sec. 3, page 9; J-4.)

As a result of the conduct, on or about November 11, 2021, Viturello imposed a six-day out-of-school suspension (OSS) to T.R. and other students involved in the Snapchat thread. Viturello also initiated a HIB investigation. (See Stip. at ¶ 7 and ¶ 21; J-2.) On November 11, 2021, Viturello contacted T.R.'s parents regarding the situation.

(See J-4; J-14 at R148.) By letters dated November 12, 2021, Viturello notified T.R.'s parents of the foregoing events, his initial determination, the imposition of the OSS, and the pending HIB investigation. (See Stip. at ¶ 22; J-3; J-4.)

Viturello described that seven District students were involved in the inappropriate Snapchat comments and their comments ranged in frequency and severity. The students who made more frequent or more significant comments were disciplined with greater consequences than those who had less frequent or less significant comments on the Snapchat chain. T.R. received the highest level of discipline (i.e., a six-day OSS) based on his comments. He was not the only student to receive that level of discipline.

On November 12, 2021, T.R.'s mother notified school staff that she was afraid of leaving T.R. alone that morning and that T.R. presented with suicidal ideation in prior years. (Stip. at ¶ 23.) In response, Backer, the school counsellor, and the school social worker made a home visit. School staff conducted a risk assessment and wellness visit of T.R. at his home, and he was cleared to return to school after the evaluation. (Ibid.; see J-14).

The HIB investigation was conducted by Viturello and Backer. (Stip. at ¶ 24.) Backer interviewed Susan the day after the incident was reported. Susan was aware of the substance of the Snapchat, and Susan advised that she became aware of the Snapchat about her from a friend. Backer testified that Susan was "clearly very upset, she was crying, she expressed concern about going to the high school because these students had been previously making fun of her from our District and another district and she was embarrassed." Susan also relayed that "she avoids going to certain areas because she doesn't want to be around" these students. After interviewing Susan, Backer and Viturello interviewed witnesses and the alleged offenders.

Susan was provided with counseling through the District for the remainder of the year. (Stip. at ¶ 20.)

During a meeting with Viturello and Backer on November 15, 2021, T.R.'s parents personally reviewed all of the Snapchat comments made by T.R. for which he received discipline and were the subject of the HIB investigation. (See Stip. at ¶ 25; J-14.)

The HIB investigation was completed on or around November 19, 2021. (Stip. at ¶ 26; see J-1.)[2] Backer concluded that the acts committed by T.R. constituted HIB within the meaning of the Board's Policy and State law. (Id. at ¶ 28; see J-1.) Backer completed an Investigation Report Form in which she checked the boxes finding that T.R.'s behavior met the listed HIB criteria. (J-1 at R013.)

Backer determined that T.R.'s behavior "[i]s reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic." (J-1 at R013.) Backer explained that she checked that box "because the content included several perceived characteristics about [Susan's] appearance, and mainly her weight and . . . also . . . her sexuality."

Backer checked the box that the conduct "[t]akes place on school property, at any school-sponsored function, on a school bus, or off school grounds" (J-1 at R013), and stated that the conduct took place off school grounds.

Backer checked the box finding that T.R.'s behavior "[s]ubstantially disrupts or interferes with the orderly operation of the school or the rights of other students[.]" (J-1 at R013.) Backer explained that "based on the comments [T.R.] made, [Susan] was visually very upset about the content that was said about her, . . . [Jane was] signed out of school after sharing the information about the Snapchat and then T.R. himself was in distress" resulting in school staff conducting a risk assessment. In addition, there was an interference with the operation of the school as a whole, and the incident "had a substantial interference with the school day." Backer explained that "there were about 25 students that were involved on the Snapchat, so clearly it was spoken about within the

[2] T.R. is designated as student "A-2" and "AP2" in the HIB Investigation Report and as "TR" in the summaries of student chat comments in the report. (Stip. at ¶ 27.)

middle school halls"; "[t]here were a lot of students that were interviewed"; and "there were a lot of staff members that were involved in the interview process and the HIB investigation[.]"

Backer checked the box finding that "a reasonable person should know, under the circumstances, [that T.R.'s behavior] will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property[.]" (J-1 at R013.) Backer explained, "[m]aking fun of someone's appearance, [and] their sexuality, . . . a normal person would understand that . . . would be hurtful to that person and could cause emotional harm." Backer believed that a reasonable 8th grader would know under the circumstances that the conduct that T.R. admitted to would have the effect of physically or emotionally harming a student. She testified that "a reasonable 8th grade student would be aware that there are negative implications associated with that kind of language," and a "reasonable person would think that using that language with a group of 25 plus students would get back to that student." She noted that the school educates students about the internet, including matters such as the digital footprint, how it follows them, and that anything put on the internet is traceable.

Backer checked the box finding that T.R.'s behavior "has the effect of insulting or demeaning any student or group of students" (J-1 at R013) "[b]ecause the content had to do with [Susan's] physical appearance, weight and also sexuality." During Backer's interview with Susan, Susan relayed that she was insulted or demeaned.

Backer checked the box finding that T.R.'s behavior "creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student." (J-1 at R013.) Backer explained that Susan conveyed "that she didn't want to go to the high school where these students were going to be attending."

In the form, Backer also checked the box that the "[a]ggressor's actions determined to be . . . [i]ntentional, but not designed to harass, intimidate, or bully," i.e., "[t]he student knowingly engaged in harassing, intimidating, or bullying behavior but was not aware of

the potential negative impact on the target." (J-1 at R013.) Backer testified that "an 8th Grade student is aware that the type of content he engaged in would hurt someone, so the intent, it was hurtful," but she did "not believe that [T.R.] woke up that day and decided he wanted to harass, intimidate or bully the victim." Backer believed that T.R.'s conduct "was intentional as in he knowingly engaged in behavior that he knew was wrong and hurtful, but [she did not] believe that he wanted to harass, bully or intimidate or be involved in an investigation, [and she did not] think he was thinking that through when he was involved." Backer did not believe that T.R. "had an intention of hurting" Susan, and she did not believe that T.R. "was thinking clearly about the ramifications." However, Backer articulated that "a reasonable person would know—should know that . . . type of language would be harmful to somebody."

As Viturello had already imposed a six-day OSS on T.R. for the Code of Conduct violations, Backer recommended additional remedial measures, including meeting with a school counselor, a reflective writing assignment, and an in-home risk assessment supplemented by an additional parent meeting. (Id. at ¶ 29; see J-1 at R014.)

On or around November 19, 2021, Viturello approved the HIB Investigation Report without modification. (Stip. at ¶ 30.) He reviewed the report and agreed Backer's determination that the incident was "Confirmed Bullying." (See J-1 at R013.) Viturello agreed with Backer's determination that the criteria checked on the form had been met. Viturello described that T.R.'s conduct was reasonably perceived as being motivated by the victim's weight and sexuality, and the conduct took place off school grounds.

Viturello agreed with Backer's determination that T.R.'s behavior substantially disrupted and interfered with the orderly operations of the school or the rights of other students. He explained that Susan "was very anxious about the situation, was very impacted, [and] needed multiple counseling sessions[.]" Susan also shared that she was fearful of going to the high school because the incident involved not only Long Hill students but students in surrounding towns. In addition, Jane was "very concerned about retribution" from the students involved in the conduct, and she was signed out of the school in the first few days after the incident. Viturello also spoke with T.R.'s mother, who was concerned about T.R.'s mental health based on his involvement in the incident.

Viturello testified that "there was a great impact to the school in general and many individuals involved." "There was impact on all the students who were suspended and their involvement and also the witnesses," noting that "there were witnesses in the Snapchat that asked for it to stop[.]"

Viturello agreed with Backer's determination that a "reasonable person should know, under the circumstances, [that T.R.'s behavior] will have the effect of physically or emotionally harming" Susan. Viturello described that the District educates students about social media in general, and the dangers of social media, including a 7th grade course called Digital Literacy in which the Library Media Specialist educates students about their digital footprint and the impact they could have on other people. Viturello believed that an 8th grader in the District in the Fall of 2021 would have understood that "when you have a conversation like that, there's a very good chance that it's not going to remain isolated when there's over two dozen people on it." Viturello explained that, although it was Snapchat, there were over two dozen students on it and "knowing middle school students, it's very reasonable to understand that someone's going to share a conversation that was more than one comment." Participants can also screenshot or camera-shot the information posted on Snapchat "so the information travels."

Based on the comments, Viturello agreed with Backer's determination that T.R.'s behavior had the effect of insulting or demeaning Susan. He also agreed with Backer's determination that T.R.'s behavior "creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student." Viturello noted that Susan needed counseling, and Jane left the school.

On or around November 22, 2021, Viturello forwarded the HIB Investigation Report to the then Superintendent of Schools, Dr. Anne Mucci. (Stip. at ¶ 30.) On or around November 22, 2021, Dr. Mucci approved the HIB Investigation Report without modification. (Id. at ¶ 31; see J-5.) The parents were notified of Dr. Mucci's decision via letter dated November 22, 2021. (Id. at ¶ 32; see J-5.) That letter also informed the parents of their right to request a hearing before the Board regarding the HIB determination.

The parents, through counsel, requested a Board hearing via e-mail on November 29, 2021. (Stip. at ¶ 33; see J-18.) On or about January 13, 2022, a hearing was held before the Board. (Id. at ¶ 34; see J-17.) At that Board hearing, the Board agreed with the recommendation of the Superintendent and upheld the determination that T.R. had committed an act of HIB. (Id. at ¶ 35; see J-17.) Counsel for petitioner was notified of the Board's decision by letter dated January 19, 2022. (Id. at ¶ 36; see J-17.) That letter (J-17) states in pertinent part:

> For reasons set forth below, the Board affirmed the decision of the Superintendent that [T.R.] committed an act of HIB and that the discipline imposed was not unreasonable.
>
> The allegations and findings for the HIB complaint are set forth in the investigation report, a copy of which was previously been provided to you. The Board agreed with the findings of the report and affirmed the decision of the Superintendent .... The Board agreed that [T.R.'s] actions met the legal definition of HIB.
>
> Specifically, the Board determined that [T.R.'s] comments made online were clearly targeting a student's perceived characteristics including but not limited to the student's appearance, hygiene, sexuality, mental state/disability and more. While [T.R.] may have thought that his comments would not have been shared with [Susan], such a belief was not reasonable given the vast number of students participating in the chat, including students from other school districts and even counties, many of whom [T.R.] admittedly did not know. Moreover, [Susan] was made aware of the comments, and thus was insulted/demeaned as contemplated by the HIB law.
>
> The Board also found that there was a substantial disruption to the school environment as well as the rights of multiple students as the contents of the chat were widely shared and discussed in school. Moreover, . . . both [Susan] and [Jane] have been noticeably and severely impacted by [T.R.'s]. individual actions as well as those attributed to the group of students that engaged in the chat along with [T.R.]. Such disruption was more than sufficient to trigger the Board's authority and responsibility to address the electronic communication occurring off school grounds pursuant to N.J.S.A. 18A:37-15.3, and N.J.A.C. 6A:16-7.5. It must be

> noted that the latter regulation grants schools the authority to issue discipline not just based on the aggressor's safety or well-being as you argued at the hearing, but also "for reasons relating to the safety, security and well-being of other students, staff or school grounds," which reasons were clearly implicated in this case.

Petitioner filed a Petition of Appeal dated April 8, 2022, contesting the Board's determination. (See Stip. at ¶ 37; J-11.)

In addition to the evidence that forms the foundation of the aforesaid findings of fact, a summary of other pertinent testimony follows.

The Testimony

T.R. currently attends the same high school as Susan and Jane and described that he is now "friendly" with Susan. T.R. acknowledged that he knew that it was not okay to bully people while in school, but articulated his understanding that the type of acts that would involve bullying were "more in person, like physical things or saying stuff to people's face." He also did not believe that there would be issues with bullying outside of school. T.R. indicated that "20 something people" were in the chat group, including students from surrounding towns, and T.R. agreed that hurtful things were said during the chat group, including comments about Susan's appearance. T.R. articulated his understanding that, when using Snapchat, "we were talking in a private group that no one else could . . . publicly see and that after 24 hours, it automatically deletes the chats." T.R. testified that he thought that what was said would never get back to Susan "because it automatically deletes and it's private," and "in that group . . . there was not really people who were close friends with her[.]"

T.R. described that he was "devastated" and "felt really horrible about what [he] had said" when he found out that it was brought to Susan's attention that derogatory comments had been said about her. T.R. testified that he "wouldn't have ever said anything like that to her face," and he "would have never said anything like that" if he had any thought that it would possibly get back to Susan. T.R. acknowledged that he "never should have done something like that," and he "felt like a horrible person" and "really

bad[.]" The incident physically affected him. T.R. alerted his parents that he was feeling terrible and that the incident was affecting him physically. T.R. apologized to Susan a couple of days after he was suspended. (See J-22.) According to T.R., they had a conversation and they continued to have friendly conversations after that. T.R. testified that, based on his discussion with Susan, she did not know what exactly was said about her, Susan asked him to tell her what people were saying, and he declined to do so. T.R.'s parents disciplined T.R. for the incident; the parents took his phone away and grounded him. The parents also limited T.R.'s screen time when he got his phone back, and the parents "would go through [his] phone a lot to make sure nothing else was happening."

T.R. articulated that he felt that the HIB determination was a "misrepresentation" of who he is as a person, and the comments he made then are not a representation of him as an entire person. T.R. testified that he has never said or done anything with the intent of hurting someone and that such actions are not part of his character. T.R. admitted that he deserved to be punished because he said "some horrible things," but did not "think that it was right to say that [he] was bullying." T.R. described that he did not want a letter in his file to affect him in the future regarding a potential college or job.

T.R.'s mother, J.R., confirmed that T.R. was disciplined at home for the incident, which also included making T.R. watch a video on being an upstander and bullying. J.R. acknowledged that T.R.'s comments were "terrible" and "very inappropriate." She did not believe that it was fair that T.R.'s actions have been categorized as bullying because "it gives the perception that he was intentionally cruel, intentionally tried to harm someone . . . or hurt their feelings or make them feel terrible about themselves or intimidate them." T.R. expressed to her that, using Snapchat, he never thought that his comments would ever get back to Susan. J.R. described that the incident impacted T.R. She testified that T.R. "was devasted"; he "cried a lot"; he "felt terrible that it got out and was shared, that [Susan] was aware of it"; and T.R. "thought he was a really terrible person." The six-day OSS "exacerbated the situation" because T.R. had never heard of anyone getting an OSS, and T.R. thought that he was "a really terrible person" and did "something that was so awful to . . . warrant such a punishment." J.R. described her disagreement with the

six-day OSS and expressed concern about future employers becoming aware of the HIB determination.

LEGAL DISCUSSION AND CONCLUSIONS

The Legislature enacted the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13, et seq., (the Act) to promote "a safe and civil environment in school" by preventing "conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment[.]" N.J.S.A. 18A:37-13. The Act is designed "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises[.]" N.J.S.A. 18A:37-13.1(f).

The Act defines HIB to include:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in . . . [N.J.S.A. 18A:37-15.3], that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or

> by severely or pervasively causing physical or emotional harm to the student.
>
> [N.J.S.A. 18A:37-14.]

The Act requires school districts to adopt policies that prohibit HIB and include procedures for reporting and investigating complaints of HIB and "consequences and appropriate remedial action for a person who commits an act" of HIB. N.J.S.A.18A:37-15(b); see N.J.A.C. 6A:16-7.7. The district's policy "shall include provisions for appropriate responses to [HIB] . . . that occurs off school grounds, in cases in which a school employee is made aware of such actions." N.J.S.A.18A:37-15.3. "The responses to [HIB] . . . that occurs off school grounds shall be consistent with the board of education's code of student conduct and other provisions of the board's policy on . . . [HIB]." Ibid. See N.J.A.C. 6A:16-7.1(a) ("Each district board of education shall develop, adopt, disseminate, and implement a code of student conduct that establishes standards, policies, and procedures for positive student development and student behavioral expectations on school grounds and, as appropriate, for conduct away from school grounds"); N.J.A.C. 6A:16-7.5(a) ("School authorities have the right to impose a consequence on a student for conduct away from school grounds that is consistent with the district board of education's code of student conduct, pursuant to N.J.A.C. 6A:16-7.1"); N.J.A.C. 6A:16-7.5(b) ("School authorities shall respond to harassment, intimidation, or bullying that occurs off school grounds, pursuant to N.J.S.A. 18A:37-14 and 15.3 and N.J.A.C. 6A:16-1.3, 7.1, and 7.7"). The principal in each school must appoint a school anti-bullying specialist, who shall "lead the investigation" of HIB incidents in the school and "act as the primary school official responsible for preventing, identifying, and addressing" HIB incidents in the school. N.J.S.A. 18A:37-20(a).

Although a school district is given "local control over the content of [its] policy," N.J.S.A. 18A:37-15(b) dictates certain time limits and requirements regarding the reporting, the investigation and the determination of HIB complaints that must, at a minimum, be included in the district's policy. In this regard, all acts of HIB must be reported verbally to the school principal on the same day when the school employee or contracted service provider witnessed or received reliable information regarding an

alleged HIB incident, and such acts of HIB must be reported in writing to the school principal within two school days of when the school employee or contracted service provider witnessed or received reliable information that a student had been subject to HIB. N.J.S.A. 18A:37-15(b)(5). In turn, the principal must "inform the parents or guardians of all students involved in the alleged incident[.]" Ibid. The HIB "investigation shall be initiated by the principal or the principal's designee within one school day of the report of the incident and shall be conducted by a school anti-bullying specialist." N.J.S.A. 18A:37-15(b)(6)(a). The investigation must be completed "not later than 10 school days from the date of the written report" of the HIB incident. Ibid. The results of the investigation must be "reported to the superintendent of schools within two school days of the completion of the investigation[.]" N.J.S.A. 18A:37- 15(b)(6)(b). The results of the investigation must also be "reported to the board of education no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent." N.J.S.A. 18A:37-15(b)(6)(c). The board must issue a decision, in writing, to affirm, reject, or modify the superintendent's decision "at the next board of education meeting following its receipt of the report," which may be appealed to the Commissioner of Education. N.J.S.A. 18A:37-15(b)(6)(e).

"[P]arents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation, in accordance with federal and State law and regulation, including the nature of the investigation, whether the district found evidence of . . . [HIB], or whether discipline was imposed or services provided to address the incident of . . . [HIB]." N.J.S.A.18A:37-15(b)(6)(d). That "information shall be provided in writing within 5 school days after the results of the investigation are reported to the board." Ibid. "A parent or guardian may request a hearing before the board after receiving the information[.]" Ibid. The board must convene a hearing within ten days of receiving such a request, and the board must "meet in executive session for the hearing to protect the confidentiality of the students." Ibid. During the hearing, "the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents[.]" Ibid.

It is well settled that actions within a school board's authority are entitled to a presumption of validity and will not be overturned in the absence of an affirmative showing that the decision was arbitrary, capricious, or unreasonable. Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966). Stated differently, the exercise of a school board's discretionary powers may not be disturbed unless shown to be "patently arbitrary, without rational basis or induced by improper motives." Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). The scope of the Commissioner's review is limited. The Commissioner's role is not to substitute his or her judgment for that of the Board, but to assess whether the Board had a reasonable basis for its conclusions. Id. at 295-96. And "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewage Co. v. Dep't of Envtl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App Div. 1974).

Against this backdrop, petitioner does not allege any procedural violations regarding the Board's HIB determination and no such violations are apparent from the record. Petitioner contends that the Board's HIB determination is arbitrary, capricious and unreasonable because it was predicated on the Board's HIB Policy, which altered the language of N.J.S.A. 18A:37-14. Specifically, petitioner argues that the Board's Policy inserted the word "or" at the end of subsection (a) and, therefore, converted the "reasonable person" element of the statute from an essential element of HIB to only one of three possible elements. Petitioner avers that subsection (a), that a reasonable person should know the act will have a harmful effect, is a required finding to constitute an act of HIB, followed by a combination of subsection (b) or (c).

Our courts have articulated the principles governing statutory construction. The "overriding objective in determining the meaning of a statute is to 'effectuate the legislative intent in light of the language used and the objects sought to be achieved.'" McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001) (citation omitted). The Supreme Court explained in Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012) (citations omitted):

> The objective of all statutory interpretation is to discern and effectuate the intent of the Legislature. To achieve that objective, we begin by looking at the statute's plain language, ascribing to the words used "their ordinary meaning and significance." We do not view the statutory words in isolation but "in context with related provisions so as to give sense to the legislation as a whole." If the Legislature's intent is clear on the face of the statute, then we must apply the law as written. It is not our function to rewrite a plainly written statute or to presume that the Legislature meant something other than what it conveyed in its clearly expressed language.

"If the plain language leads to a clear and unambiguous result, then [the] interpretive process is over." Richardson v. Bd. of Trs. Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007). It is not the function of this forum "to 'rewrite a plainly-written enactment,' or to presume that the drafter intended a meaning other than the one 'expressed by way of the plain language.'" U.S. Bank, N.A. v Hough, 210 N.J. 187, 199 (2012) (citation omitted).

Succinctly stated, the plain and unambiguous language of N.J.S.A. 18A:37-14 does not support petitioner's position. Rather, as the Commissioner explained in Wehbeh v. Verona Bd. of Educ., EDU 10981-18, Comm'r, (February 4, 2020) https://www.nj.gov/education/legal:

> [A] finding of HIB requires three elements. First, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic and, second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. (Emphasis added.)

See also N.U. v. Mansfield Bd. of Educ., EDU 09701-20, Comm'r, (August 10, 2022) https://www.nj.gov/education/legal; R.H. and M.H. o/b/o A.H. v. Sayreville Bd. of Educ., EDU 09435-17 and EDU 14833-17 (consolidated), Comm'r, (September 23, 2021) https://www.nj.gov/education/legal; Klapach v. Fort Lee Bd. of Educ., EDU 5069-20, Comm'r, (April 6, 2021) https://www.nj.gov/education/legal. The conduct must also take

place on school property, at a school-sponsored function, on a school bus or off school grounds as provided by N.J.S.A. 18A:37-15.3.

Indeed, the Commissioner in Wehbeh specifically rejected petitioner's asserted construction of the statute:

> The Initial Decision incorrectly views subsection (a), that a reasonable person should know the act will have a harmful effect, as the third requirement, with an additional fourth requirement being a choice between subsections (b) and (c). As a matter of standard statutory construction, the term "or" between subsections (b) and (c) also applies to subsection (a), such that a demonstration of any of these three criteria can support a finding of HIB.
>
> [Id. at footnote 2.]

Turning to the evidence, I **CONCLUDE** that petitioner failed to sustain her burden of establishing that the Board acted in an arbitrary, capricious, or unreasonable manner in finding that T.R. committed an act of HIB.

Regarding the first element, in defining HIB as an action "that is reasonably perceived as being motivated either by any actual or perceived characteristic," N.J.S.A. 18A:37-14, "the statute requires an analysis of how the actor's motivation is perceived and whether that perception is reasonable[;] [i]t does not require an analysis of the actual motivation of the actor." R.H. and M.H.; Wehbeh. Here, it was not arbitrary, capricious, or unreasonable for the Board to conclude that a reasonable person would consider T.R.'s Snapchat posts to be motivated by the target student's distinguishing or perceived characteristics regarding her appearance, including her weight and sexuality.[3]

Regarding the second element, there is ample evidence in the record that T.R.'s Snapchat posts caused a substantial disruption to or interference with "the orderly operation of the school or the rights of other students[.]" Viturello testified that the victim,

[3] T.R.'s comments include, among others, that the target student "looks like medusa with her new hair"; "her and [another student] probably weigh as much as our whole friend group combined"; "nobody can ever say she wakes up on the wrong side of the bed because she wakes up on both"; "she takes up more storage than my PC has"; and "why would she even take mirror pics like you can't even see part of her cause it goes past the mirror." (See J-1 at R006; J-7; J-13.)

Susan, "was very anxious about the situation, was very impacted, [and] needed multiple counseling sessions[.]" She also expressed fear of going to the high school because the incident involved not only Long Hill students but students in surrounding towns. Similarly, Backer testified that Susan "was visually very upset" about the comments said about her, she was crying and embarrassed, and she expressed concern about going to the high school. In addition, Viturello testified that the student who reported the information, Jane, was "very concerned about retribution" from the students involved in the conduct. Indeed, Jane's parents signed her out of the school after she reported the incident and Jane remand homeschooled for the remainder of the 2021–2022 school year. Viturello testified that he spoke with T.R.'s mother, who was concerned about T.R.'s mental health based on his involvement in the incident. This resulted in school staff conducting a risk assessment at T.R.'s home. Backer further testified that there was an interference with operation of the school as a whole and the incident "had a substantial interference with the school day." She described that "there were about 25 students that were involved on the Snapchat, so clearly it was spoken about within the middle school halls"; "[t]here were a lot of students that were interviewed"; and "there were a lot of staff members that were involved in the interview process and the HIB investigation[.]" Accordingly, given this evidence, the Board was not arbitrary, capricious, or unreasonable in finding a substantial disruption to the school environment and the rights of multiple students.

Regarding the third element, an act of HIB is one that "a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student," "has the effect of insulting or demeaning any student," or "creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student." N.J.S.A. 18A:37-14. Plainly, T.R.'s comments had the "effect of insulting or demeaning" Susan. Backer further explained that the conduct created a hostile education environment as Susan relayed that she did not want to go to the high school where the involved students would be attending, and Viturello noted that Susan needed counseling and Jane left the school. In short, given this evidence, the Board was not arbitrary, capricious, or unreasonable in finding that T.R.'s conduct satisfied N.J.S.A. 18A:37-14(b) and (c).

The crux of petitioner's argument focuses on whether "a reasonable person should know, under the circumstances, [that T.R.'s comments] will have the effect of physically or emotionally harming a student[.]" N.J.S.A. 18A:37-14(a). Apart from the fact that, even if this issue is resolved in petitioner's favor, the HIB finding is supported by the other two alternative criteria, I am unpersuaded by petitioner's argument. Although T.R. testified regarding his belief that his comments would never get back to Susan based on his understanding that he was talking in a private group on Snapchat, and the chats are automatically deleted after twenty-four hours, the governing standard is objective, not subjective. The pertinent inquiry is what a reasonable person should know under the circumstances, not what T.R. knew. In other words, the statute does not "require the actor to have actual knowledge of the effect that [his/her] actions will have, or to specifically intend to bring about that effect." Wehbeh. Rather, it requires "only that a reasonable person should know there would be a harmful effect, not that the actor knows there would be such an effect." Ibid.

There is no doubt that a reasonable person should and would know that T.R.'s social media posts would have the effect of emotionally harming Susan based on the insulting and demeaning content of the comments. T.R.'s subjective intention to keep his comments private is not controlling. Further, a reasonable 8th grade student would be aware of the ability to screenshot texts or pictures and, thus, should know, under the circumstances, that the posted insults may not remain confined to the Snapchat participants and might be revealed to Susan even if the Snapchat posts later disappeared. Given the ease under which electronic communications may be copied or shown to other persons, it is certainly reasonable to expect a thirteen-year-old student to understand that someone could disseminate his comments regardless of the forum in which they were posted. In this regard, Viturello testified that although it was Snapchat, there were over two dozen students on it, and "knowing middle school students, it's very reasonable to understand that someone's going to share a conversation that was more than one comment." He further noted that participants can screenshot or camera-shot the information posted on Snapchat "so the information travels." Backer explained, "[m]aking fun of someone's appearance, [and] their sexuality, . . . a normal person would understand that . . . would be hurtful to that person and could cause emotional harm." Backer believed that a reasonable 8th grader would know under the circumstances that the conduct that

T.R. admitted to would have the effect of physically or emotionally harming a student. She testified that "a reasonable 8th grade student would be aware that there are negative implications associated with that kind of language," and a "reasonable person would think that using that language with a group of 25 plus students would get back to that student." Simply put, the evidence fails to establish that the Board's conclusion that "a reasonable person should know, under the circumstances, [that T.R.'s comments] will have the effect of physically or emotionally harming" Susan was arbitrary, capricious, or unreasonable.

N.J.S.A. 18A:37-15.3 provides that conduct may be considered HIB when it takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in N.J.S.A. 18A:37-15.3. In turn, N.J.S.A. 18A:37-15.3 instructs that HIB policies adopted by a school district board of education "shall include provisions for appropriate responses to [HIB] . . . that occurs off school grounds, in cases in which a school employee is made aware of such actions." Additionally, N.J.A.C. 6A:16-7.5 directs:

> (a) School authorities have the right to impose a consequence on a student for conduct away from school grounds that is consistent with the district board of education's code of student conduct, pursuant to N.J.A.C. 6A:16-7.1.
>
> 1. This authority shall be exercised only when it is reasonably necessary for the student's physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds, pursuant to N.J.S.A. 18A:25-2 and 18A:37-2.
>
> 2. This authority shall be exercised only when the conduct that is the subject of the proposed consequence materially and substantially interferes with the requirements of appropriate discipline in the operation of the school.
>
> 3. The consequence pursuant to (a) above shall be handled in accordance with the district board of education's approved code of student conduct, pursuant to N.J.A.C. 6A:16-7.1, and as appropriate, in accordance with N.J.A.C. 6A:16-7.2, 7.3, or 7.4.

> (b) School authorities shall respond to harassment, intimidation, or bullying that occurs off school grounds, pursuant to N.J.S.A. 18A:37-14 and 15.3 and N.J.A.C. 6A:16-1.3, 7.1, and 7.7.

Accordingly, a board of education is required to investigate HIB complaints even if they occur outside of school. Here, the Board received an HIB complaint involving Snapchat posts that occurred outside of school hours, so it was required to investigate the allegations. As the Snapchat posts involved students who attended CMS and substantially disrupted and interfered with the orderly operations of the school and the rights and wellbeing of the victim and other students, the Board was not arbitrary, capricious, or unreasonable in investigating the conduct that occurred off school grounds, finding that it met the definition of HIB, and imposing consequences for the unwarranted conduct.

In sum, the elements of the legal definition of an act of HIB have been satisfied in this case, and the Board's decision to uphold the HIB determination is not arbitrary, capricious or unreasonable.

Finally, I **CONCLUDE** that the imposed six-day OSS did not violate T.R.'s First Amendment rights, and the OSS cannot be said to be arbitrary, capricious, or unreasonable.

Initially, it is observed that the six-day OSS was imposed on or about November 21, 2021, based on Viturello's determination that T.R. had violated various requirements of the CMS Code of Conduct. Since the imposed consequence consisted of a short-term suspension, no formal appeal hearing before the Board was required, and petitioner's remedy consisted of an appeal to the Commissioner. See N.J.A.C. 6A:16-7.2. Here, petitioner filed her Petition of Appeal on or about April 12, 2022, which is beyond the required 90-day appeal period. See N.J.A.C. 6A: 3-1.3(i). However, given that HIB Investigation Report also lists the six-day OSS as a consequence for the HIB violation (J-1 at R014), I will consider petitioner's argument in the context of the Board's HIB determination.

In Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969), the United States Supreme Court recognized that "conduct by the student, in class or out of it, which for any reason -- whether it stems from time, place, or type of behavior -- materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech." Id. at 513. More recently, the Supreme Court addressed a student's First Amendment rights in the context of off-campus speech in Mahanoy Area Sch. Dist. v. B.L., 594 U.S. 180 (2021).

In Mahanoy, a public high school student used, and transmitted to her Snapchat friends, outside of school hours and away from the school, vulgar language and gestures criticizing the school's cheerleading team after she did not make the varsity cheerleading team. Id. at 183-184. In response, the school suspended the student from the junior varsity cheerleading squad for the upcoming year. Id. at 185.

The Court in Mahanoy made clear that "schools have a special interest in regulating speech that 'materially disrupts classwork or involves substantial disorder or invasion of the rights of others.'" 594 U.S. at 188 (quoting Tinker, 594 U.S. at 513). The Court held that "[t]hese special characteristics call for special leeway when schools regulate speech that occurs under its supervision." Id. at 188. The Court rejected the notion that "the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus," and recognized that "[t]he school's regulatory interests remain significant in some off-campus circumstances." Ibid. The Court declined to adopt a specific list of off-campus behavior that may call for school regulation, believing that it "would deny the off-campus applicability of Tinker's highly general statement about the nature of a school's special interests." Id. at 189. The Court explained:

> Particularly given the advent of computer-based learning, we hesitate to determine precisely which of many school-related off-campus activities belong on such a list. Neither do we now know how such a list might vary, depending upon a student's age, the nature of the school's off-campus activity, or the impact upon the school itself. Thus, we do not now set forth a broad, highly general First Amendment rule stating just what counts as "off campus" speech and whether or how ordinary

> First Amendment standards must give way off campus to a school's special need to prevent, e.g., substantial disruption of learning-related activities or the protection of those who make up a school community.
>
> [Id. at 189.]

The Court identified "three features of off-campus speech that often, even if not always, distinguish schools' efforts to regulate that speech from their efforts to regulate on-campus speech," and that "[t]hose features diminish the strength of the unique educational characteristics that might call for special First Amendment leeway." Id. at 189. "First, a school, in relation to off-campus speech, will rarely stand in loco parentis," and thus, "off-campus speech will normally fall within the zone of parental, rather than school-related, responsibility." Ibid. "Second, from the student speaker's perspective, regulations of off-campus speech, when coupled with regulations of on-campus speech, include all the speech a student utters during the full 24-hour day," meaning that "courts must be more skeptical of a school's efforts to regulate off-campus speech, for doing so may mean the student cannot engage in that kind of speech at all." Id. at 189-190. "Third, the school itself has an interest in protecting a student's unpopular expression, especially when the expression takes place off campus" in that "America's public schools are the nurseries of democracy [and] [o]ur representative democracy only works if we protect the 'marketplace of ideas.'" Id. at 190. In this regard, the Court held:

> Given the many different kinds of off-campus speech, the different potential school-related and circumstance-specific justifications, and the differing extent to which those justifications may call for First Amendment leeway, we can, as a general matter, say little more than this: Taken together, these three features of much off-campus speech mean that the leeway the First Amendment grants to schools in light of their special characteristics is diminished. We leave for future cases to decide where, when, and how these features mean the speaker's off-campus location will make the critical difference.
>
> [Ibid.]

Regarding the student's Snapchat posts, the Court stated:

> Putting aside the vulgar language, the listener would hear criticism, of the team, the team's coaches, and the school—in a word or two, criticism of the rules of a community of which B.L. forms a part. This criticism did not involve features that would place it outside the First Amendment's ordinary protection. B.L.'s posts, while crude, did not amount to fighting words. And while B.L. used vulgarity, her speech was not obscene as this Court has understood that term. To the contrary, B.L. uttered the kind of pure speech to which, were she an adult, the First Amendment would provide strong protection . . . . ("The inappropriate . . . character of a statement is irrelevant to the question whether it deals with a matter of public concern").
>
> Consider too when, where, and how B.L. spoke. Her posts appeared outside of school hours from a location outside the school. She did not identify the school in her posts or target any member of the school community with vulgar or abusive language. B.L. also transmitted her speech through a personal cellphone, to an audience consisting of her private circle of Snapchat friends. These features of her speech, while risking transmission to the school itself, nonetheless . . . diminish the school's interest in punishing B.L.'s utterance.
>
> [Id. at 190-191; Citations omitted and Emphasis added.]

In concluding that the student's First Amendment rights had been violated because the school's special interest in regulating some off-campus student speech was not sufficient to overcome the student's First Amendment interests, the Court, among other things, found "no evidence in the record of the sort of 'substantial disruption' of a school activity or a threatened harm to the rights of others that might justify the school's action." Id. at 192. Rather, the record revealed "that discussion of the matter took, at most, 5 to 10 minutes of an Algebra class 'for just a couple of days' and that some members of the cheerleading team were 'upset' about the content of B.L.'s Snapchats." Ibid.

The facts of this case are markedly distinguishable from those existing in Mahanoy. T.R.'s comments were unrelated to any public concern or community interest and contributed nothing to the "marketplace of ideas." Further, in contrast to the social media posts in Mahanoy, T.R.'s posts targeted another student, Susan, with offensive and

insulting comments about her physical appearance. See Doe v. Hopkinton Public Schools, 19 F. 4th 493, 506 (1st Cir. 2021) ("'bullying is the type of conduct that implicates the governmental interest in protecting against the invasion of the rights of others, as described in Tinker.'") (Citations omitted.) And T.R.'s comments "materially disrupt[ed] classwork or involve[d] substantial disorder or invasion of the rights of others." Tinker, 594 U.S. at 513; Mahanoy 594 U.S. at 188. As noted, multiple students were affected by the Snapchat posts. Susan was very upset about the comments and expressed concern about going to the high school, necessitating the provision of counselling; Jane left the school; and T.R. himself required a mental health risk assessment. Additionally, the Snapchat posts were talked about in the middle school halls and caused a substantial disruption to the school. See R.H. and M.H. (wherein the Commissioner rejected the petitioner's argument that Mahanoy prevented the Board from regulating her speech and held that "the impact of the social media post on the school violated the HIB statute and is within the school's authority to regulate.").

The Board's HIB Policy (J-23), along with its separate Conduct/Discipline Policy (J-8), address the right and authority of the chief school administrator to impose a consequence on a student for conduct away from school grounds, which essentially reiterates the provisions of N.J.A.C. 6A:16-7.5. As previously addressed, the Snapchat posts involved students who attended CMS and substantially disrupted and interfered with the orderly operations of the school, coupled with the rights and wellbeing of the victim and other students. Accordingly, I **CONCLUDE** that the school had the authority to impose a consequence for T.R.'s conduct, and the imposition of the six-day OSS was consistent with the governing law and not arbitrary, capricious, or unreasonable.

ORDER

Based upon the foregoing, I **ORDER** that the Petition of Appeal be and hereby 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 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.

October 28, 2024
DATE

Margaret M Monaco
MARGARET M. MONACO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

List of Witnesses

For Petitioner:

T.R.

J.R

For Respondents:

Michael Viturello

Melissa Backer

List of Exhibits in Evidence

Joint:

J-1 HIB Investigation Report

J-2 E-mails dated November 11 and 12, 2021

J-3 Letter from Principal Viturello to T.R.'s parents dated November 12, 2021

J-4 Letter from Principal Viturello to T.R.'s parents dated November 12, 2021

J-5 Letter from Superintendent Mucci to T.R.'s parents dated November 22, 2021

J-6 Letter from Douglas M. Silvestro, Esq., to Jerald F. Oleske, Esq., dated November 23, 2021

J-7 Screenshots of Snapchat messages

J-8 Board Policy 5131 - Conduct/Discipline

J-9 Central Middle School 2021–2022 Student Manual and Code of Conduct

J-10 E-mail dated September 10, 2021

J-11 Petition of Appeal

J-12 Answer to Petition of Appeal

J-13 T.R.'s Statements in Snapchat

J-14 E-mail dated December 6, 2021 and Incident Notes Log

J-15 No exhibit admitted

J-16 No exhibit admitted

J-17 Letter from Douglas M. Silvestro, Esq., to Jerald F. Oleske, Esq., dated January 19, 2022

J-18 E-mails dated November 29, 2021

J-19 E-mail dated November 28, 2021

J-20 Letter from Kristen Duesel Oleske, Esq., and Jerald F. Oleske, Esq., to Principal Viturello dated November 18, 2021

J-21 Joint Statement of Undisputed Facts

J-22 Text messages

J-23 Board Policy 5131.1- Harassment, Intimidation and Bullying

445-24
OAL Dkt. No. EDU 00881-23
Agency Dkt. No. 12-1/23

New Jersey Commissioner of Education

Final Decision

Margaret Bennett,

Petitioner,

v.

Judith Sullivan, Tom Bogdansky, Doreen Mariani, Marianna Emmolo, and Kim Ansh,

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.

Petitioner—a parent, taxpayer, and community member—alleges that respondents, majority members of the Ramapo Indian Hills Regional High School Board of Education (Board), violated various Board policies, regulations, and laws when conducting Board business. She claims that their actions, mainly pertaining to making certain motions and voting on them, have harmed the school district. The allegations involve the Board's amendment of its legal services policy, and a motion to pause the district's Energy Savings Improvement Program, without first consulting the Board Superintendent; voting against hiring a substitute teacher; rejecting purchase orders from a certain appliance store; obstruction of harassment, intimidation, and bullying (HIB) investigations through Board votes; and obstruction of proper recording of Board

minutes. The most recent amended petition dated March 29, 2023, states that petitioner is seeking "strong sanctions and injunctive measures" against respondents for their actions.

Respondents moved to dismiss the petition for numerous reasons, including that petitioner lacks standing. The Administrative Law Judge (ALJ) granted respondents' motion upon determining that petitioner lacks standing. The ALJ concluded that petitioner failed to demonstrate she was harmed or affected by respondents' actions in a direct and meaningful way. Additionally, citing *N.J.A.C.* 6A:3-1.2, the ALJ concluded that petitioner failed to establish that she is an "interested person" who would be "substantially, specifically, and directly affected by the outcome of this matter." The ALJ further concluded that while petitioner claimed that respondents' actions could bring about lawsuits involving the district and harm children, she failed to provide support for those claims.

In her exceptions, petitioner maintains that she has standing as a taxpayer because taxpayers bear the financial consequences of respondents' actions. Alternatively, she argues that even if she lacks standing, the Commissioner should nonetheless make a formal statement, issue a reprimand, or make recommendations to hold respondents accountable. In reply, respondents contend that petitioner's exceptions fail to provide a legal basis to refute the ALJ's conclusion that she lacks standing. They argue that petitioner's status as a taxpayer is insufficient to confer standing in a matter before the Commissioner because she has not alleged some form of particularized harm unique to her and distinct from her general concerns as a community member. They also assert that petitioner's exceptions are procedurally defective because they do not conform with *N.J.A.C.* 1:1-18.4.

Upon review, the Commissioner concurs with the ALJ that petitioner lacks standing and does not qualify as an "interested person" under *N.J.A.C.* 6A:3-1.2. "Restrictions on standing apply to those who initiate administrative proceedings before the Commissioner." *Cantatore v. Bd. of Educ. of Carlstadt-East Rutherford Reg'l High Sch. Dist., Bergen Cnty.*, OAL Dkt. No. 05498-22, Initial Decision at 9, *adopted*, Commissioner Decision No. 153-23 (May 25, 2023). To pursue a controversy or dispute arising under the school laws, a person must be an "interested person" as defined by *N.J.A.C.* 6A:3-1.2. *Ibid.*

N.J.A.C. 6A:3-1.2 defines "interested person" as "a person who will be substantially, specifically, and directly affected by the outcome of a controversy before the Commissioner." The record fails to establish that petitioner has children who are currently attending school in the Ramapo Indian Hills Regional High School District. Thus, she will "suffer no direct personal harm or inconvenience from the actions" respondents took. *Herron v. Bd. of Educ. of Montclair*, Commissioner Decision No. 233-14 at 2 (June 2, 2014). Furthermore, while she is a resident and taxpayer, she "has alleged no personal financial ramifications" from respondents' actions. *Ibid.* Instead, she alleged that respondents' actions could bring about lawsuits involving the district and harm children. Accordingly, she does not qualify as an "interested person" under *N.J.A.C.* 6A:3-1.2. *See also Stubaus v. Whitman*, 339 *N.J. Super.* 38, 47-48 (App. Div. 2001) (explaining that standing to sue requires an adverse position, a personal stake in the outcome, and the "substantial likelihood" of suffering some harm in the event of an unfavorable decision).

The Commissioner further finds and concludes that, even assuming petitioner had established standing, the remedies she seeks in her petition—"strong sanctions and injunctive measures"—are not specifically available to her under the school laws and regulations upon

which she relies. While the Commissioner has jurisdiction to hear disputes arising under school laws and regulations, in this instance petitioner has failed to state a claim upon which relief may be granted by the Commissioner. *See Cardillo v. Bd. of Educ. of Paterson, Passaic Cnty.*, Commissioner Decision No. 192-24 at 3 (May 15, 2024) (holding that a petition must be dismissed for failure to state a claim "if it has failed to articulate a legal basis entitling [petitioner] to relief").

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

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2024
Date of Mailing: December 11, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 00881-23
AGENCY DKT. NO. 12-1/23

MARGARET BENNETT,
Petitioner,
v.
JUDITH SULLIVAN, TOM BOGDANSKY, DOREEN MARIANI, MARIANNA EMMOLO, AND KIM ANSH,
Respondents.

Margaret Bennett, petitioner, pro se

Kerri A. Wright, Esq., for respondents (Porzio, Bromberg & Newman, attorneys)

Record Closed: September 1, 2024 Decided: September 30, 2024

BEFORE **JOANN LaSALA CANDIDO**, ALAJ:

STATEMENT OF THE CASE

Respondents, the majority members of the Ramapo Indian Hills Regional School District Board of Education (Judith Sullivan, Tom Bogdansky, Doreen Mariani, Marianna

Emmolo, and Kim Ansh), filed a Motion to Dismiss petitioner's (Margaret Bennett) Amended Petition dated January 25, 2023, which sought emergent relief and alleged various violations/misconduct by the respondents in their positions as members of the Ramapo Indian Hills Regional Board of Education, although it did not name the Board itself as a party. Chief among the issues discussed here is whether petitioner has standing to bring this action.

PROCEDURAL HISTORY

The matter was transmitted to the New Jersey Office of Administrative Law on January 27, 2023, as an emergent matter, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. The emergent relief sought was solely on the January 5, 2023, hearing vote by respondent Sullivan to not renew the contract for Fogarty and Hara's law firm to act as Board counsel. Petitioner sought the injunctive relief in the form of removing respondent Sullivan's "yes" vote and replacing her vote with recusal for apparent conflict of interest. The petitioner requested that the remainder of her petition be considered by the Commissioner on a non-emergent basis.

The emergent relief was denied by Administrative Law Judge Jude-Anthony Tiscornia on February 7, 2023, and upheld by Commissioner of the Department of Education on March 7, 2023. The Commissioner found the existing petition sufficient to allow proceedings regarding those issues to proceed.

Petitioner filed the amended petition on April 5, 2023. Respondents filed this motion to dismiss the amended petition on May 11, 2023.

Petitioner filed her opposition on May 19, 2023. Respondents filed their supplemental submission on June 2, 2023. Petitioner filed her response to the supplemental submission on June 13, 2023. Administrative Law Judge Jude-Anthony Tiscornia was appointed to the Hudson County Superior Court, and the matter was transferred to the undersigned on or about September 1, 2024.

ARGUMENTS OF THE PARTIES

By way of background, petitioner's amended petition alleges that statutory/code provisions[1] were violated when respondent Ansh motioned to amend Board Policy 0174 regarding legal services without consulting the superintendent beforehand. She claims that changes made to the Board Policy imposed risk to the District and "obstruct[ed] the operation of the district, impede[d] the Superintendent, Business Administrator, and other administrators such as the Director of Special Education, from doing what they are certificated to do which includes the Superintendent's ability to administer the schools."

Amended Petition 2. She further alleges that the respondents violated Board Policy 0131, which only allows for first reading policy amendments when there is an emergency, and Board Policy 1210 regarding board–superintendent relations due to there not being consultation with the superintendent prior to board policies being revised. Petitioner avers that a violation of Board Policy 0146 by overstepping their authority as board members improperly paused an Energy Savings Improvement Plan that had been approved previously, which imposed a financial burden on the District.

Petitioner further asserts that respondents violated Board Policy 0164, violating Robert's Rules, and that the Board's actions with regard to HIB resolutions contravened the Anti-Bullying Bill of Rights Act as well as N.J.A.C. 6A:16-7.1, sending the District down the path of litigation.

Petitioner also claims that the respondents obstructed the recording of minutes at Board meetings and violated Board Policy 4125 by voting against hiring a specific substitute teacher. She alleges obstruction of N.J.S.A. 18A:27-4.1 as well. Lastly, petitioner requests an injunction to avoid the respondents violating Board Policy 6450, which addresses choice of vendor.[2]

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[1] Petitioner references N.J.A.C. 6A:23-5.2, N.J.S.A. 18A:11-1, and N.J.S.A. 18A:17-20. It appears that N.J.A.C. 6A:23-5.2 is a former version of the code.

[2] Petitioner refers to this as Count 9, but it is the second Count 9 listed, and therefore the undersigned will refer to it as Count 10.

Respondents argue that this matter should be dismissed based upon the following. First, respondents argue that the petitioner has failed to advance a cause of action. Second, respondents argue that the petition should be dismissed for the petitioner not having standing. As respondents state:

> Petitioner is merely a resident of one of the towns served by the Board, but she has neither alleged any distinct injury or harm to herself or her interests, nor can the relief that she seeks be remedied by the Commissioner. Instead, the amended petition seeks to punish Respondents for their participation in Board action affecting the District, rather than Petitioner herself.
>
> [Respondents' Motion 9.]

Third, respondents argue that petitioner's application omitted an indispensable party—specifically, the Board. Fourth, respondents argue that petitioner's allegations of violations of board policy are not cognizable claims for the Commissioner to decide. Fifth, respondents argue that possibly all the issues in this matter are moot. And sixth, respondents argue that the petitioner has failed to allege facts that support petitioner's causes of action.

Regarding respondents' argument stating that petitioner does not have standing in this matter, petitioner argues in part that:

> Petitioner is a citizen of the municipality served by the Board of Education on which Respondents are Trustees. Petitioner therefore has standing to challenge its unlawful acts. Sophisticated lawyering by Ms. Wright notwithstanding, these numerous, well-documented instances of blatant misconduct by the [Board] require reprimand by the Commissioner of Education. Further, the acts of misconduct which were reversed by subsequent corrective action of the Board are clearly capable of repetition; therefore, the Commissioner should intervene with a written ruling to guard against the repetition of such misconduct in the future.
>
> [Petitioner's Opposition 4.]

Furthermore, petitioner states that "right now Respondents make up a mission-driven board-within-a-board blinded by ill-conceived premises that has absolutely negatively impacted taxpayers of this regional school district. Petitioner is one of those taxpayers. Petitioner has and continues to be harmed by Respondents' actions." Petitioner's Opposition 4. Petitioner stresses, "More importantly Your Honor, this is about the children." Ibid. And the petitioner argues:

> Petitioner has standing to object to the detrimental actions of these Respondents. Petitioner is a taxpayer, parent, active community member. She is a watchdog, a citizen who cares. District/municipality resources are being squandered. The tab grows exponentially. There is a direct harm to Petitioner as a taxpayer who supports the high schools. Petitioner is seeking a determination that the Respondents' actions were wrong.
>
> [Petitioner's Opposition 5.]

In respondents' supplemental letter brief, respondents argue that "Petitioner cannot just file a petition because she is a taxpayer, especially when she alleges no personal ramifications being suffered—above anything imposed on every other taxpayer in the district—and when the petition is based largely on ideological differences with the direction taken by the Board." Respondents' Supplemental 4. Respondents state that "[w]hether an individual has standing is not a function measured against how much someone 'cares' about an issue." Ibid. Respondents continue, "Instead, in order to be an interested party with standing before the Commissioner, Petitioner needs to be 'substantially, specifically and directly affected by the outcome of a controversy before the Commissioner.' N.J.A.C. 6A:3-1.2. She is not." Ibid.

Furthermore, respondents state that "[s]he articulates no harm actually being visited upon her as a result of the Board actions of which she complains. And, as detailed within Respondents' motion, and conceded within Petitioner's opposition, Petitioner's claims are on behalf of others." Ibid. Respondents argue that the "[p]etitioner does not state with any specificity how she actually is harmed. She does not explain what the 'absolute negative impacts' are." Ibid. Regarding her reference about the matter being about the children, respondents argue that "[p]etitioner must have standing. It must be about her, not about children." Id. at 5.

Petitioner argues in the third person in response to the respondents' supplemental brief, "Petitioner is affected by the outcome. She is a vested community member, parent and taxpayer. She has standing." Petitioner's Response to Supplemental 2.

LEGAL ANALYSIS AND CONCLUSION

While the respondents' motion uses the term Motion to Dismiss, it should be addressed using the Motion for Summary Decision standard. As has been previously stated in an Office of Administrative Law decision in another matter, "Respondent's motion to dismiss is akin to a motion for summary decision. Summary decision is the administrative counterpart to summary judgment in the judicial arena." Bacchues v. Bd. of Trs., Police and Firemen's Ret. Sys. of N.J., 2021 N.J. AGEN LEXIS 744 (July 19, 2021).

N.J.A.C. 1:1-12.5(b) states that a Motion for Summary Decision is granted when "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." Furthermore, "When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." N.J.A.C. 1:1-12.5(b). As the Office of Administrative Law has previously stated in a special education matter, "The standard governing a motion for summary decision is substantially the same as a motion for summary judgment under Rule 4:46-2. Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 121 (App. Div. 1995) (citing Frank v. Ivy Club, 228 N.J. Super. 40, 62 (App. Div. 1988))." Middletown Twp. Bd. of Educ. v. R.A. and B.A. o/b/o H.A., 2022 N.J. AGEN LEXIS 274 (Apr. 11, 2022). Furthermore:

> In deciding a motion for summary judgment, the court must determine whether the evidence presented, assumed to be true, and viewed in the light most favorable to the non-moving party is "sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party." Brill

> v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995). The "judge's function is not . . . 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 (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)). In other words, the essential question is "whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one-sided that one party must prevail as a matter of law." Brill, 142 N.J. at 533 (citing Liberty Lobby, 477 U.S. at 250).
>
> [Id. at *11–12.]

Standing is an issue of central importance in every case. Without standing, an individual cannot bring a case. As the Commissioner of Education wrote in another matter:

> As referenced in the Initial Decision, standing is a threshold justiciability determination about whether a litigant is entitled to bring an action before a court or other tribunal. Stubaus v. Whitman, 339 N.J. Super. 38, 47 (App. Div., 2001). In order to have standing, a party must be in a position adverse to other parties, have a palpable stake in the outcome of the litigation, and be likely to suffer harm in the event of an unfavorable decision. Ibid.
>
> [Herron v. Montclair Bd. of Educ., 2014 N.J. AGEN LEXIS 1146, *2 (June 2, 2014).]

Administrative Law Judge Elissa Mizzone Testa wrote in a previous Board of Education matter, "Restrictions on standing apply to those who initiate administrative proceedings before the Commissioner." Cantatore v. Carlstadt-East Rutherford Reg'l High Sch. Dist. Bd. of Educ., 2023 N.J. AGEN LEXIS 221, *9, Initial Decision (Apr. 26, 2023), adopted, Comm'r (May 25, 2023), https://www.nj.gov/education/legal/commissioner/2023/153-23.pdf. Furthermore, "The Commissioner has clarified through regulation as well as case law that only an 'interested person,' i.e., one who has standing, may initiate such proceedings. Bedminster Educ. Ass'n v. Bedminster Twp. Bd. of Educ., EDU 6720-05, Comm'r decision (June 16, 2006)." Ibid. N.J.A.C. 6A:3-1.2 defines an interested person as "a person(s) who will be

substantially, specifically, and directly affected by the outcome of a controversy before the Commissioner." And as explained by Judge Testa:

> Consequently, petitioners must show that they will "be affected by the outcome in a direct and meaningful way" before they may proceed in a contested case. U.K. & G.K. ex rel D.K. v. Clifton Bd. of Educ., 93 N.J.A.R.2d (EDU) 71; Kenwood v. Montclair Bd. of Educ., EDU 8858-81, Initial Decision, (Apr. 23, 1982), adopted, Comm'r (June 14, 1982)). Thus, to have standing, a complaining party must demonstrate "some measurable amount of detrimental impact on the complaining party's personal rights." S.J. v. Mountain Lakes Bd. of Educ., EDU 7081-03, Initial Decision, (Oct. 7, 2003) (citing, Salorio v. Glaser, 82 N.J. 482, 491 (1998)).
>
> A deficiency in standing is fatal to a petition such as the one at issue here. "The dismissal of cases brought by litigants who will not be effected by the outcome in a direct and meaningful way is required by this regulation." S.J. v. Mountain Lakes Bd. of Educ., EDU 7081-03, Initial Decision, (Oct. 7, 2003) (citing, S.R. and E.D.R. o/b/o E.D.R., Jr. v. Montague Bd. of Educ., EDU 5300-03, 201 AGEN LEXIS 583 (Oct. 3, 2001)).
>
> [Cantatore, 2023 N.J. AGEN LEXIS 221, at *10.]

Assuming arguendo that the respondents' reasons for summary decision other than for lack of standing fail, the undersigned must grant respondents' motion for summary decision on the basis of the petitioner lacking standing first and foremost.

Petitioner's amended petition can be most appropriately summarized as alleging that the respondents violated Board policy or New Jersey State statutory/code provisions when the respondents were acting as members of the Board. Petitioner argues that she is a taxpayer, parent, active community member, watchdog, and a citizen who cares. This, however, does not show directly any harm toward her by the respondents' actions, nor has she provided any information indicating that she has been affected by the respondents' actions in a direct and meaningful way. Petitioner has made claims that the actions of the respondents could risk lawsuits to the district and harm the children, but without proof of same.

I must reiterate that standing is central to any matter before the Commissioner, just like it is in any case in any court. The petitioner does not have standing. Without standing, the petitioner's case cannot proceed. Petitioner has failed to establish that she is an interested person who would be "substantially, specifically, and directly affected by the outcome" of this proceeding. N.J.A.C. 6A:3-1.2. While concluding that petitioner has no standing to bring this action and the Commissioner no jurisdiction to hear it, no findings are made with respect to respondents' argument that the claims are fatally flawed for failing to name an indispensable party or any claim of violations of Board policies or mootness. Because of the lack of standing, I **CONCLUDE** that there are no issues of material fact and Summary Decision is granted in favor of respondents.

Based upon the above, the respondents' motion for Summary Decision is **GRANTED**.

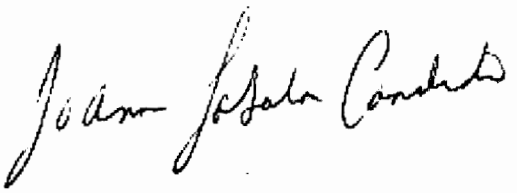
ORDER

Accordingly, it is hereby **ORDERED** that respondents' motion for Summary Decision is **GRANTED** and petitioner's amended petition be and is hereby **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.



September 30, 2024

DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency: September 30, 2024

Date Mailed to Parties: September 30, 2024

ljb

446-24
OAL Dkt. No. EDU 02431-24
Agency Dkt. No. 2-1/24

New Jersey Commissioner of Education

Final Decision

Jennifer Bard,

Petitioner,

v.

Board of Education of the Borough of Brielle, Monmouth County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that, pursuant to *N.J.S.A.* 18A:6-9, the Commissioner's jurisdiction does not include disputes concerning the conduct of school elections.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2024
Date of Mailing: December 11, 2024

[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
MOTION TO DISMISS
OAL DKT. NO. EDU 02431-24
AGENCY DKT. NO. 2-1/24

JENNIFER BARD,
Petitioner,
v.
BOARD OF EDUCATION OF THE BOROUGH OF BRIELLE, MONMOUTH COUNTY,
Respondent.

Jennifer Bard, petitioner, pro se

Cherie L. Adams, Esq., for respondent, Board of Education of the Borough of Brielle (Adams Lattiboudere Croot & Herman, LLC, attorney)

Record Closed: October 7, 2024 Decided: October 30, 2024

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

Petitioner, Jennifer Bard, challenges the eligibility of a member of the respondent, Board of Education of the Borough of Brielle (BOE), and its actions taken during the school board election.

PROCEDURAL HISTORY

On November 7, 2023, Liam Starkey (Mr. Starkey) was elected to the local BOE. Mr. Starkey was not on the ballot but received 111 write-in votes. The Monmouth County Board of County Canvassers certified the election results, and Mr. Starkey was seated on the BOE in January 2024. On January 3, 2024, the petitioner, Jennifer Bard (Ms. Bard, petitioner) filed a pro se petition of appeal with the Department of Education asking the Commissioner of Education (Commissioner) to investigate two claims about Mr. Starkey and his election to the BOE. On February 15, 2024, the respondent, the Borough of Brielle Board of Education, filed an Answer to the petition. The contested case was transmitted to the Office of Administrative Law (OAL), where it was filed on February 21, 2024. N.J.S.A. 52:14B-1 to N.J.S.A. 52:14B-15 and N.J.S.A. 52:14F-1 to N.J.S.A. 52:14F-13. After several conference calls, respondent filed a Motion to Dismiss on July 18, 2024. Petitioner submitted her response to the motion on August 20, 2024. A status conference was held on October 7, 2024, to clarify the parties' positions, and the matter closed then.

FINDINGS OF FACT

The parties do not dispute many of the background facts in this case. I, therefore, **FIND** the following **FACTS**:

On January 3, 2024, the petitioner filed a pro se petition of appeal with the Department of Education, asking the Commissioner to investigate two claims about Mr. Starkey and his election to the BOE.

The petitioner claimed it was never verified that Mr. Starkey was eligible to be a candidate on election day. The petition alleges that Mr. Starkey was seventeen years old, too young to register to vote, and therefore ineligible to serve on a school board under New Jersey law. Ms. Bard claimed this is "potentially a legitimate but unintended loophole that if nothing else the state legislature might want to review" because "it's not an equal playing field for all write-in candidates if some of them would have been eligible to petition for the ballot and some would not have been." (See Petitioner's Petition.)

Ms. Bard claimed that she heard from "dozens" of Brielle residents across all political affiliations about unsolicited political text messages pertaining to the school board election. (Ibid.) Ms. Bard alleged that they all were sent around 7:31 or 7:32 a.m. on the day of the school board's election, speculating they were likely robo-texts as "defined by the FCC." Ms. Bard did not claim to receive one of these texts herself. (Ibid.)

The petitioner took issue with these texts because they appeared to be linked to New Jersey Senator Vin Gopal's campaign. The core of her complaint was that these messages were "potentially illegal" and undermined the "integrity" of the non-partisan school board. (Ibid.)

Ms. Bard provided two screenshots of texts messages, both from the same number. One is an incomplete image, and the only words that can be seen are "Hi Ronald! This is Jessie volunteering with the Gopal, . . . Donlon, and Peterpaul camp . . . . We have a very important . . . Election coming up in 10 day . . . ." The second says "There are only 2 candidates on the ballot today for 3 seats on the Brielle Board of Education. Please vote for Liam Starkey as a write-in candidate for the third seat. He will provide a young voice for the students. Text Stop to opt out." (Ibid.)

On February 15, 2024, the respondent filed an Answer to the Petition and Affirmative Defenses. On July 18, 2024, the respondent filed a motion to dismiss the petitioner's claim for lack of jurisdiction. The respondent argues that the petition must be dismissed for lack of jurisdiction on the following grounds: "1) authority over election enforcement rests with the superintendent of Elections and the Monmouth County Board of Elections, 2) the Commissioner of Education is statutorily prohibited from ruling on this

matter, and 3) the proper powers for hearing controversies and disputes concerning school board election results are exclusively reserved for Superior Court judges." (Respondent's Brief in Support of Motion to Dismiss at 2.)

The respondent further argues that it

> [complied] with all relevant election laws and statutes. Pursuant to applicable provisions in N.J.S.A. 19:16 through N.J.S.A. 19:19, the Board forwarded election ballots and required documentation to the Monmouth County Board of County Canvassers. Pursuant to N.J.S.A. 19:20-9, the Canvassers then certified the election results of November 7, 2023, and Mr. Starkey, a write-in candidate, as the duly elected candidate to be seated on the Board of Education of the Borough of Brielle.
>
> [Id. at 6.]

Mr. Starkey resigned from the Brielle Board of Education for unknown reasons on August 14, 2024.

On August 20, 2024, the petitioner sent a one-page email[1] to the OAL. (P-1.) On August 26, 2024, this tribunal sent an email to the petitioner inquiring if the email of August 20, 2024, was the petitioner's response to the respondent's Motion to Dismiss, to which the petitioner responded "Yes"[2]. (P-2.) In the petitioner's response to the BOE's motion to dismiss, she stated that even though Mr. Starkey had resigned, it was still "crucial" to pursue the case "to its full resolution." She further states:

> This matter is not merely about one candidate; it highlights a potential loophole in our election laws that could undermine the fairness of future elections if left undressed. Ensuring that all candidates meet the legal requirements to stand for election is fundamental to maintaining public trust in our democratic process."
>
> [P-1.]

[1] For ease of reference this tribunal will mark the email as P-1.
[2] For ease of reference this tribunal will mark this email as P-2.

DISCUSSION AND CONCLUSIONS OF LAW

The first issue is whether the Commissioner of Education and the Office of Administrative Law have jurisdiction to rule on school election controversies challenging the eligibility of a member of a BOE and the actions he took during the campaign. The second issue is whether the Commissioner of Education and the Office of Administrative Law have jurisdiction over campaign communications, specifically unsolicited text messages sent by a third-party political campaign.

The Commissioner of Education has jurisdiction over all disputes arising under school laws but has no jurisdiction over the procedural process of school elections.

> 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**.
>
> [N.J.S.A. 18A:6-9 (emphasis added).]

All "alleged violations of the procedural process for school elections" must instead be brought in Superior Court. City of Orange Twp. Bd. of Educ. v. City of Orange Twp., EDU 01996-17, Order for Emergent Relief (February 28, 2017), <https://njlaw.rutgers.edu/collections/oal>, dismissed for lack of jurisdiction. When a party brings a procedural election claim to the Office of Administrative Law, it must be dismissed because the "Superior Court is the proper forum." City of Orange Twp. Bd. of Educ. v. City of Orange Twp., 451 N.J. Super. 310, 315 (Ch. Div. 2017).

Elections can be challenged on multiple procedural grounds, including that an "incumbent was not eligible to the office at the time of the election." N.J.S.A. 19:29-1(b). These challenges "shall be heard" by the "Superior Court assigned to the county" where the election was held. N.J.S.A. 19:29-2. Election challenges are "commenced by the

filing of a petition . . . signed by at least 15 voters of the country or by any defeated candidate." Ibid. The petition must be "verified by the oath of at least 2 of the petitioners, or by the candidate." Ibid.

Notably, all election challenges must be brought no later than thirty-two days after the election, even when this allows an official to hold a position for which they might not be eligible. N.J.S.A. 19:29-3; see also Davis v. City of Plainfield, 389 N.J. Super. 424, 432 (Ch. Div. 2006); Jones v. Mitchell, 194 N.J. Super. 387, 392 (Law Div. 1983).

Challenging Starkey's Eligibility

There is no statutorily enumerated age requirement to serve on a board of education; however all members must be registered to vote in the district in which they serve, and citizens must be eighteen years old to vote. U.S. Const. amend XXIV, § 2; N.J.S.A. 18A:12-1. In 1973, a sixteen-year-old's petition to run as a candidate for the school board was denied based on his age, and the Superior Court upheld the denial, reasoning that the legislature decided candidates not old enough to vote were not "qualified to occupy the office of board member." Vittoria v. West Orange Bd. of Educ. 122 N.J. Super. 340, 357 (App. Div. 1973). Therefore, school board members must be eighteen years old to serve, but there is no case law addressing if a candidate needs to be eighteen by election day or by the beginning of their term.

The crux of the petitioner's complaint is that if Starkey had petitioned to be on the ballot, he would have probably been deemed ineligible based on his age, and so instead, he skirted the law by mounting a write-in campaign. The complaint argues that he was probably ineligible to run for the school board on election day but admits that he may have been eligible through an unintended, but unfair, loophole. The petitioner does not claim that the BOE or the Commissioner committed any wrongdoing or violated any rules and even goes so far as to say that this is something the "state legislature might want to review." Therefore, this is a procedural election claim beyond the authority of the Commissioner and the Office of Administrative Law. Because this is a statutory interpretation question about state election law procedure, I **CONCLUDE** that it must be brought before the Superior Court.

Furthermore, this claim is time-barred. The election was held on November 7, 2023, and the petitioner did not file the complaint until January 3, 2024. This was fifty-seven days after the election and twenty-five days past the statutory limit. N.J.S.A. 19:29-3. For this reason, I also **CONCLUDE** that this matter is time-barred.

Unsolicited Campaign Text Messages

The petitioner also claimed that the unsolicited text messages were "potentially" linked to New Jersey Senator Vin Gopal's campaign, which she felt "in addition to being potentially illegal . . . grossly undermines the integrity of the board." As with the first claim, she does not allege any wrongdoing by the Commissioner or the BOE but rather by the Gopal campaign and the sender of the text messages. I therefore **CONCLUDE** that this is not a claim against the Commissioner or the BOE, and jurisdiction is improper.

ORDER

Accordingly, and for the reasons articulated above, it is **ORDERED** that the motion of respondent Board of Education of the Borough of Brielle for an Order Granting Dismissal pursuant to N.J.S.A. 18A:6-9 is hereby **GRANTED,** and the petition of appeal is **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

October 30, 2024
DATE

JOAN M. BURKE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JMB/sg/jm

APPENDIX

Exhibits

For petitioner

Pro se Petition of Appeal

P-1 Email Response to Motion to Dismiss, August 20, 2024

P-2 Email Response to OAL, August 26, 2024

For respondent

Brief in support of Motion to Dismiss with Exhibits 1–3

447-24
OAL Dkt. No. 04986-24
Agency Dkt. No. 72-3/24

New Jersey Commissioner of Education

Final Decision

R.M. and J.M., on behalf of minor child, O.M.,

Petitioners,

v.

Board of Education of the Borough of Mountain Lakes, Morris County,

Respondent.

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.

This matter concerns a determination by the Mountain Lakes Board of Education (Board) that petitioners' son, O.M., committed an act of harassment, intimidation, and bullying (HIB) when he made a comment towards a Black student that included the n-word. The student (complainant) reported the incident on June 8, 2023. Her HIB reporting form indicated that at approximately 10:00 am on June 8, 2023, "I was walking up the ramp when they called me the n-word from behind. Asked if they had a problem and told them I would knock their teeth out right now. I called my mom and she told me not to." (Complainant's HIB 338 Form). The complainant's reporting form lists O.M. and another student (student #2) as the alleged offenders.

The Board commenced an HIB investigation on June 8, 2023, the day of the alleged incident. According to the HIB Investigation Report, Anti-Bullying Specialists interviewed the alleged offenders that afternoon. O.M. reported that he and student #2 were trying to get into a friend's class. They were walking behind a teacher, Ms. Geveke, and the complainant "was in the middle" so student #2 said "move, move, move," to O.M. so they could avoid being seen by the teacher. (HIB Investigation Report). O.M. also wrote in a witness statement dated June 8, 2023, that student #2 said the words, "move, move, move" while walking behind the complainant and her friend. (O.M.'s Written Statement). O.M. further explained that he and student #2 were confused when the complainant then turned around and said, "What did you say?" and that she would "knock [their] teeth out." (HIB Investigation Report). When questioned, both O.M. and student #2 denied using the n-word during the encounter.

The HIB Investigation Report indicates that investigators tried to speak with the complainant on June 8, 202; however, she had been picked up from school early. Prior to the complainant leaving school, her mother reported to Vice Principal Lisa Cortese that the complainant was "upset and feeling uncomfortable in school." *Ibid.* Anti-Bullying Specialists interviewed the complainant the following day, on June 9, 2023. The complainant explained that she was walking up a ramp to class the previous morning, and O.M. and student #2 were walking behind her; "[t]hey said something before something nigger and then they said something else." *Ibid.* Following the incident, the complainant went to the bathroom and told her mother over the phone that "someone called me nigger in the hallway." *Ibid.* When asked who did it, the complainant identified OM and another student she did not know. The complainant also reported that Mountain Lakes teacher Linda Aldrich was in a bathroom stall while she was

speaking to her mother and that when Aldrich came out, she told the complainant to come to her room if she had a problem. The complainant noted that she went to Aldrich's room and told her what happened; from there she and Aldrich went to the principal's office to report the incident.

Aldrich recounted, in a written statement dated Thursday, June 8, that she "overheard [the complainant] on the phone with her mother." (Linda Aldrich's Written Statement). Aldrich noted that the complainant "was very upset about what 2 boys had said behind her back in the hallway between classes." *Ibid*. Aldrich states that the complainant later came to her room and reported that "two boys were behind her on the ramp near room 341. She heard them say, 'Go nigger, go.'" *Ibid*.

The investigators concluded that an act of HIB had occurred based on the information collected in the investigation. Further, the investigators found that the victim was targeted based on her race and color and that she feared being verbally harassed by the alleged offenders inside of school. The students were given 3 days of out-of-school suspension, and counseling was provided to the complainant. Superintendent Michael Fetherman affirmed the findings of the investigation. Petitioners appealed this matter to the Board, and a hearing was held on September 19, 2023. Petitioner's counsel and O.M. appeared. O.M. told the Board that he had said, "Move, Nikki, move." The Board vacated the HIB finding and remanded the matter to the administration for further investigation and review given the new evidence provided by O.M. during the hearing.

On September 28, 2023, the District commenced a second investigation. In his interview, O.M. disclosed that *he*, not student #2 was the speaker and that he had said, "Move, Nikki,

move." (Addendum Report). When reminded that his written statement from the day of the incident states the words, "move, move, move," O.M. responded, "I am not sure why I said two different things." He then added, "They are both correct." *Ibid.* When questioned further about the discrepancy in his statements, O.M. refused to answer, and the interview ended. Student #2 was interviewed that day also and stated that O.M. was the speaker, and said, "Move, Nikki, move." *Ibid.* During the complainant's September 28, 2023, interview, she reported that she heard O.M. and student #2 say the n-word but was not "100% sure what else they said, but it was something like walk nigger walk or go nigger go." *Ibid.*

The second investigation concluded that O.M. committed HIB against the complainant. Fetherman found the complainant to be credible and noted her visceral reaction caught on surveillance camera, indicating her displeasure with the use of the n-word. In contrast, he found that O.M. was not credible and that he and student #2 made up the testimony, "Move, Nikki, move" to avoid responsibility. Further, Fetherman found that O.M. said, "Walk, nigger, walk or Go, nigger, go." (Notice of Board Decision, 10/19/23). The Board affirmed Fetherman's decision and petitioners appealed the HIB finding to the Commissioner of Education. Petitioners argue that the HIB investigation was incomplete as the Board failed to interview additional witnesses who they believe were in the hallway during the incident. Petitioners also allege that the investigation did not produce sufficient evidence to support the finding of HIB.

After the matter was transmitted to the OAL, the Board filed a Motion for Summary Decision, and the petitioner filed opposition. The Board then filed its reply. The ALJ granted the Board's motion for summary decision, concluding that the action that the Board took to determine whether O.M. engaged in HIB conduct was not arbitrary, capricious, or unreasonable.

Specifically, the ALJ concluded that the Board properly conducted the required investigation and that Fetherman's findings supported the Board's determination that O.M. engaged in HIB.

Upon review, the Commissioner concurs with the ALJ's conclusion that the Board's HIB determination was not arbitrary, capricious, or unreasonable. When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. Bd. of Educ. of W. Orange*, 60 N.J. Super. 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration," and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't of Env't Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), aff'd, 131 *N.J. Super.* 37 (App. Div. 1974). Regarding HIB determinations, this standard has been explained as requiring a petitioner to "demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." *G.H. and E.H. o/b/o K.H. v. Bd. of Educ. of Borough of Franklin Lakes*, Bergen Cnty., OAL Dkt. No. EDU 13204-13 (Initial Decision, Feb. 24, 2014), adopted, Commissioner Decision No. 157-14 (Apr. 10, 2014).

The Anti-Bullying Bill of Rights defines HIB as follows:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L. 2010, c.122 (C. 18A:37-15.3), that substantially disrupts or interferes with

> the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
>
> *N.J.S.A.* 18A:37-14.

Here, the record shows that the Board's investigation was sufficiently thorough. The Board commenced an HIB investigation regarding O.M.'s alleged comment on June 8, 2023, the day of the alleged incident. The HIB Investigation Report and Addendum Report indicate the methodology the Board utilized in reaching the HIB determination. The Anti-Bullying Specialists interviewed both alleged offenders hours after the incident, and interviewed the complainant the following day, on June 9, 2023. The investigation also considered the complainant's HIB report form, and written statements from the complainant, Aldrich, O.M. and student #2, that were dated June 8, 2023, the day of the incident. The Board vacated their HIB determination and reopened the investigation after O.M. provided new information. The complainant, student #2, and O.M. were all interviewed again on September 28, 2023, and the investigators inquired into O.M.'s inconsistent testimony. Lastly, video surveillance of the incident was also reviewed during the investigation. Given the written statements, interview notes, remand upon the discovery of new testimony, and the review of video surveillance of the alleged incident, the Commissioner concurs with the ALJ that the Board properly undertook the required investigation.

Petitioners argue that the HIB investigation was not complete or thorough because the Board failed to interview Ms. Geveke and the complainant's friend, both of whom they allege were in the hallway at the time of the incident. In addition, petitioners argue that the Board failed to seek out additional witnesses that were in the vicinity of the incident, which unreasonably turned the investigation into a battle of credibility between the complainant and the alleged offenders. However, the Investigation Report indicates that the Board had already utilized a reasonable methodology in investigating the alleged HIB. For the Commissioner to hold that interviewing other witnesses would have been more reasonable than the investigative steps the Board took would require the Commissioner to substitute his judgment for that of the Board's, which is impermissible.

Furthermore, any testimony indicating that the alleged offenders did not say the n-word would, at most, balance the other evidence on the record from the complainant and Aldrich that O.M. did say the n-word. While evidence may leave room for two opinions regarding whether O.M. said the n-word, it is insufficient to overturn the Board's decision, since it does not demonstrate that the Board's decision was arbitrary, capricious, or unreasonable.

The ALJ correctly concluded that Fetherman's findings, as reported to the Board, supported the Board's determination that O.M. committed HIB. Fetherman's findings are sufficiently supported by the record. In the Addendum Report, Fetherman found the complainant to be credible. He referenced the complainant's emotional phone call with her mother that was overheard by Aldrich, unbeknownst to the complainant. Fetherman also noted that the complainant provided consistent testimony whenever asked about the incident; for instance, the complainant was steadfast in her allegation that the comment included the n-word,

and she consistently identified O.M. as an alleged offender from the beginning. Lastly, Fetherman found that the video surveillance footage showed the complainant's visceral response to the use of the n-word.

In a letter to petitioners, dated October 19, 2023, Fetherman found that O.M. was not credible due to inconsistencies in his testimony throughout the investigation as well as O.M.'s response when confronted with said inconsistencies. The record supports Fetherman's credibility finding regarding O.M. In both his written statement and his interview from June 8, 2023, O.M. reported that student #2 was the speaker, and that he had said, "Move, move, move." At that time, neither O.M. nor student #2 reported that O.M. had said, "Move, Nikki, move." During the remand interview, O.M. could not account for the discrepancy in his testimony, stating that both comments are correct. He then refused to answer further questions. Fetherman concluded in the Addendum Report that O.M.'s reluctance to answer questions regarding his inconsistent testimony contributed to his lack of credibility as he was unwilling to make a case for his innocence in response to the allegations.

Lastly, Fetherman's findings in the October 19, 2023, letter – that O.M. directed a comment with the n-word towards the complainant, who is African-American; that the comment was reasonably perceived to have been motivated by the complainant's race; and that O.M.'s comment interfered with the complainant's rights in violation of the Anti-Bullying Bill of Rights and the Board's HIB policy – are sufficiently supported by the record. As such, the Board's reliance on Fetherman's findings in reaching the HIB decision is not arbitrary, capricious, or unreasonable, nor does it "...demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." *G.H. and E.H. o/b/o K.H. v. Bd. of Educ. of Borough of Franklin*

Lakes, Bergen Cnty., OAL Dkt. No. EDU 13204-13 (Initial Decision Feb. 24, 2014), *adopted*, Commissioner Decision No. 157-14 (Apr. 10, 2014).

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2024
Date of Mailing: December 11, 2024

[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
SUMMARY DECISION
OAL DKT. NO. EDU 04986-24
AGENCY DKT. NO. 72-3/24

R.M. AND J.M. ON BEHALF OF MINOR CHILD, O.M.,
Petitioner,
v.
BOARD OF EDUCATION OF THE BOROUGH OF MOUNTAIN LAKES, MORRIS COUNTY,
Respondent.

Joseph J. Bell, Esq., for Petitioners (Bell, Shivas & Bell, P.C., attorneys)

Sean W. Fogarty, Esq. for Respondent (Fogarty and Hara, Esqs., attorneys)

Record Closed: August 16, 2024 Decided: September 30, 2024

BEFORE **R. TALI EPSTEIN**, ALJ:

STATEMENT OF THE CASE

Petitioners challenge a determination that O.M., their minor son, engaged in Harassment, Intimidation, and Bullying (HIB) against an African-American student on June 8, 2023 (the "Incident"), when he made a comment directed at the student that

included the word "nigger." Should the HIB conclusion stand, even though O.M. claims he did not utter that word during the Incident? Yes. Respondent's determination is entitled to a presumption of correctness, and petitioners have not established that it is arbitrary, capricious, or unreasonable.

PROCEDURAL HISTORY

On March 19, 2024, R.M. and J.M. (Petitioners) filed a Verified Petition of Appeal (Petition) with the Commissioner of Education (Commissioner) challenging the HIB determination made by the Mountain Lakes Board of Education (Board, or Respondent) against Petitioners' son, O.M. (Certification of Sean Fogarty, dated July 17, 2024, Ex. A.) The Petition alleges that the HIB investigation was not thorough or complete in that additional witnesses were not interviewed, and the HIB determination was not supported by the record and/or based on disputed findings. (Id., Ex. A, ¶¶ 21-23; 31-33.) The Petition also asserts procedural deficiencies with the Board's actions. (Id., Ex. A, ¶ 34.) Petitioners seek to set aside the Board's decision and remove the HIB finding from O.M.'s records on the grounds that the Board's determination was arbitrary, capricious, and unreasonable. (Id., Ex. A, ¶ 36.)

On April 9, 2024, Respondent answered the Petition denying Petitioners' allegations of wrongdoing. (Id., Ex. B.) In its Answer and Separate Defenses, Respondent maintains that it followed all required procedures and that its decision met the HIB criteria. (Id., Ex. B.) Respondent demands judgment for relief, ordering that the Petition be dismissed with prejudice and declaring that its finding that O.M. engaged in conduct which constituted HIB was not arbitrary, capricious or unreasonable. (Id., Ex. B, Wherefore Clause).

On June 13, 2024, Respondent served its first set of Interrogatories and Request for Admissions on Petitioners. (Id., Ex. C.) Respondent's counsel further certifies that Petitioners did not object to the Request for Admissions or provide written discovery responses by the June 28, 2024, deadline, and the matters are deemed admitted pursuant to N.J.A.C. 1:1-10.4(c). (Id., ¶¶ 4-5.) Petitioners purported to serve belated, unsworn and undated responses, which were forwarded by email on July 24, 2024.

The Department of Education (DOE) transmitted this case to the Office of Administrative Law (OAL), where it was filed on April 10, 2024, as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

The matter was assigned to me on April 19, 2024. Following a prehearing conference and subsequent communications with the parties, I issued a prehearing order on May 31, 2024, which provided, among other things, a summary decision briefing schedule.

On July 17, 2024, the Board timely filed its motion for a summary decision. Petitioners filed their opposition on August 9, 2024, three days past the ordered deadline. Regardless, the tribunal excuses Petitioners' delinquency and has considered the opposition as if it were timely submitted. On August 16, 2024, the Board timely submitted its reply papers.

FINDINGS OF RELEVANT FACT

Based on the documents submitted in support and opposition to the motion for summary decision, and when viewed in the light most favorable to the non-movants, I **FIND** the following **FACTS**:

It is undisputed that O.M. was a ninth-grade student attending Mountain Lakes High School (Mountain Lakes) at the time of the Incident, on June 8, 2023. The parties also acknowledge that O.M. has a 2023–2024 Individualized Educational Program. There is no claim that O.M.'s eligibility for special education at Mountain Lakes impacted his ability to fully appreciate his conduct or the Board's determination that he engaged in a violation of the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A37-13 to -32 (ABBRA), as adopted by the Board Policy No. 5512.

Regarding the Incident and the ensuing investigation, the following facts are also undisputed:

On or about, June 8, 2023, Mountain Lakes received a report of a HIB allegation that occurred on the same day on "the ramp leaving the new wing" of the high school building. (Certification of Michael Fetherman, dated July 17, 2024, Ex. B.) As described verbatim in the HIB 338 Form (the "reporting form"), the Victim (student S.B.) reported that, at approximately 10:00 am, she "was walking up the ramp when they called me the nword [sic] from behind. Asked if they had a problem and told them I would knock their teeth out right now. I called my mom and she told me not to." (Id., Ex. B.) The reporting form further identifies O.M. and another student as the alleged offenders. (Id., Ex. B.)

The Victim completed the reporting form after Linda Aldrich (Aldrich), a Mountain Lakes teacher, "overheard [the] Victim on the phone with her mother." (Id., Ex. D.) In her witness statement, dated June 8, 2023, Aldrich recounted that the Victim "was very upset about what 2 boys had said behind her back in the hallway between classes." (Id., Ex. D.) Aldrich's statement further detailed that she told the Victim that she "was available in the art room if [the Victim] needed [her] help." (Id., Ex. D.) The Victim "came to [Aldrich] and told [her] that two boys were behind [the Victim] on the ramp near room 341." [The Victim] heard them say, "Go nigger, go." After listening to the Victim's account, Aldrich told her that the Incident "needed to be reported and [they] went to see [the principal]." (Id., Ex. D.)

In her witness statement, written the same day in the principal's office, the Victim wrote that "I was walking in the hallway and I hear nigger from behind me. I turned around and asked if they had a problem. [T]hey said no they were talking about/to someone else. Told them I'll knock their teeth out and kid said do it. I choose [sic] not to so there wouldn't be another problem for me." (Id., Ex. C.) The Victim also filled out the HIB 338 Form.

Mountain Lakes' Anti-Bullying Specialists/Investigators, Maria Lindsay (Lindsay) and Cara Pelchat (Pelchat), investigated the Incident with the assistance of Vice

Principal Lisa Cortese (Cortese). Their investigation commenced on the day of the Incident.

The HIB Report notes that the investigators tried to interview the Victim on June 8, 2023, but she was picked up from school early. (Id., Ex. E.) The Victim's mom had previously advised Cortese that her daughter might be picked up early by her grandmother because she was "upset and feeling uncomfortable in school." (Id., Ex. E.) The Victim was picked up at 12:05 pm by her grandmother. (Id., Ex. E.)

At 12:23 pm on June 8, 2023, Lindsay and Pelchat spoke with O.M. A case manager also sat in on the discussion. (Id., Ex. E.) As detailed in the HIB Report, O.M. explained that he and another student (Offender 2) were walking behind a teacher (Ms. Geveke), and the Victim "was in the middle," so Offender 2 said "move, move, move" to O.M. "so that they could get out of Ms. Geveke's sight." (Id., Ex. E.) O.M. used the same words ("move, move, move") in the June 8, 2023, witness statement that he wrote, but in the written statement, O.M. does not clarify to whom the words were directed (i.e., to O.M. or to the Victim.) (Id., Ex. F.)

O.M. further reported to the investigators that he and Offender 2 "were confused" when the Victim turned around and said, "What did you say?" and that she would knock their teeth out. (Id., Ex. E.) O.M. said that he was laughing when Offender 2 responded to the Victim and told her to "go ahead." (Id., Ex. E.) When O.M. was questioned if he used the "N-word," he said "no." (Id., Ex. E.)

Offender 2 was questioned after O.M., and he also denied using the "N-word" during the encounter described by O.M. (Id., Ex. E.)

On the following day, June 9, 2023, Lindsay and Pelchat met with the Victim to obtain her statement. The following abbreviated account is taken from the HIB Report: The Victim identified O.M. and Offender 2 and recounted that "[t]hey said something before something nigger and then they said something else and I turned around [and] said do you have a problem and they said no we were talking to someone else, about someone else, but there was no one else in the hallway." (Id., Ex. E.) The Victim also

reported that she turned toward Offender 2 and said she would knock his teeth out because she thought he was the one who responded to her, but instead walked away and called her mother. The Victim told her mother that "someone called me a nigger in the hallway." (Id., Ex. E.) When her mother asked her who did that, the Victim told her "it was OM and some other kid." (Id., Ex. E.) This was the conversation that Aldrich overheard in the bathroom.

The Victim then relayed how Aldrich told her to come talk to her if she had a problem, and after hearing what transpired, they went to speak to the principal. When the principal asked the Victim if she knew "who it was," she responded that "she was pretty sure it was O.M." (Id., Ex. E.) The Victim also confirmed that she left school early on the day of the Incident because she "didn't feel comfortable in school" and "you never know what will happen . . . like if [she] was going to be harassed or jumped." (Id., Ex. E.)

The HIB Report "concluded that the Incident" was an "act of HIB." (Id., Ex. E.) The conclusion was "[b]ased on the information collected in the investigation," which supported the finding that the Victim, who is African-American, was "targeted based on her race and color and was in fear of being verbally harassed by the alleged offenders inside of school." (Id., Ex. E.)

The results of the HIB investigation were reported to Superintendent Michael Fetherman (Fetherman). (Id., ¶ 17.) After reviewing the HIB Report, Fetherman decided to affirm the findings because he "agreed there was evidence which suggested that the alleged HIB behavior was motivated by a distinguishing characteristic of the Victim." (Id., ¶ 17.) Fetherman then reported the results of the investigation to the Board. (Id., ¶ 17.)

On or about June 16, 2023, Fetherman notified Petitioners of the results of the HIB investigation and their right to request a hearing before the Board. (Id., Ex. G.) Petitioners requested a hearing, which was adjourned to September 19, 2023, to accommodate Petitioners' schedule.

On September 19, 2023, the Board held a HIB appeal in executive session. Petitioners' counsel presented arguments, and O.M. testified. When O.M. addressed the Board, he reported that he (not Offender 2) said, "Move, Nicki, move." (Id., Ex. I.) The day after the hearing, the Board wrote to Petitioners, advising that their prior determination would be modified by vacating the HIB finding and remanding the matter for further review and investigation. (Id., Ex. I)

Accordingly, the District conducted a further investigation on September 28, 2023, and prepared an Addendum Report. (Id., Ex. J.)

As reflected in the Addendum Report, when O.M. was interviewed for the second time, he admitted that he (not Offender 2) was the speaker and that he said, "Move, Nicki, move." (Id., Ex. J.) When asked why he used the words "move, move, move" in his statement that was written on the same day of the Incident, he replied, "I am not sure why I said two different things" and then added, "They are both correct." (Id., Ex. J.) When further challenged, O.M. stated that he did not want to answer further questions, and the interview ended. (Id., Ex. J.)

During Offender 2's interview on September 28, 2023, he corroborated O.M. new account that O.M. was the speaker and that O.M. said, "Move, Nicki, move." (Id., Ex. J.) Yet, when he was first interviewed on the same date as the Incident, Offender 2 did not identify any specific words that were spoken by O.M. (Id., Ex. E.)

When the Victim was interviewed again on September 28, 2023, she reported that "I heard O.M. and [Offender 2] say nigger." (Id., Ex. J.) She was "not 100%" sure of the words uttered before and after the "N-word" but recalled that "it was something like 'walk, nigger, walk' or 'go, nigger, go.'" (Id., Ex. J.)

Following Fetherman's review of the Addendum Report, he concluded that "O.M. and Offender 2 were not credible and that O.M. said, "Move, nigger, move." (Id., ¶ 26.) Fetherman's findings and the bases upon which they are supported appear in the section of the Addendum Report titled "Superintendent's Findings." (Id., Ex. J.)

The conclusion of the remanded investigation was that O.M. was found to have engaged in a HIB infraction against the Victim. (Id., Ex. J.)

On October 16, 2023, Fetherman reported the results of the remanded investigation to the Board at its regularly scheduled meeting, in executive session. Fetherman provided Petitioners with a copy of his decision on the remanded investigation on October 19, 2023. (Id., Ex. K.)

On November 6, 2023, during its regularly scheduled meeting, the Board deliberated and unanimously voted to affirm Fetherman's decision and the HIB finding against O.M. (Id., Ex. L.)

DISCUSSION AND CONCLUSIONS OF LAW

Under the Uniform Administrative Procedure, N.J.A.C. 1:1-1.1 to -21.6, which governs the conduct of contested cases before the OAL, a party may file a motion for summary decision on substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion "shall be served with briefs and with or without supporting affidavits." N.J.A.C. 1:1-12.5(b). The Administrative Law Judge presiding over the contested case may grant a party's motion "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." Ibid. Accord Brill v. Guardian Life Ins. Co. of Am.,142 N.J. 520, 530 (1995). To overcome an adequately supported motion for summary decision, the non-moving party must submit an affidavit showing that a genuine issue of material fact exists that can only be determined in an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

Further, as applicable here, an action by a board of education "is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable." Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Stated otherwise, when a local board of education acts within its discretionary authority, its decision will not be disturbed unless it is demonstrated that the decision was "patently arbitrary, without

rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). Thus, to successfully challenge a HIB determination made by a board of education, a party "must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of the Bor. of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) (citation omitted), adopted, Comm'r (April 10, 2014). A board's decision may also be overturned if its determination violates the legislative policies expressed or implied in the governing act. J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)), adopted, Comm'r (April 25, 2013).

The Legislature designed the ABBRA, N.J.S.A. 18A:37-13 to -37, "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises." N.J.S.A.18A:37-13.1(f). Each school district must adopt a policy that prohibits HIB and provides "a procedure for prompt investigation of reports of violations and complaints." N.J.S.A. 18A:37-15(b)(6).

Under the ABBRA, "harassment, intimidation or bullying" is defined as:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
>
> a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in

> reasonable fear of physical or emotional harm to his person or damage to his property;
>
> b. has the effect of insulting or demeaning any student or group of students; or
>
> c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
>
> [N.J.S.A. 18A:37-14]

Consistent with the ABBRA, the Board adopted a HIB policy, Board Policy No. 5512, mirroring the statutory language. As applied to the facts here, it is beyond dispute that the conduct at issue met the definition of a HIB.

First, the Incident involved a verbal act. As detailed above, the fact that the utterance included the word "nigger" is sufficiently supported in the record by the Victim's repeated statements, as corroborated by Aldrich's witness statement, which was made on the same date of the Incident. From the Victim's first account of the Incident to her mother and then to Aldrich, followed by the Victim's statement in the HIB 338 Form, her witness statement, initial interview, and second interview during the remanded investigation, the Victim was consistent and steadfast in her report that the comment made included the word "nigger."

Second, it is incontrovertible that the utterance of the "N-word" to an African-American student would be reasonably perceived as motivated by an actual or perceived characteristic of that student. Third, the conduct towards the Victim substantially disrupted the Victim and interfered with her rights in violation of the ABBRA and the Board policy. She retreated from the scene of the Incident, texted her mother, and then went to the bathroom so she could call her mother "to calm [her] down." She expressed that she "didn't feel comfortable in school" and had her grandmother come to

pick her up early. The Victim also reported a concern that she could possibly be "harassed or jumped" if she had stayed in school.

The final criterion for finding that a HIB act occurred is satisfied by meeting one of the three prongs set forth in the subparts to 18A:37-14. In this case, all three are satisfied. Calling the Victim, an African-American student, the "N-word" has the indisputable effect of "insulting or demeaning a student." Sufficient evidence in the record also exists to support the District's finding that the Victim was insulted by the comment and understood it to be directed to her. In addition to the Victim's report, O.M. and Offender 2 similarly reported that the Victim instantly turned around when she heard the slur to confront them. Her immediate reaction evidenced that she was deeply affected by the demeaning comment. The conduct also met the first and third prongs of N.J.S.A. 18A:37-14. A reasonable person should have known that calling an African-American student the "N-word" would have the effect of emotionally harming the student or placing the student in reasonable fear of physical or emotional harm. Equally clear is the finding that calling a student the "N-word" creates a "hostile educational environment for the student" as defined in the statute.

In short, there is no question that the conduct at issue meets the legal definition of HIB. Indeed, Petitioners do not dispute that such conduct constitutes harassment, intimidation, or bullying within the meaning of the ABBRA. Instead, they argue that O.M. did not engage in that conduct because he did not use the "N-word" in the utterance he made in the hallway on the day of the Incident. Put simply, Petitioners' position is that the superintendent should have believed O.M., not the Victim. Petitioners, thus, seek to have this tribunal hear testimony regarding the Incident and make its own evaluation of O.M.'s credibility to determine whether he was truthful during the initial and remanded HIB investigation.

To support their argument, Petitioners cite to caselaw that stands for the general proposition that credibility determinations are the province of the factfinder and cannot be adjudicated by summary decision. See Avery v. Arthur Armitage Agency, 242 N.J. Super 293, 307 (App. Div. 1990), citing Judson, 17 N.J. at 75; D'Amato v. D'Amato, 305 N.J. Super. 109, 114 (App. Div. 1997) (cases cited in Petitioners' Opposition Brief). But

an evidentiary hearing is not required where the documentary record establishes that the Board acted within its discretion to determine whether an act of HIB occurred. In other words, to determine whether the Board's decision was arbitrary, capricious, and unreasonable, I need only decide whether sufficient credible evidence supports the Board's decision. Even if that evidence leaves room for me to form another opinion, it is insufficient ground to overturn the Board's decision, "so long as the Board has not acted dishonestly or in bad faith." R.R. o/b/o minor child, A.R. v. Bd. of Educ. of the Bor. of Ramsey, Bergen County, No. EDU 0378-23, Initial Decision (Jan 29, 2024), adopted, No. 131-24 (Comm'r March 8, 2024).

Based on the undisputed facts set forth above, I **CONCLUDE** that the District properly undertook the required investigation. I further **CONCLUDE** that Fetherman's findings, as reported to the Board, amply supported the Board's determination that O.M. engaged in an act of HIB. Further, Petitioners failed to present any competent evidence, in the form of an opposing affidavit as required by N.J.A.C. 1:1-12.5(b), to overcome summary decision in Respondent's favor. Standing alone, their allegations that the District's investigation was "incomplete" because other potential witnesses could have been interviewed or that the Board "did not hear any other opinions on the issue besides that of the former superintendent Fetherman"[1] do not demonstrate that the Board "acted in bad faith, or in utter disregard of the circumstances before it." G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of Franklin Lakes, No. EDU 13204-13, Initial Decision (Feb. 24, 2014) (citation omitted), adopted, Comm'r (Apr. 10, 2014).

The record establishes that the Board's decision to affirm the HIB finding against O.M. is well-supported by the evidence collected by the District, which included, among other things, multiple reports from the Victim who remained steadfast in her account that the offending statement included the "N-word"; a corroborating witness statement from a teacher made on the same day as the Incident; and O.M.'s accounts of the Incident which changed over time to admit that he was the speaker, though denying he used the

[1] See Petitioners' Letter Brief in Opposition to Respondent's Motion for Summary Decision, dated August 9, 2024, p. 9.

"N-word" and refusing to answer additional, follow-up questions during the remanded investigation.[2]

That the District's investigators, Fetherman and, thereafter, the Board believed the Victim's account to be more consistent with the evidence than O.M.'s version of the Incident simply does not render the Board's decision to affirm the HIB finding arbitrary, capricious, or against the weight of the evidence. See, e.g., R.R. o/b/o minor child, A.R. v. Bd. of Educ. of the Bor. of Ramsey, Bergen County, No. EDU 0378-23 (Initial Decision Jan 29, 2024), adopted, No. 131-24 (Comm'r March 8, 2024) (it is "reasonable and rational" for the District to have found "the victim's explanation more consistent with the evidence collected during the investigation.")

Accordingly, on the basis of the undisputed material facts and applicable legal standards, I **CONCLUDE** that the action of the Board in determining that O.M. engaged in conduct that constituted harassment, intimidation, or bullying within the meaning of the ABBRA was not arbitrary, capricious, or unreasonable.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Respondent's motion for summary decision is **GRANTED** and **DISMISS** the Petitioners' appeal.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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

[2] The record also includes surveillance video capturing the Victim's "visceral reaction" to hearing the "N-word." (Id., Ex. J.)

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 **ACTING 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.

September 30, 2024
DATE

R. TALI EPSTEIN, ALJ

Date Received at Agency: September 30, 2024

Date Mailed to Parties: September 30, 2024

cc

APPENDIX

EXHIBITS IN EVIDENCE

For Petitioner:

P-1 Letter Brief in Opposition to Respondent's Motion for Summary Decision, dated 8/9/24

For Respondent:

R-1 Letter Brief in Support of Respondent's Motion for Summary Decision, dated 7/17/24, with Supporting Certifications and Exhibits

Certification of Michael Fetherman, dated 7/17/24, with Exhibits A-L

Exhibit A	Board Policy No. 5512, revised 4/3/23
Exhibit B	S.B.'s HIB 338 Form, dated 6/8/23
Exhibit C	S.B.'s Written Statement, dated 6/8/23
Exhibit D	Linda Aldrich's Written Statement, dated 6/8/23
Exhibit E	District's HIB Investigation Report #MLHS-0012-22-23
Exhibit F	O.M.'s Written Statement, dated 6/8/23
Exhibit G	Correspondence from Michael Fetherman to Petitioners, dated 6/16/23
Exhibit H	Correspondence from Petitioners' Counsel to Michael Fetherman, dated 7/19/23
Exhibit I	Notice of Initial Board Decision, dated 9/19/23
Exhibit J	Addendum Report, dated 9/28/23
Exhibit K	Notice of Board Decision, dated 10/19/23
Exhibit L	Board Resolution, dated 11/7/23

Certification of Sean W. Fogarty, Esq., dated 7/17/24, with Exhibits A-C

Exhibit A	Verified Petition of Appeal, dated 3/19/24
Exhibit B	Respondent's Answer and Separate Defenses to Petition of Appeal, dated 4/9/24

Exhibit C Respondent's First Set of Interrogatories and Request for Admissions, dated 6/13/24

Notice of Motion, dated 7/17/24

Proof of Service, dated 7/17/24

Proposed Order, dated 7/17/2024

R-2 Letter Brief Replying to Petitioners' Opposition to Respondent's Motion for Summary Decision, dated 8/16/24

448-24
OAL Dkt. No. EDU 09397-24
Agency Dkt. No. 153-5/24

New Jersey Commissioner of Education

Final Decision

J.A., on behalf of minor child,

Petitioner,

v.

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

Respondent.

The record of this matter, which was transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-14.4 and includes an advisement of petitioner's failure to appear at the scheduled OAL hearing on October 24, 2024, has been reviewed. Petitioner did not file an explanation for the failure to appear, notwithstanding the opportunity to do so. Accordingly, this matter is no longer deemed to be a contested case before the Commissioner and is hereby dismissed with prejudice.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2024
Date of Mailing: December 11, 2024

[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.

451-24
OAL Dkt. No. EDU 05916-22
Agency Dkt. No. 139-6/22

New Jersey Commissioner of Education

Final Decision

James McCarron,

Petitioner,

v.

Board of Education of the Somerset Hills School District, Somerset County,

Respondent.

The record of this matter, which was transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-14.4 and includes an advisement of the failure to appear at a scheduled conference on November 12, 2024 by counsel for both parties, has been reviewed. The parties did not file an explanation for their failure to appear. Accordingly, this matter is no longer deemed to be a contested case before the Commissioner and is hereby dismissed with prejudice.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 16, 2024
Date of Mailing: December 18, 2024

[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.

452-24
OAL Dkt. No. EDU 14008-23
Agency Dkt. No. 296-10/23

New Jersey Commissioner of Education

Final Decision

Angeline Montauban,

Petitioner,

v.

Board of Education of the City of Newark,
Essex County,

Respondent.

The record of this matter, the proposed Settlement Agreement (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 16, 2024
Date of Mailing: December 18, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
APPROVING SETTLEMENT
OAL DKT. NO. EDU 14008-23
AGENCY DKT. NO. 296-10/23

ANGELINE MONTAUBAN,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF NEWARK, ESSEX COUNTY,
Respondent.

Sanford Oxfeld, Esq., for petitioner (Oxfeld Cohen, P.C. attorneys)

Brenda Liss, Esq., for respondent (General Counsel, attorneys)

Record Closed: November 25, 2024 Decided: November 26, 2024

BEFORE **PATRICE E. HOBBS**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The parties have agreed to settle this case and have entered into an agreement. Having reviewed the terms of their agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

I **FILE** my decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration. This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is empowered by law to make a final decision in this case. If the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not so act within 45 days, and unless such time limit is otherwise extended, this recommended decision becomes a final decision in accordance with N.J.S.A. 52:14B-10.

Patrice E Hobbs

November 26, 2024
DATE

PATRICE E. HOBBS, ALJ

Date Received at Agency: November 29, 2024

Date Mailed to Parties: November 29, 2024

lsr

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is by and between the Newark Board of Education ("Board") and Angeline Montauban ("Employee").

WHEREAS, on or about November 10, 2022, Employee filed a Verified Complaint with the New Jersey Department of Law and Public Safety, Division on Civil Rights, and that Verified Complaint (the "DCR Complaint") was assigned NJDCR Docket No. E2022-000964; and the Board, through its attorneys, filed an answer to the DCR Complaint, denying the allegations therein;

WHEREAS, on or about November 14, 2022, Employee filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission, and that Charge (the "EEOC Charge") was assigned EEOC Charge No. 17E-2023-00032; and by letter dated November 14, 2022, the EEOC advised that it would refrain from investigating pending resolution of the DCR complaint;

WHEREAS, on or about October 27, 2023, Employee filed a Petition to the New Jersey Commissioner of Education; and that Petition (the "Petition") was assigned Agency Ref. No. 296-10/23, transmitted to the Office of Administrative Law, and there assigned Docket No. EDU 14008-2023; and the Board, through its attorneys, filed an Answer to the Petition, denying the allegations therein;

WHEREAS, Employee and the Board wish to resolve any and all claims and differences, known or unknown, that Employee has or may have against the Board, including but not limited to the claims stated in the DCR Complaint, the EEOC Charge, and the Petition, in accordance with the terms set forth herein, without any admission as to liability or fault;

NOW, THEREFORE, the parties hereby agree as follows:

1. In consideration for Employee's execution of this Agreement and compliance

with the promises made herein, the Board will provide Employee the following consideration:

(a) Within 30 days of the date on which the Board receives this Agreement signed by Employee, Employee will receive payment in the amount of five thousand five hundred dollars ($5,500.00), provided that Employee has not exercised the right to revoke this Agreement in accordance with paragraph 13.

(b) For the 2024-2025 school year, Employee will be placed on Step L of the salary guide in the current agreement between the Newark Teachers Union and the Board, for an annual salary of eighty-eight thousand one hundred twenty-five dollars ($88,125.00) plus four thousand dollars ($4,000.00) longevity. In succeeding years Employee will receive salary in accordance with the Agreement between the Board and the Newark Teachers Union; provided, however, that this shall not be construed to affect in any way the Board's authority to withhold Employee's salary increment in accordance with applicable law.

2. It is understood and agreed that in return for the consideration set forth in paragraph 1 above and the other promises contained herein, the sufficiency of which is hereby acknowledged, Employee will take and all action necessary to withdraw or voluntarily dismiss the DCR Complaint, the EEOC Charge and the Petition immediately upon execution of this Agreement. Furthermore, employee does hereby knowingly and voluntarily, completely and forever, release and discharge the Board, its present and former members, employees, officers, agents and representatives from any and all causes of action, claims, judgments, obligations, damages, all claims to attorneys' fees, and all rights to pre- or post-judgment interest or liabilities of whatever kind and character, relating to Employee's employment or the termination of Employee's employment with the Board. This releases all claims, including those of which Employee is not aware and those not mentioned in this Agreement, and it applies to all claims resulting from anything which has happened from the beginning of time to the date of this

Agreement. Without limiting the foregoing, Employee hereby releases and waives any and all pending claims, complaints, petitions, and grievances filed or otherwise presented against the Board on her behalf, any and all appeals of said matters; and all issues presented, asserted, or assertable in connection with such matters.

3. The release set forth herein includes but is not limited to any claims that Employee or anyone on Employee's behalf may have arising under Title 18A of the New Jersey Statutes, the New Jersey Wage and Hour Law, the New Jersey Law Against Discrimination, the New Jersey Conscientious Employee Protection Act, the New Jersey Family Leave Act, the New Jersey Civil Rights Act, the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1991 as amended, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the Family and Medical Leave Act, the Fair Labor Standards Act, the Workers' Compensation Act, the Age Discrimination in Employment Act, the Employee Retirement Income Security Act ("ERISA"), the Consolidated Omnibus Budgetary Reconciliation Act ("COBRA"), the Older Workers Benefit Protection Act ("OWBPA"), the Uniformed Services Employment and Reemployment Rights Act, 42 U.S.C. § 1981, 42 U.S.C. § 1983, or any other federal, state or local civil rights, human rights, wage and hour, pension, employment or labor law, rule and/or regulation, public policy, contract or tort law, or the United States or New Jersey State Constitution; any claim of retaliation under such laws; any claim arising under the common law, including but not limited to causes of action for wrongful discharge, breach of contract or violation of collective negotiations agreement, fraud, defamation, interference with contract or prospective economic advantage, breach of the implied covenant of good faith and fair dealing, breach of any employment handbook or manual; any claims of violation of tenure or seniority rights; any tort claims, including but not limited to any claim for civil battery, civil assault, outrage, negligent or intentional infliction of emotional distress; claims of violation of any other federal, state, or local statute, law or ordinance; claims for loss of income, unpaid wages, payment for accumulated sick leave, personal leave or vacation time; compensatory damages, emotional distress, attorneys' fees and costs, and any other cause of action whether cognizable in law or in equity, known or

unknown, based on any conduct up to and including the date of this Agreement. Employee further agrees that Employee has not filed or made any allegations relating to Employer in any other matter in any court, agency or tribunal.

4. Nothing in this Agreement shall be construed to prohibit Employee from filing a claim for unemployment compensation or workers' compensation, filing a charge with the Equal Employment Opportunity Commission ("EEOC"), or participating in any investigation or proceeding conducted by the EEOC, or to adversely affect his right to engage in such action. Notwithstanding the foregoing, Employee hereby waives any right to obtain or recover any monies or compensation as a result of filing any such EEOC charge.

5. This Agreement shall be governed by the law of the State of New Jersey and shall be construed and interpreted in accordance with the laws of the State of New Jersey. Any action in relation to or to enforce this Agreement must be brought in a court of competent jurisdiction in New Jersey.

6. If any provision of this Agreement is determined by a court or tribunal of competent jurisdiction to be in violation of any federal or state law or otherwise unenforceable, the remainder of the Agreement shall not be affected by such determination and shall remain in full force and effect.

7. This Agreement may not be altered, amended or modified except by a writing, signed and duly a uthorized by or on behalf of both parties.

8. The parties have entered into this Agreement freely and voluntarily, with a full understanding of their rights and the contents of this Agreement.

9. Employee and the Board each acknowledge that they have been represented by their respective legal counsel in the negotiation of this Agreement; they have discussed the contents of this Agreement at length with their respective counsel; they fully understand the requirements and limitations of this instrument; and they are fully satisfied with the representation provided to them by their respective legal counsel.

10. This Agreement contains the entire Agreement and understanding between the parties and constitutes a full and final settlement relating to the issues referenced herein.

11. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns.

12. This Agreement may be executed in counterparts, each of which shall be deemed an original.

13. Employee acknowledges that she has had twenty-one (21) days to review this Agreement from the time it was presented to her and that she has an opportunity to review this Agreement with an attorney to the extent she chose to do so. Employee also acknowledges that she has been advised that she has seven (7) days after she signs and delivers the Agreement to revoke it by notifying Employer of such revocation in writing. This Agreement is not and shall not be effective or enforceable until the seven-day revocation period has expired.

14. Employee has signed this Agreement voluntarily and entirely of Employee's own free will, without any pressure from the Board or any representative of the Board.

Angeline Montauban
ANGELINE MONTAUBAN

November 4, 2024
Date

NEWARK BOARD OF EDUCATION

Roger León
By: Roger León
Superintendent

11/25/24
Date

453-24
OAL Dkt. No. 04662-24
Agency Dkt. No. 321-11/23

New Jersey Commissioner of Education

Final Decision

Board of Education of the Borough of Mountain Lakes, Morris County,

Petitioner,

v.

Board of Education of the Township of Boonton, Morris County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered.

Following the issuance of the Initial Decision, petitioner advised the Commissioner that it had agreed to withdraw its claim and that, as such, the parties agreed that the matter is now moot.

Accordingly, the Initial Decision is rejected based on the change in circumstances.[1] The petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 16, 2024
Date of Mailing: December 18, 2024

[1] The Commissioner does not reach any conclusions regarding the legal issues in this matter.

[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

SUMMARY DECISION

OAL DKT. NO. EDU 04662-24

AGENCY DKT. NO. 321-11/23

BOARD OF EDUCATION OF THE BOROUGH OF MOUNTAIN LAKES, MORRIS COUNTY,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWNSHIP OF BOONTON, MORRIS COUNTY,

Respondent.

Stephen R. Fogarty, Esq., for petitioner (Fogarty & O Hara, attorneys.)

Arsen Zartarian, Esq., for respondent (Cleary, Giacobbe, Alfieri, and Jacobs, attorneys)

BEFORE **ERNEST M. BONGIOVANNI,** ALJ:

Petitioner, the Mountain Lakes Board of Education (Mountain Lakes/petitioner) seeks, by its motion for summary decision, an order compelling respondent, Boonton Township Board of Education (Boonton/respondent), to execute a sending-receiving contract for the 2023-2024 school year and for arrearages for respondent's failure to pay the full demanded tuition cost. Respondent argues that the facts do not warrant

summary decision, that Boonton never agreed to pay the demanded amount of tuition, that Mountain Lakes has advanced no valid cause of action, alleging that petitioner violated N.J.A.C. 6A:23A-17.1 (d), that Mountain Lakes further accepted the tuition advanced by Boonton. Further, Mountain Lakes argues the tuition rate is negotiable and inconsistent with past practices, or at least the parties' prior ten-year services agreement, that Mountain Lakes reasonably relied on the tuition rate previously agreed to in its expired ten-year contract and the demanded tuition amount is financially untenable. Therefore, Boonton seeks summary dismissal of Mountain Lakes petition. For the reason which follow, I grant Mountain Lakes Motion for Summary Decision, and deny Boonton's Motion to Dismiss.

PROCEDURAL HISTORY

Mountain Lakes and Boonton have a receiving-sending relationship, wherein high school age students of Boonton receive their high school education in Mountain Lakes by paying tuition for their attendance. (Petitioner Statement of Facts at ¶ 3.) A contract governing this relationship governing a period of ten years was entered into on January 24, 2013, and expired at the conclusion of the 2022-2023 school year. (Respondent's Exhibit A). That contract established a base cost for the first year and provided for a 2% increase each year until the termination of the contract, instead of basing the tuition on the actual cost per student subsequently certified by the Commissioner for any given school year during the terms of the agreement. Ibid

On or around March 7, 2023, Mountain Lakes began conversations with Boonton for a successor sending-receiving agreement based on the actual cost per pupil as certified by the Commissioner of Education (Verified Petition, ¶ 12). Based on that, the estimated tuition rate for 2023-2024 school year would be $19,293. (Id. at ¶ 10), The average daily enrollment of Boonton students attending Mountain Lakes High School is 192, making the annual tuition charge payable to Boonton to Mountain Lakes for school year 2023-2024 $3,704,356. (Id at ¶ 9 and 11.) On April 10, 2023, Alex Ferreira, Mountain Lakes' School Business Administrator and Board Secretary, emailed John Murray, Boonton's School Board Administrator and Board Secretary, advising Murray that the estimated tuition rate for the 2023-2024 school year would be $19, 923,

(Second Cert by John T. Murray III, Exhibit A). Ferreira included in the email that Mountain Lakes would start "charging [Boonton] the actual cost per student" ("certified tuition rate") Ibid. Murray responded to this email on April 11, 2023, stating that "in the absence of a successor agreement between [Mountain lakes] and [Boonton] "that Boonton "will pay tuition for the 2023-2024 in accordance with the expiring contract and will not include a unilateral increase as you proposed." Ibid.

On or about April 17, 2023, Mountain Lakes' attorney forwarded to Boonton's attorney a proposed successor sending-receiving agreement for a term of ten years based on the estimated cost per pupil as certified by the Commissioner of Education with reciprocal provisions crediting both districts for annual tuition payments that are more or less the same as the estimated cost per pupil (Verified Petition, ¶ 13). On or about May 10, 2023, Boonton's attorney forwarded a counter proposal for a successor-receiving agreement with predetermined tuition rates each year based on a 2% annual increase, essentially matching the terms of the expired agreement. This proposal would mean Mountain Lakes would be charging $1,883,689 less than its proposed agreement (Id. at ¶14) Mountain Lakes rejected this counteroffer on or around May 26, 2023.

On or about June 23, 2023, Mountain Lakes send a one-year written sending-receiving agreement as required by N.J.A.C. 6A:23A-17.1 (f) which required Boonton to pay one tenth of the annual tuition charges per month beginning on September 1, 2023, and continuing through June 1, 2024 (Verified Petition at ¶ 16 and 17.) On August 8, 2023, Murray emailed Ferreira stating he had cancelled the purchase order to pay tuition as it had been edited by Ferreria to match the updated tuition cost of $19,293 per pupil. (Second Cert. of Murray, Exhibit C). Murray also stated that "payments from [Boonton] will not be forthcoming for the 2023-2024 [sic] unless the new purchase order is signed by you and returned without edits to me" (Ibid).

Boonton has since then refused to sign a tuition contract based on the $19,293 rate and refused to pay said full amount (Petitioner Statement of Facts, ¶ 9). Instead, Boonton has paid Mountain Lakes the amount of tuition in accordance with expired contract rate of a 2% increase, per year, and which Mountain Lakes has not agreed to (Second Certification of Murray, Exhibit C, Statement of Facts, at ¶ 10.) "Mountain

Lakes has accepted these tuition payments without prejudice to its position un this matter that [Boonton] must execute the tuition contract and pay $19,293 per student as tuition for the 2023-2024 school year," stated Murray.

On or about November 28, 2023, Mountain Lakes submitted this petition seeking that Boonton be compelled to execute the 2023-2024 written contractual agreement, as required by N.J.A.C. 6A23A-17.1(d), and with a tuition rate of $19,293 per student, and for arrears for the school year which totaled at that time $1,111.278. On Mountain Lakes failed to advance a cause of action. On April 1, 2024, this matter was transmitted to the Office of Administrative Law as a contested case. On June 5,2024, filed a motion for summary disposition and in opposition to Boonton's motion to dismiss. A reply by Boonton was filed on June 12, 2024 and on June 13, 2024, oral argument via Zoom was held and the record was closed.

ANALYSIS AND CONCLUSIONS OF LAW

The submissions of the parties reveal that the salient facts as stated above are not in dispute, and therefore I **FIND** them as **FACTS** A motion for summary decision may be granted if the papers and discovery presented as well as any certifications or affidavits which may be filed show there is no genuine issue of material fact and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5 (b)

Specifically, N.J.A.C. 1:1-12.5(b) 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 "[t]he judgment or order sought shall be rendered forthwith 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 alleged 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 & 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 (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 252. I **CONCLUDE** that this matter is ripe for summary decision. The petition of appeal raises a purely legal question, one which asks that I determine whether the statutory and regulatory scheme affords Mountain Lakes the discretion to demand that Boonton pay the full certified tuition amount for the students it sends to Mountain Lakes High School. The affordability of that tuition is not at issue; nor it is pertinent that may sorely need the full tuition amount. The facts raised by Boonton in regard to the alleged methodology in the calculation of the certified tuition amount, while controverted, are a proverbial "red herring." They are not material to the limited issue presented by the pleadings.

I **CONCLUDE** that the law supports Mountain Lakes demand for the full certified tuition, and that it is entitled to the relief it seeks. Boonton argues that summary decision cannot be granted as the facts are in dispute as an issue with the calculated per pupil tuition cost. Boonton argues that Mountain Lakes changed the methodology by which Boonton calculated its cost per pupil tuition rates without permission of the Commissioner, in violation of N.J.A.C. 6A:23A-17.1 (d), which provides "[o]nce having determined to annually submit the report pursuant to (c) (1) above to the Commission, a receiving district board of education shall submit a written request to the Commissioner

for review and approval in order to change the certification method in (c) (2) above, the receiving district board of education shall indicate reason(s) for the change."

However, this issue lies outside the petition. Mountain Lakes' petition seeks arreages for the 2023-2024 school year and to compel Boonton to sign a sending-receiving tuition agreement. The petition by Mountain Lakes does not concern how the estimated cost per student was calculated.

Bd. of Educ of the Village of Ridgefield Park Bergen Cnty v. Bd. of Educ. Of the Borough of Little Ferry, Bergen Cnty, EDU 07868-20, Initial Decision (March 8, 2021), adopted Comm'r (April 22, 2021) (hereinafter Ridgefield Park) is nearly identical to the case at hand. There, a receiving district had provided a discount in their previous contractual agreement, however, upon the expiration of that agreement and in the negotiations of a new one, the receiving district stopped offering the discounted tuition rate and demanded the full estimated cost per pupil from the sending district. The sending school district refused to execute a new sending-receiving agreement, and the receiving district filed a petition asking for relief in the form of compelling the sending district to pay the full estimated cost per student rate. The sending district argued the methodology of how the estimated cost per pupil was calculated. This argument was rejected by ALJ Ellen Bass and the Commissioner. Ridgefield Park held that the calculation of the tuition rate is a separate issue which does not negate the receiving school district's entitlement to full payment of the actual cost per pupil tuition rate. Instead, the Commissioner encouraged the complaining District to file a separate petition of appeal to take issue with the calculation of the per pupil tuition rate calculated. Ibid.

Here Boonton takes issue with the calculation of the per pupil rate calculated by Mountain Lakes. Boonton may or could have filed its own petition of appeal but the issue it raises lies outside the scope of Mountain Lakes' petition. As in Ridgefield Park, arguing the methodology of calculation of the full tuition lake is, as here a "proverbial red herring" to use Judge Bass's terminology. The disputed facts of whether Mountain Lakes did or did not change their methodology or receive the necessary certification from the Board of Education is "not material to the limited issue presented by the

pleadings." Ibid. [1] Thus, no material facts are in dispute.

Sending-receiving relationship as defined at N.J.A.C. 6A:23A-1.2 means "an agreement between two district boards of education, one of which does not have the facilities to educate in-district an entire grade(s) or provide an entire program(s), and as such as an alternative sends such students to a district board of education having such accommodation and pays tuition pursuant to N.J.S.A. 18 A:38-8 et seq." The calculation of tuition Payments is governed by N.J.S.A. 118A:39-19 which provides:

> Whenever the pupils of any school district are attending public school in another district, within or without the State, pursuant to this article [N.J.S.18A:38-8 through N.J.S.18A:38-24], the board of education of the receiving district **shall determine** a tuition rate to be paid by the board of education of the sending district to an amount not in excess of the actual cost per pupil as determined under rules prescribed by the commissioner and approved by the State board...[.]
>
> N.J.S.A. 18A:38-19 (emphasis supplied).

Relying on the words "shall determine," Mountain Lakes argues urges that it may set any tuition amount, so long as that amount does not exceed the "actual cost per pupil." The "actual cost per student" as defined at N.J.A.C. 6A:23A-17.1 (b) means "the total cost per student in average daily enrollment based upon the audited expenditures for the year for the purpose for which the tuition rate is being determined, and is consistent with the grade/program categories in N.J.S.A. 18A:7F-50 and 18A:7F-55."

When interpreting a statute or regulation there is a presumption that the framers intended that words be interpreted considering their ordinary meaning. Jablonowska v. Suther,195 N.J. 91, 105 (2008). The intent of a statute or regulation should be gleaned

[1] Even if this issue was properly within the scope of the petition the alleged violation of NJAC 6A:23A-17.1 (d) by a receiving district has no statutory remedy for a sending school district, and no case law exists to address whether a school district can simply avoid payment based on this occurrence.

from a view of the whole and of every part of the statute, with the real intention prevailing over the literal sense of its terms. Schierstead v. City of Brigantine, 29 N.J. 220, 230 (1959). Ridgefield Park holds that "the plain language of N.J.S.A. 18A:18-19 supports [a receiving school district]'s view that it may insist on the full amount of tuition yielded by the regulatory scheme." More definitively, the statute clearly indicates that the receiving district "clearly and unequivocally shall" set the tuition rate. As found by Judge Bass, "the statute clearly and unequivocally indicates that the receiving district shall does not state that the sending district has any power to dictate the amount of tuition to be paid." Ridgefield Park, supra. (emphasis added)

I **CONCLUDE** that the plain language of N.J.S.A. 18A:38-19 supports Mountain Lakes' view that it may insist on the full amount of tuition yielded by the regulatory scheme. As in Ridgefield Park, I also find the statute clearly and unequivocally indicates that the receiving district "shall" set the tuition rate. It does not state that that the sending district has any power to dictate the amount of tuition to be paid.

Also, as in Ridgefield Park, the accuracy of the certified tuition amount is an issue raised nowhere in the pleadings. And neither the financial situation of each of these Boards, nor the history of their past efforts to agree on a tuition amount are pertinent to the narrow issue presented; that is, whether the law permits Mountain Lakes, to demand the full certified tuition amount. Just as the sending-receiving parties in Ridgefield, I am sure that Mountain Lakes will struggle to meet its fiscal demands without the amount of tuition it seeks. Further, I am sure that Boonton has fiscal constraints of its own that have prompted it to protest payment of the full tuition amount.

I further **CONCLUDE** the law fully supports Mountain Lakes demand for the full certified tuition, and that it is entitled to the relief it seeks.

N.J.A.C. 6A:23A-17.1(f) requires that the districts enter into a sending-receiving agreement, but regarding the procedure for the payment and calculation of tuition, there is little reason or no room for negotiation. N.J.A.C. 6A:23A-17.1(f) expressly provides:

> The receiving district board of education and the sending district board of education shall establish by written contractual agreement a tentative tuition charge for budgetary purposes. Such tentative charge shall equal an amount not in excess of the receiving district board of education's "estimated cost per student" for the ensuing school year for the purpose or purposes for which tuition is being charged, multiplied by the "estimated average daily enrollment of students" expected to be received during the ensuing school year. Such written contract shall be on a form prepared by the Commissioner.

The sending-receiving agreement must contain several provisions:

> The sending district board of education shall be required in the contractual agreement to pay 10 percent of the tentative tuition charge no later than the first of each month from September through June of the contract year. The contractual agreement ...shall require all adjustments resulting from a difference in cost or in the number of students sent to be made during the second school year following the contract year. All contractual agreements shall contain a payment schedule of all adjustments that may be necessary.
>
> N.J.A.C. 6A:23A-17.1(f)(3)

The districts must sign an agreement for the "ensuing school year," however Boonton refused to reach such an agreement and refused to recognize Mountain Lake's lawful ability to set the tuition price. On April 5, 2023, The DOE certified the estimated cost per student for the 2021-2022 year for grades 9-12 as being $19,293 (Resp. Ex B) Considering inflation rates there is 0 chance possibility that this tuition rate decreased before the 2023-2024 school year. Thus, the rate per pupil being charged is likely below the estimated cost for the 2023-2024 school year, and Mountain Lakes, the receiving district, is entitled to request this amount from Boonton, the sending district. Boonton may negotiate, but ultimately must agree to pay the full amount requested by the receiving district.

In addition, the DOE cannot determine the actual cost per student for a school year until that school year has concluded. Once the DOE determines the actual cost per student, the receiving district may charge for any shortfall, or the sending district

may recoup any overpayment. N.J.A.C. 6A:23A-7.1(f)(6). Thus, under the applicable statutory scheme and regulatory intent, not only is Mountain Lakes entitled to charge Boonton $19,293 per pupil for the 2023-2024 school year, but it is also entitled to request more during the subsequent school year from Boonton if it is later certified by the DOE that the price per pupil for the 2023-2024 school year is higher than the estimated $19,293. This is true even if the parties have a contractually agreed upon tuition price: the receiving district will still be entitled to demand more tuition than the contractual agreement if the contractual agreement is subsequently determined to be less than the actual cost per student during the school year multiplied by the actual daily enrollment received. N.J.A.C. 6A:2A-17.1(7)

Mountain Lakes can charge the full estimated cost per pupil for the 2023-2024 school year. If Boonton takes issue with how this cost was calculated, because as they assert, Mountain Lakes changed their methodology for how the cost was calculated, Boonton should file its own separate action. Boonton argued that if Mountain Lakes changed its methodology, an allegation I find to be based on conjecture, then Boonton would have been entitled to object to the rate before the DOE. However, Boonton failed to provide any evidence that the "change in methodology" would have changed the tuition rate. In any event, I find it is not a proper issue for the court to decide as a defense but that rather it is an affirmative claim, assuming arguendo any merit, that Boonton must bring in a separate action.

Boonton's motion for Dismissal

Boonton argues the case must be dismissed because petitioner is seeking the enforcement of a contract that was never agreed to. (Respondent's Brief at 7.) Boonton argues that typical contract law includes offer and acceptance, meeting of the minds, consideration, and certainty of the terms of agreement. (Id at 6). In oral argument Boonton claimed contract law of detrimental reliance applies because allegedly Mountain Lakes and Boonton submitted their preliminary 2023-2024 budgets based on both sides agreeing to a contract rate with a 2% increase, only that Mountain Lakes later changed their mind, and, on April 10, 2023, proposed the $19,293 rate. However, through Boonton's admission, "it is well established that the statutory and

regulatory scheme governs the sending-receiving relationship relative to tuition payments, and not the partiers' contractual language." (Resp. Br. at 4). See also Ridgefield Park. Respondent's reliance on concepts of contract law are misplaced, as they do not really apply to the case at hand.

N.J.A.C. 6A:23A-17.1(f) requires the execution of a written contract for a sending-receiving agreement. Mountain Lakes is entitled to set the tuition rate as high as it wants, provided it is at or below the estimated per pupil for a school year. In Ridgefield Park, Judge Bass ordered the sending district to execute a sending-receiving district contract with the receiving district. "Importantly, [the receiving District has the right of full tuition regardless of the contractual language. Accordingly, deleting that [contractual] language would not abrogate its rights." Ridgefield Park at page10.

Boonton's motion to dismiss argues (1) Mountain Lakes violated N.J.A.C. 6A:23-17.1(d) (2); (2) Boonton never agreed to the proposed 2023-2024 contract and (3) Boonton has made all payments for the 2023-2024 school year. As to the first argument, I have already addressed Boonton may file a separate action for relief if it is determined that the calculated estimated cost per pupil is incorrect. However, no such evidence has been put forth; rather Boonton argues the methodology for calculation changed and proper procedure was not followed. That does not change that Boonton does not seriously contest $19,293 is not the accurate per pupil rate, and as noted, Boonton is entitled to a refund if they can show otherwise. With regard to the argument that Boonton never agreed to the contract, Boonton is nonetheless required, for the reasons aforestated, to execute the agreement per N.J.A.C. 6A:23A-17.1(f). Finally, as to Boonton's argument that it has already paid all payments due for the 2023-2024 year, I disagree. Both parties admit Boonton has paid the rate based on the expired and now null and void ten-year agreement, with its 2% increase of the prior year's payments.

Mountain Lakes is entitled to the demanded payment of $19,293 for each of the students, which the undisputed proofs show equals to a total payment for the school year of $3,704,256. Mountain lakes is entitled to the difference of $3,704,256 and whatever Boonton has paid thus far for the 2023-2024 school year. Further Mountain

Lakes will be entitled to demand more tuition from Boonton if it is later certified by the DOE that the estimated cost per pupil exceeded $19,293 for the 2023-2024 school year.

In conclusion, I grant, summary decision for Mountain Lakes, and deny Boonton's motion to dismiss. I **CONCLUDE** that Mountain Lakes is entitled from Boonton to the amount of the estimated cost of attendance for tuition, as demanded. I further **CONCLUDE** that Boonton must execute a written sending-receiving agreement with Mountain Lakes for the 2023-2024 year as required by N.J.A.C. 6A:23A-17.1 (f). and that Boonton pay forthwith its debt to Mountain Lakes, meaning the difference between $3,704,256 and the sum already paid for the 2023-2024 school year. I further **CONCLUDE** that Mountain Lakes may request adjustments in the next academic year if it is determined that the estimated cost per pupil for 2023-2024 exceeded $19.923.

ORDER

Based on the foregoing, it is **ORDERED** that Summary Decision is **GRANTED** in favor of Mountain Lakes. It is further **ORDERED** as follows:

1. Boonton will execute a written sending-receiving agreement for the 2023-2024 year as required by N.J.A.C. 6A:23A-17.1 with the rate determined by Mountain Lakes as aforesaid stated and described, as Mountain Lakes may determine the tuition amount between the parties, so long as that amount is not more than the actual cost per pupil as determined by the statutory and regulatory scheme governing tuition payments in sending-receiving relationships.

2. Boonton pay forthwith its debt to Mountain Lakes, meaning the difference between $3,704,256 and the sum already paid for the 2023-2024 school year. year as required by N.J.A.C. 6A:23A-17.1 (f).

3. Mountain Lakes may request adjustments in the next academic year if it is determined that the estimated cost per pupil for 2023-2024 exceeded $19.923.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

August 9, 2024

Ernest M. Bongiovanni

DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency: 08/09/24

Date Mailed to Parties: 08/09/24

id

454-24
OAL Dkt. No. EDU 06982-24
Agency Dkt. No. 140-5/24

New Jersey Commissioner of Education

Final Decision

D.M. and D.M.-G., on behalf of minor child, M.M.,

Petitioners,

v.

Board of Education of the Township of Union, Union County,

Respondent.

The record of this matter, the proposed Settlement Agreement and Release (Agreement) and the Initial Decision issued by the Office of Administrative Law have been reviewed pursuant to *N.J.A.C.* 1:1-19.1. Upon review, the Commissioner approves the terms of the Agreement and adopts the Initial Decision as the final decision in this matter. The case is hereby dismissed, subject to compliance with the terms of the Agreement.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 16, 2024
Date of Mailing: December 18, 2024

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. EDU 09682-24
AGENCY DKT. NO. 140-5/24

D.M. AND D.M.-G. ON BEHALF OF MINOR CHILD, M.M.,
Petitioners,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF UNION, UNION COUNTY,
Respondent.

D.M., petitioner, pro se

Philip H. Gertner, Esq., for respondent (Taylor Law Group, LLC, attorneys)

Record Closed: November 26, 2024 Decided: November 26, 2024

BEFORE **R. TALI EPSTEIN**, ALJ:

This contested case was transmitted to the Office of Administrative Law for a hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. By order of the tribunal, dated November 25, 2024, D.M.-G was dismissed as a party to this case. D.M. and the Board of Education of the Township of Union, Union County have agreed to settle

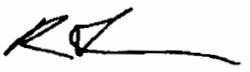
this case, the terms of which were placed on the record on October 16, 2024, and memorialized in a written settlement agreement signed by the parties. Their settlement agreement is attached to this decision.

Having heard the testimony provided by petitioner on October 16, 2024, and having reviewed the terms of the parties' agreement, I have determined that the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy between the parties in this case.

I **ORDER** that the settlement agreement is **APPROVED**, that its terms are **INCORPORATED** into this decision, and that this case is **CONCLUDED**.

I **FILE** my decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration. This recommended decision may be adopted, modified, or rejected by **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is empowered by law to make a final decision in this case. If the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not so act within 45 days, and unless such time limit is otherwise extended, this recommended decision becomes a final decision in accordance with N.J.S.A. 52:14B-10.

November 26, 2024
DATE



R. TALI EPSTEIN, ALJ

Date Received at Agency: November 27, 2024

Date Mailed to Parties: November 27, 2024
cc

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into effective as of October 15, 2024, ("the Effective Date"), by and between ~~DIANE MCGLAIN-GARRETT ("D.M.G.")~~, DOMINIQUE MUHAMMAD ("D.M."), and the TOWNSHIP OF UNION BOARD OF EDUCATION (the "Board") (collectively, the "Parties").

WHEREAS, the Board is a body corporate and politic, organized and existing by virtue of the laws of the State of New Jersey, N.J.S.A. 18A:1-1, et seq., which is entrusted with maintaining and governing the public schools of the Township of Union School District (the "District");

WHEREAS, the Board has its administrative offices located at 2369 Morris Avenue, Union, New Jersey 07083;

WHEREAS, D.M.G., currently residing at 121 Apple Tree Lane, Union, New Jersey 07083, is the grandmother of M.M., and not the parent or legal guardian of M.M.;

WHEREAS, M.M.'s parent, D.M., does not reside in the Township of Union;

WHEREAS, M.M. is a student currently enrolled in the District;

WHEREAS, ~~D.M.G.~~ and D.M. claim that M.M. is eligible for and entitled to a free public education in the District as an affidavit student pursuant to N.J.S.A. 18A:38-1(b)(1)

WHEREAS, the Board determined on April 25, 2024 that M.M. was not domiciled in the Township of Union, and, therefore, was not entitled to a free public education in the District pursuant to N.J.S.A. 18A:38-1, et seq. or N.J.A.C. 6A:22-3.1, et seq.; and

WHEREAS, ~~D.M.G.~~ and D.M. filed an appeal with the New Jersey Commissioner of Education, captioned D.M. and D.M.-G., o/b/o M.M. v. Board of Education of the Township of Union, OAL Docket No. EDU 09862-2024N, Agency Docket No. 140-5/24, challenging the

Board's determination (the "Appeal"); and

WHEREAS, the Parties desire to resolve and settle all outstanding matters between them pursuant to the terms and conditions set forth in this Agreement;

NOW THEREFORE, intending to be legally bound hereby and in consideration of the mutual covenants, conditions, obligations, and promises contained herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement Terms**

~~D.M.G.~~ and D.M. agree to withdraw the Appeal, and to re-register M.M. for enrollment in the District. M.M.'s registration and enrollment will be handled in the ordinary course in accordance with N.J.S.A. 18A:38-1, et seq., N.J.A.C. 6A:22-3.1, et seq., and applicable Board policy. In exchange for withdrawal of the Appeal, the Board agrees to waive all claims against ~~D.M.G.~~ and/or D.M. for tuition owed to the Board for M.M.'s attendance at District Schools while ineligible, during the time period of ~~April 28, 2024 through June 17, 2024~~ December 18, 2023 through June 20, 2024 and September 5, 2024 through October 1,

2. **Release**

a. **Release By ~~D.M.G.~~ and D.M.**

Upon the fulfillment by the Board of the terms and conditions of the Agreement, ~~D.M.G.~~ and D.M., their heirs and assigns hereby irrevocably and unconditionally waive, release and forever discharge any and all claims or rights, whether known or unknown, which they have or may have against the Board related to residency, personally and officially, individually and collectively, its past and present Board members, all officers and administrators, the Board's attorneys, agents, servants, and current and former employees, as well as the Board's predecessors, successors, assigns, estates, heirs, trustees, beneficiaries, administrators, representatives, insurers,

reinsurers, and sureties, including, but not limited to, any and all claims for damages, however designated, any and all claims for emotional distress or pain and suffering, attorneys' fees, and any and all claims arising under any federal, state or local ordinance, regulation or law including, but not limited to, the Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §§ 2000e, et seq., ("Title VII"); the Reconstruction Era Civil Rights Act, as amended, 42 U.S.C. §§ 1981, § 1983, et seq. ("Civil Rights Act"); the Civil Rights Act of 1991, as amended, 42 U.S.C. § 1981a, et seq. ("CRA of 1991"); the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. ("ADA"); the Rehabilitation Act, 29 U.S.C. §§ 701, et seq. ("RA"); the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. ("LAD"), any common law claim and any and all other claims, that could be initiated in any venue, up to the date of this Agreement. ~~D.M.G.~~ and D.M. expressly understand and acknowledge that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. ~~D.M.G.~~ and D.M. expressly accept and assume the risk of such unknown or underestimated losses or claims and acknowledges and agrees that the benefits to be provided to them pursuant to this Agreement fully compensate them for such risks.

b. Release by the Board

Upon the fulfillment by ~~D.M.G.~~ and D.M. of the terms and conditions of the Agreement, the Board, its heirs and assigns hereby irrevocably and unconditionally waive, release and forever discharge any and all claims or rights, whether known or unknown, which they have or may have against the ~~D.M.G.~~ and D.M. related to residency, personally and officially, individually and collectively, as well as their predecessors, successors, assigns, estates, heirs, trustees, beneficiaries, administrators, representatives, insurers, reinsurers, and sureties, including, but not limited to, any and all claims for damages, however designated, any and all claims for emotional distress or pain

and suffering, attorneys' fees, and any and all claims arising under any federal, state or local ordinance, regulation or law including, but not limited to, the Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §§ 2000e, et seq., ("Title VII"); the Reconstruction Era Civil Rights Act, as amended, 42 U.S.C. §§ 1981, § 1983, et seq. ("Civil Rights Act"); the Civil Rights Act of 1991, as amended, 42 U.S.C. § 1981a, et seq. ("CRA of 1991"); the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. ("ADA"); the Rehabilitation Act, 29 U.S.C. §§ 701, et seq. ("RA"); the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. ("LAD"), any common law claim and any and all other claims up to the date of this Agreement. The Board expressly understands and acknowledges that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. The Board expressly accepts and assumes the risk of such unknown or underestimated losses or claims and acknowledges and agrees that the benefits to be provided to it pursuant to this Agreement fully compensate it for such risks.

3. **Stipulation of Dismissal**

D.M., [redacted]G. and the Board agree that by executing this Agreement, it (and a Board resolution) shall be submitted to the Administrative Law Judge for issuance of an Initial Decision approving the settlement. If the settlement is approved by both the Administrative Law Judge and the Commissioner of Education, the Appeal shall be dismissed with prejudice.

4. **Assent to Terms**

D. M.
~~Petitioner~~ and Respondent hereby acknowledge that they entered into this Agreement with a full understanding of their rights and that they were fully informed of the implications of this Agreement. The parties enter into this Agreement without duress and of their own free will and volition and acknowledge that they were given a full and fair opportunity to fully consider this

Agreement.

5. **No Admission of Liability**

This Agreement does not in any way constitute an admission of liability or wrongdoing by any of the Parties.

6. **Successors and Assignees**

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors, assignees, heirs, officers, employees, officials and agents.

7. **Amendment; Severability; No Waiver**

This Agreement shall not be amended, changed or modified except in a writing signed by all parties. The provisions of this Agreement are severable. If it is determined by a court or administrative agency of competent jurisdiction that a specific clause of this Agreement is illegal or unenforceable, the remainder of the Agreement shall not be affected by such a ruling and shall remain in full force and effect unless doing so would destroy the essential nature of this Agreement. Any failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or of any other provision.

8. **Confidentiality.**

Each Party understands and agrees that this Agreement, its terms, and the matters discussed in negotiating its terms are confidential. Neither Party may, directly or indirectly, divulge, discuss, publicize, disclose or in any way communicate the fact of this Settlement Agreement or the terms of this Agreement, the discussion or circumstances surrounding the negotiation or execution of this Agreement, or any of the allegations or claims that the other Party asserted or that the other Party could have asserted to anyone, including to the media or any other third party, without the

express written authorization by an authorized representative of the other Party unless compelled to do so pursuant to law. The foregoing confidentiality obligations shall not apply to disclosure by either Party to its spouse, parent and/or children, legal representatives and/or tax advisors, provided such Party first instructs them, and secures their agreement, to keep all such information in strict confidence.

~~D.M.G.~~ and D.M. acknowledge that their failure to abide by these confidentiality provisions will result in immediate and irreparable damage to the Board, thereby entitling it to, amongst other things, injunctive relief from a court having appropriate jurisdiction. Persons referenced in this paragraph with whom the Parties may share the terms and amounts of this Agreement are also bound by this paragraph, and each Party agrees to advise such persons of the same. Except as otherwise provided herein, in response to any request for information concerning the terms of this Agreement, each Party and its respective counsel shall state only "the matter has been resolved."

In the event that a Party is subpoenaed by any court or federal or state agency of competent jurisdiction to give testimony about the subject matter of this Agreement, the terms of this Agreement or anything related hereto, such Party shall give immediate notice of the receipt of said subpoena by phone and fax or overnight mail to the other Party. The notice referred to above is intended to give the other Party the opportunity to move to quash any such subpoena and to investigate the circumstance pursuant to which the subpoena was issued. This provision shall not prohibit the Board from taking any action or discussions regarding the approval of this Agreement.

9. **Non-Disparagement.**

~~D.M.G.~~ and D.M. expressly agrees and covenants that they will not make, and that they will not cause their affiliates, representatives, trustees, agents, or persons acting on their behalf to

make, any representations or statements, either directly or indirectly, whether orally or in writing, to any person or entity, that disparages the Board, or any of its current or former employees.

10. No Further Consideration

The Board and D.M. ~~The Parties~~ each expressly acknowledge and represent that neither party will seek nor be entitled to any further consideration from the other in connection with this Agreement other than the consideration as detailed herein.

11. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matters herein, and supersedes and integrates any and all prior representations, negotiations, discussions, understandings and agreements, whether oral or written. Each party acknowledges that neither the other party, nor any agent or attorney of the other party, has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement to induce it to execute this Agreement.

12. Construction

The terms of this Agreement are not to be construed against any one party but are to be construed as if all parties prepared it equally.

13. Counterparts

This Agreement may be signed in counterparts and shall be binding as if all Parties executed the original thereof. A facsimile or electronically-transmitted signature shall have the same effect as an original signature.

14. Law Governing

This Agreement shall be governed by the laws of the State of New Jersey.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this agreement consisting of this and seven (7) preceding pages on the dates set forth below.

~~**Diane McClain-Garrett**~~

_____

Date:_____

Dominique Muhammad - Mother

Date: 10/16/24

Mother

Township of Union Board of Education

Philip H. Gertner, Esq.

Board Council

Date: 10/16/2024

455-24
OAL Dkt. No. EDU 12074-24
Agency Dkt. No. 141-5/24

New Jersey Commissioner of Education

Final Decision

M.B., on behalf of minor child, O.B.,

Petitioner,

v.

Board of Education of the Woodstown-Pilesgrove Regional School District, Salem County,

Respondent.

The record of this matter, which was transmitted to the Commissioner by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-14.4 and includes an advisement of petitioner's failure to appear at a scheduled conference on October 17, 2024, has been reviewed. Petitioner did not file an explanation for the failure to appear. Accordingly, this matter is no longer deemed to be a contested case before the Commissioner and is hereby dismissed with prejudice.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 16, 2024
Date of Mailing: December 18, 2024

[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.

NEW JERSEY DEPARTMENT OF EDUCATION

IN THE MATTER OF
TENURE CHARGES BY

SCHOOL DISTRICT OF THE
TOWNSHIP OF EDISON,
Petitioner

and Agency Dkt #142-5/24

SAM IACOBONE,
Respondent

Appearances:

For Petitioner: Paul C, Kalac, Esq.
Weiner Law Group, LLP

For Respondent: Matthew Moench, Esq.
King Moench & Collins LLP

Before: Barbara C. Deinhardt
Arbitrator

ORDER APPROVING SETTLEMENT OF TENURE CHARGES

Respondent Sam Iacobone has been continuously employed by the Edison Township Board of Education as a tenured physical education and health teacher since September 1, 1995. Effective January 9, 2023, he was suspended from his position with full pay and full benefits. On February

22, 2024, the District served Tenure Charges on Respondent alleging that he engaged in conduct unbecoming.

The Commissioner of Education, having reviewed the Tenure Charges and Respondent's June 3, 2024 Motion to Dismiss in Lieu of Answer thereto, determined that the charges were sufficient, if true, to warrant dismissal or reduction in salary and, therefore, referred the matter to arbitration. The charges were referred to the undersigned on June 4, 2024, pursuant to N.J.S.A. 18A:6-16.

Respondent's Motion to Dismiss was denied by Decision issued July 24, 2024. Following the adjudication of Respondent's Motion to Dismiss, the parties reached a mutually acceptable settlement of the Tenure Charges prior to the commencement of the hearings scheduled for October 17 and 18. The settlement terms were set forth in a written Settlement Agreement ("Settlement") dated. in which the District laid out the basis for the settlement, to wit, that the District was voluntarily dismissing all Tenure Charges currently pending against Respondent,. Mr. Iacobone has provided an irrevocable letter of resignation effective. He will be paid his full salary, benefits and emoluments of employment through June 30, 2023, but will not be paid any back pay for the 120 days he was out of work without pay. Examiners for possible suspension or revocation of certificate.

On November 24, 2024, the Settlement, signed by the parties, was forwarded to the Arbitrator for review and approval. An additional sworn Certification from Mr. Iacobone dated December 13, 2024 was forwarded on December 18, 2024. After review of the Settlement and the additional Certification, I find that the standards for settlement or withdrawal of the

Tenure Charges have been satisfied in accordance with N.J.A.C. 6A:3-5.6 and therefore the settlement of the Tenure Charges pursuant to the terms of the Settlement is hereby approved.

1. A copy of the Settlement and additional Certification, as well as the Tenure Charges and the Motion to Dismiss in Lieu of Answer and Decision thereon, are annexed to this Order;
2. The withdrawal of the Tenure Charges is warranted given that Respondent has decided to resign his position;
3. The Settlement is signed by both the charged and charging parties, both of whom were represented by competent counsel;
4. Respondent was informed of the terms of the Settlement and attested that he was entering into the agreement with a full understanding of his rights, having been represented by competent counsel;
5. The Settlement is in the public interest, given that, Respondent having resigned his employment, proceeding with the Tenure Charges will not provide any further relief; and
6. Respondent was advised of the Commissioner's duty to refer tenure determinations resulting in loss of position to the State Board of Examiners for possible suspension or revocation of certificate.

By reason of the forgoing, I am satisfied that the terms of the parties' settlement are reasonable and in the best interests of both parties and of the public and therefore the settlement and withdrawal of the Tenure Charges against Respondent Iacobone, pursuant to the terms

set forth in the Settlement, is approved.

SO ORDERED.

Barbara C. Deinhardt
Neutral Arbitrator

Dated: December 18, 2024

STATE OF NEW YORK)
: ss
COUNTY OF KINGS)

On this the 18th day of December, 2024, I, Barbara C. Deinhardt, affirm, pursuant to Section 7507 of the Civil Practice Law and Rules of the State of New York, that I have executed and issued the forgoing as my Interim Opinion and Order in the above matter.

Barbara C. Deinhardt

457-24

New Jersey Commissioner of Education

Decision

G.W. and K.W., on behalf of minor child, M.W.,

Petitioners,

v.

Board of Education of the Borough of Ringwood, Passaic County,

Respondent.

Synopsis

In this case on remand – which stems from an appeal filed in September of 2020 – petitioners sought to overturn the Board's determination that their child, M.W., was not the victim of harassment, intimidation, and bullying (HIB). The petitioners contended that their child had been subjected to HIB stemming from an assignment by his sixth-grade teacher. Following a long and complicated procedural history, which included the withdrawal of counsel representing petitioners, the Board filed a motion for summary decision in April 2024. In an Initial Decision issued June 27, 2024, the ALJ – finding, *inter alia,* that petitioners failed to file opposition papers – granted the Board's motion for summary decision. Subsequently, the Commissioner rejected the Initial Decision and remanded the matter to the Office of Administrative Law (OAL) to be properly litigated, finding that, given the unique circumstances of the matter, petitioners had been unable to respond to the motion for summary decision and that the matter should therefore not have been considered unopposed. The Commissioner ordered that the petitioners be given a 20-day time limit on remand for filing opposition to the Board's motion for summary decision.

On remand, the ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; petitioners did not submit any opposition papers within the 20 day time limit set by the Commissioner and did not request an extension of time to submit same; it is undisputed that G.W. and K.W. did not allow the District's HIB investigators to interview M.W. about the alleged HIB; nothing in the record indicates that M.W. was adversely affected by the assignment that was the topic of the HIB complaint; nothing in the record indicates that any other student was adversely affected by the alleged HIB, nor was the orderly operation of the school; in fact, the record was entirely devoid of evidence supporting any of the elements of a charge of HIB. Accordingly, the ALJ granted the Board's motion for summary decision.

Upon review, the Commissioner, *inter alia*, concurred with the findings and conclusions of the ALJ on remand. Accordingly, the October 4, 2024, Initial Decision was adopted as the final decision in this matter, and the petition of appeal was dismissed.

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.

457-24
OAL Dkt. No. 12842-24 (09628-20 on remand)
Agency Dkt. No. 199-9/20

New Jersey Commissioner of Education

Final Decision

G.W. and K.W., on behalf of minor child, M.W.,

Petitioner,

v.

Board of Education of the Borough of Ringwood, Passaic County,

Respondent.

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

Petitioners filed an appeal of respondent's (Board) determination that their child, M.W., was not the victim of harassment, intimidation, and bullying (HIB). Petitioners were initially represented by counsel, who was subsequently permitted to withdraw. M.W.'s father, G.W., took over managing the case, but notified the OAL in February 2024 that M.W.'s mother, K.W., would be handling the case going forward.

In an Initial Decision issued June 27, 2024, the Administrative Law Judge (ALJ) granted the Board's second motion for summary decision. Specifically, the ALJ deemed the motion unopposed because petitioners had not filed opposition papers. The ALJ found that the record was devoid of evidence supporting any of the elements of a charge of HIB.[1] As such, the ALJ concluded that there

[1] The Board concedes that M.W. reasonably perceived that the alleged perpetrator's conduct was motived by an actual or perceived distinguishing characteristic. The Board also concedes that the conduct occurred on school grounds. *Respondent's Brief in Support of Motion for Summary Decision*, p. 6.

were no unresolved issues of material fact that would necessitate a plenary hearing, and that the Board's HIB determination should be affirmed.

On September 6, 2024, the Commissioner rejected the Initial Decision, finding that given the unique circumstances of this matter, in which petitioner was no longer represented by counsel and lacked a copy of the complete case file, petitioner was unable to respond to the motion for summary decision. The Commissioner remanded this matter to the OAL to be properly litigated and directed the Office of Controversies and Disputes to provide a complete copy of the record to petitioner. Additionally, the Commissioner set a 20-day time limit for petitioners to file opposition to the Board's motion.

On remand, when petitioner failed to respond to the motion within 20 days, the ALJ considered the motion unopposed. The ALJ concluded that a required element of HIB – that the conduct substantially disrupt or interfere with the orderly operation of the school or the rights of other students – had not been established, thereby precluding a finding of HIB. The ALJ further concluded that there were no unresolved issues of material fact that would warrant a plenary hearing and granted the Board's motion for Summary Decision.

Upon review, the Commissioner concurs with the findings and conclusions of the ALJ on remand. Accordingly, the October 4, 2024, Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 19, 2024
Date of Mailing: December 20, 2024

[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
SUMMARY DECISION

OAL DKT. NO.: EDU 12842-24

G.W. AND K.W. ON BEHALF OF MINOR CHILD M.W.,

Petitioners,

v.

BOROUGH OF RINGWOOD, BOARD OF EDUCATION, PASSAIC COUNTY,

Respondent.

REMAND OF
OAL DKT. NO.: EDU 09628-20

K.R. formerly known as K.W., on behalf of M.W., petitioners, pro se

Jessika Kleen, Esq., for respondent (Machado Law Group, attorneys)

BEFORE: **JOHN P. SCOLLO,** ALJ:

Record Closed: September 30, 2024 Decided: October 4, 2024

STATEMENT OF THE CASE

Petitioners, G.W. and K.W., parents of M.W., filed for a Fair Hearing following the Ringwood Board of Education's (a/k/a the District) determination that HIB charges brought against Joan Bredin ("Bredin"), M.W.'s teacher, did not support a finding of HIB conduct. In the Motion at bar, the Respondent seeks Summary Decision ordering the dismissal of the Petitioner's appeal.

PROCEDURAL HISTORY

On or about December 6, 2019, Joan Bredin provided a reading assignment, a three-page story titled "An Engine Without Brakes" to M.W., then a sixth-grade special education student, who had been diagnosed as Attention Deficit Hyperactivity Disorder ("ADHD").

On December 13, 2019, G.W. and K.W. (a/k/a K.R.), M.W.'s parents, learned about the assignment and made an HIB complaint. Anti-Bullying Specialist, Eric R. Erler (the "Investigator") investigated the allegations of the complaint by interviewing Bredin and a paraprofessional (a teacher's aide) who worked in the same classroom with M.W. G.W. and K.W. did not give consent for their son, M.W., to be interviewed and so he was not interviewed. On January 8, 2020, Erler filed his HIB Investigation Narrative in which he concluded that the incident (i.e., the circumstances surrounding the assignment of the story to M.W. by Bredin) did not meet the criteria for HIB. On February 24, 2020, the Ringwood Board of Education voted to adopt the Investigator's conclusion. On May 14, 2020, counsel for G.W. and K.W. sent a letter in lieu of the appearance of G.W. and K.W. in furtherance of their appeal of the District's determination. On May 27, 2020, the HIB/Discipline Appeal Committee met. On June 1, 2020, the Board of Education voted to take no further action, thus affirming its February 24, 2020 decision to adopt the Investigator's conclusion that the criteria for HIB had not been met. On September 14, 2020, G.W. and K.W. filed a Petition of Appeal from the Board of Education's June 1, 2020 Decision with the Commissioner of Education. On September 21, 2020, the Board

of Education filed its Answer to the Appeal. A hearing was scheduled for April 28 and 30, 2021. In March, 2021 the two sides filed their respective motions for summary decision. Settlement discussions ensued without resolution of the matter. Subsequently, Opposition papers, Replies, and various supporting papers were submitted. On December 16, 2021 both motions were denied. On June 7, 2022 the Honorable JoAnn Candido, ALJ entered an Order granting the motion of Robert Thurston, Esq. to be relieved as counsel for Petitioners. Subsequently, in light of related civil litigation pending in Federal District Court, the matter was held in abeyance. In September, 2023 counsel for Respondent inquired of Judge Scollo about the status of this matter and whether this matter would be given a trial date. In response, Judge Scollo requested a status report from the parties regarding the state of the related civil litigation. On February 22, 2024, Respondent's counsel supplied a status report and requested leave to file a Motion to Dismiss EDU 09628-20. Judge Scollo denied leave to file a Motion to Dismiss but granted leave for Respondent to file a Motion for Summary Decision. Counsel for Respondent filed a Motion for Summary Decision on April 30, 2024 chiefly citing as its bases the failure of the Petitioners to set forth evidence that the student (M.W.) was harmed, or that the alleged incident substantially disrupted or interfered with the orderly operation of the school or the rights of the allegedly targeted student or of other students.

On April 8, 2024, the Tribunal sent correspondence to both sides granting leave to the Respondent, Ringwood BOE to file a Motion for Summary Decision and stating that UAPR 1:1-12.5 required the party opposing a Motion for Summary Decision to submit Opposition papers within twenty (20) days. As noted above, Respondent Ringwood BOE filed its motion for summary decision on April 30, 2024. Therefore, Petitioners' Opposition papers were due on May 20, 2024. On June 10, 2024, K.R. (the mother of M.W. and formerly known as "K.W.") inquired with Judge Scollo's secretary, Diana Batista, about how to obtain papers from her file. K.R. claimed that she did not have a copy of Ringwood BOE's Summary Decision Motion; that she did not have her case filings; and that she wanted leave from the Tribunal to allow her fourteen (14) days from the date of her receipt of the Motion to file Opposition papers. Ms. Batista directed K.R. to contact the Department of Education for copies of her papers. On June 10, 2024, Attorney Kleen (counsel for the Ringwood BOE) sent emails enclosing proof that she

served the Motion for Summary Decision upon the petitioners on April 30, 2024, including a copy of the envelope in which the Motion was contained. On June 14, 2024, in response to K.R's June 10, 2024 correspondence, Judge Scollo wrote to the parties stating that the Petitioners had prior legal counsel who should have given the file to the Petitioners when his representation of the Petitioners concluded and from whom a copy of the file should be obtainable. Referencing his April 8, 2024 letter, Judge Scollo noted that the Opposition papers were due on May 20th and were now twenty-five (25) days overdue. Nonetheless, Judge Scollo granted the Petitioners until Thursday, June 20, 2024 at 12:30 p.m. to submit their Opposition papers. The Petitioners did not submit their Opposition papers by the 12:30 p.m. deadline on Thursday, June 20, 2024 and said Opposition papers were not submitted by the Tribunal's close of business at 4:30 p.m. on June 20, 2024. Therefore, the Motion was deemed to be unopposed.

The Acting Commissioner of Education issued his Final Decision on September 6, 2024 (mailed on September 9, 2024); in that Decision the Acting Commissioner set a twenty-day time limit for the Petitioners to submit their Opposition to the Respondent's Summary Decision Motion. The Petitioners did not submit any Opposition papers by Monday, September 30, 2024 and the Petitioners did not ask the Tribunal for additional time to submit same. The Record closed on September 30, 2024.

ANALYSIS OF LEGAL AND FACTUAL ISSUES

Analysis of the Parties' Respective Positions

The Petitioners' claim has been that the assigning of the story to M.W. was inherently outrageous and the evidence of its outrageous nature is so one-sided that the only possible conclusion is that it constitutes bullying. Therefore, argue the Petitioners, the School District's determination that Ms. Bredin's action was not an act of HIB (bullying) is erroneous. The Tribunal notes that Petitioners' accusation is not rooted in established facts.

The Ringwood BOE's position is that the investigation team found that Ms. Bredin's rationale for assigning the story to M.W. was free from any kind of improper motive and,

applying all HIB criteria, concluded that Ms. Bredin's actions did not constitute an act of HIB. The BOE maintains that the HIB investigation and the conclusion reached by the Anti-Bullying Specialist and the subsequent February 24, 2020 BOE vote adopting the conclusion of the Anti-Bullying Specialist were conducted in accordance with the procedures set forth in N.J.S.A. 18A:37-14, commonly referred to as "The Anti-Bullying Bill of Rights Act" and were therefore conducted properly. The Ringwood BOE's Motion is supported by Certifications and attachments.

Findings of Undisputed Facts

Ringwood BOE's Motion for Summary Decision was filed on April 30, 2024. Under UAPR 1:1-12.5 a party has twenty days to file Opposition papers to his adversary's Motion for Summary Decision. I **FIND** that the Motion for Summary Decision was duly served by the Machado Law Firm upon the Petitioners as evidenced by Attorney Kleen's statement and by her submission of a copy of the envelope bearing the postmark of April 30, 2024. I **FIND** that the Petitioners did not file Opposition papers within the twenty-day period allowed for the filing of Opposition papers under UAPR 1:1-12.5. Although the Tribunal granted the Petitioners additional time (to Thursday, June 20, 2024 by 12:30 p.m.) to submit their Opposition papers, I **FIND** that no such papers were received by the Tribunal by 12:30 p.m. or even by the close of business at 4:30 p.m. on June 20, 2024.

The Acting Commissioner of Education issued his Final Decision on September 6, 2024 (mailed on September 9, 2024); in that Decision the Acting Commissioner remanded the matter and set a twenty-day time limit for the Petitioners to submit their Opposition to the Respondent's Summary Decision Motion. The Petitioners did not submit any Opposition papers by Monday, September 30, 2024 and the Petitioners did not ask the Tribunal for additional time to submit same. I **FIND** that the time limit set by the Assistant Commissioner has been exceeded.

It is undisputed and I **FIND** that G.W. and K.W. did not allow the HIB investigators to interview M.W. I **FIND** that had M.W. been interviewed by the HIB investigators, the investigators, the parents and this Tribunal would likely have obtained essential factual evidence regarding whether M.W. reasonably perceived that Ms. Bredin's assigning of

the article to him was motivated by an actual or perceived characteristic or by a distinguishing characteristic of M.W. I **FIND** that had the HIB investigators been allowed to interview M.W., it would have enabled the investigators to explore whether or not M.W. was adversely affected by the assignment of the article, whether the assignment substantially disrupted or interfered with the orderly operation of the school, and whether the assignment adversely affected the rights of other students. I **FIND** that the parties were afforded sufficient time to conduct discovery. I **FIND** that there was nothing in the record that indicates that M.W. was adversely affected by the assignment of the article.

I **FIND** that there was nothing in the record that indicates that any other student was adversely affected by Bredin's assignment of the article to M.W. I **FIND** that there is nothing in the record that indicates that the orderly operation of the school was adversely affected by Bredin's assignment of the article to M.W.

APPLICABLE LAW

The Standard for Summary Decision

A Motion for Summary Decision may be granted if the papers and discovery presented, as well as, any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the Motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c). See Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954) and Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995).

The HIB Statute

> N.J.S.A. 18A:37-14 defines "Harassment, intimidation or bullying" as, Any gesture, any written, verbal or physical act, or any electronic Communication, whether it be a single

incident or a series of incidents, that is:

[1] reasonably perceived as being motivated either by any actual or perceived characteristic such as race, color, religion, ancestry, national origin, gender sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic,

[2] that takes place on school property, at any school-sponsored function, on a school bus, or takes place off school grounds as provided for in N.J.S.A. 18A:37-15.3,

[3] that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

a. A reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging a student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property; or

b. Has the effect of insulting or demeaning any student or group of students; or

c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student."

Thus, to constitute HIB the gesture or action must contain all three primary (i.e., numerically-listed) elements plus at least one of the three alphabetized ("a", "b" or "c") elements.

Board of Education's HIB Decisions Are Afforded a Presumption of Validity

The decision of a local board of education should not be disturbed absent a finding that the action below was arbitrary, capricious, or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 6, 2008), (citing Thomas Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), *aff'd*, 46 N.J. 581 (1966)). In an appeal of a District's finding, with respect to an HIB investigation, the burden of proving "unreasonableness" of Board action is on Petitioners. G.M. v. Roselle Park Borough Bd. of Educ., 95 N.J.A.R.2d (EDU) 107, 109. Courts have held that "[w]here

there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewage Co. v. Dep't of Envtl. Prot., 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), *aff'd*, 131 N.J. Super. 37 (App. Div. 1974). "Thus in order to prevail, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." T.B.M., see also, W.C.L. and A.L. ex rel L.L. v. Tenafly Bd. of Educ., OAL Dkt. No. EDU 3223-12 (2013).

Motion Practice Before the Tribunal

Under the OAL's Uniform Administrative Procedure Rules (UAPR), a party wishing to oppose his adversary's Motion for Summary Decision must file written Opposition papers within twenty days of the filing of the Motion. UAPR 1:1-12.5.

LEGAL ANALYSIS AND CONCLUSIONS

Having found that the time limit set by the Acting Commissioner for Petitioners to submit their Opposition papers has been exceeded, I **CONCLUDE** that the Respondent's Motion is unopposed.

I **CONCLUDE** that the Petitioners have failed to raise any unresolved issues of material fact that would necessitate a plenary hearing.

I **CONCLUDE** that the Petitioners have failed to carry their burden of demonstrating that the decision of the BOE in regard to the HIB charges against Ms. Bredin was tainted by bad faith or that the decision of the BOE was made in utter disregard of the circumstances before it.

Having found that there is nothing in the record that would indicate that the assigning of the article to M.W. adversely affected M.W. or another student and that the assigning of the article to M.W. adversely affected the operation of the school, I **CONCLUDE** that an essential element of HIB (the third element of the primary, or numerically-listed elements) has not been established and I **CONCLUDE** that without said

element there can be not finding of an act of HIB. I therefore **CONCLUDE** that the Ringwood BOE's determination that Ms. Bredin did not commit an act of HIB must be and hereby is **AFFIRMED**.

For all of the above reasons, I **CONCLUDE** that Respondent Ringwood BOE's Motion for Summary decision should be and hereby is **GRANTED**.

ORDER

This matter having been brought before the Tribunal by counsel for the Respondent Ringwood BOE seeking Summary Decision, and the Tribunal having considered the submissions, and for good cause:

It is on this third (4th) day of October, 2024,

ORDERED that the Respondent Ringwood BOE's Motion for Summary Decision is hereby **GRANTED**; and it is further

ORDERED that the Tribunal's Order Granting Summary Decision in favor of the Ringwood BOE shall be immediately sent to the parties and / or their counsel by email; and it is further

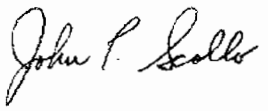
ORDERED that both sides shall immediately acknowledge receipt of this **ORDER** by email.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.



October 4, 2024

DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

LIST OF MOVING PAPERS

Respondent Ringwood BOE's Motion for Summary Decision

458-24

New Jersey Commissioner of Education

Final Decision

Marcella Simadiris,

Petitioner,

v.

Board of Education of the City of Paterson,
Passaic County,

Respondent.

Synopsis

In February 2023, the petitioner appealed the withholding of a portion of her pay by the respondent Board pursuant to *N.J.S.A.* 18A:6-14 following the filing of tenure charges against petitioner in June 2019; those charges are the subject of a tenure hearing which is still in progress. The Board began withholding pay from petitioner in January 2023, after the tenure matter had been held in abeyance during related litigation. The petitioner filed a motion for emergent relief and a subsequent motion for summary decision, both of which were denied. A hearing was held in this matter on May 6, 2024.

The ALJ found, *inter alia*, that: on May 22, 2019, the Board adopted a resolution certifying tenure charges against the petitioner and suspending her, without pay, effective May 23, 2019, in connection with the certification of tenure charges to the Commissioner; subsequent litigation and the disruption caused by the Covid-19 epidemic caused the tenure matter to be held in abeyance until September 2021, when an arbitrator was appointed to conduct the tenure proceeding; the petitioner's argument that the Board violated *N.J.S.A.* 18A:6-14 and acted without legal authority when it waited more than 440 calendar days before implementing its salary withholding is without merit, as the plain and unambiguous language of *N.J.S.A.* 18A:6-14 does not support petitioner's position; the Board's actions were consistent with the statutory directive; further, it is well settled that actions within a school board's authority are entitled to a presumption of validity and will not be overturned in the absence of an affirmative showing that the decision was arbitrary, capricious, or unreasonable. The ALJ concluded that the Board had the authority to implement petitioner's suspension through salary deductions, and the Board's actions regarding the implementation of her statutorily authorized suspension were not arbitrary, capricious, or unreasonable. Accordingly, the ALJ dismissed petitioner's appeal with prejudice.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions and adopted the Initial Decision as the final decision in this matter. Accordingly, the petition of appeal was dismissed with prejudice.

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.

458-24
OAL Dkt. No. 01360-23
Agency Dkt. No. 35-2/23[1]

New Jersey Commissioner of Education

Final Decision

Marcella Simadiris,

Petitioner,

v.

Board of Education of the City of Paterson,
Passaic County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that respondent had the authority to enforce petitioner's suspension through salary deductions. The Commissioner further concurs with the ALJ that the actions respondent utilized in implementing petitioner's suspension were not arbitrary, capricious, or unreasonable. Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 19, 2024
Date of Mailing: December 20, 2024

[1] The Initial Decision incorrectly lists the agency docket number as 25-2/23 due to a typographical error at the time of transmittal.

[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
OAL DKT. NO. EDU 01360-23
AGENCY DKT. NO. 25-2/23

MARCELLA SIMADIRIS,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF PATERSON, PASSAIC COUNTY,
Respondent.

Alfred F. Maurice, Esq., for petitioner (Springstead & Maurice, attorneys)

Karen A. Murray, Esq., for respondent (The Murray Law Firm, attorneys)

Record Closed: August 30, 2024 Decided: October 1, 2024

BEFORE **MARGARET M. MONACO**, ALJ:

STATEMENT OF THE CASE

Petitioner Marcella Simadiris (Simadiris) challenges the withholding of a portion of her pay by respondent Board of Education of the City of Paterson (the Board).

PROCEDURAL HISTORY

On February 14, 2023, Simadiris filed a Verified Petition of Appeal with the Commissioner of Education (the Commissioner), accompanied by a motion for emergent relief. The Department of Education (the Department) transmitted the matter to the Office of Administrative Law for determination as a contested case. On March 8, 2023, I issued an Order denying Simadiris's motion for emergent relief, which the Acting Commissioner adopted on March 23, 2023. Subsequently, Simadiris filed a motion for summary decision, which I denied by Order dated November 28, 2023. The hearing was held on May 6, 2024, after which the record remained open pending the receipt of a transcript of the hearing and post hearing submissions. The parties submitted briefs and reply briefs in support of their respective positions, and the record closed upon receipt of the last submission.[1]

FACTUAL DISCUSSION

At the hearing, the parties submitted a Stipulation of Undisputed Material Facts. (J-1.) No witnesses testified on behalf of Simadiris, and the Board offered testimony by its Assistant Superintendent for Human Resources, Luis Rojas (Rojas).

Based upon a review of the testimony and the documentary evidence presented, including the parties' Stipulation of Undisputed Material Facts (Stip.), and having had the opportunity to observe the demeanor and assess the credibility of the witness who testified, I **FIND** the following pertinent **FACTS** and accept as **FACT** the testimony set forth below.

[1] Simadiris attached several exhibits to her brief that were not introduced in evidence at the hearing, and these exhibits will not be considered. Similarly, Simadiris's submissions will not be considered to the extent that they address the recoupment of perfect attendance stipends, which is beyond the scope of Simadiris's Petition of Appeal. Indeed, as memorialized in my Order denying Simadiris's motion for emergent relief, "[t]he parties agree[d] that the Board's recoupment of . . . [perfect attendance stipends] is a matter subject to the [collective bargaining] contract's grievance procedure and is not before this forum."

On May 22, 2019, the Board adopted a resolution certifying tenure charges against Simadiris and "suspend[ing] [her], without pay, effective May 23, 2019, in connection with the Certification of Tenure Charges to the Commissioner[.]" (R-1; see Stip. at ¶ 1.) On June 3, 2019, the certified tenure charges were filed with the Commissioner. (Stip. at ¶ 1.) Consistent with the Board's resolution, Simadiris was suspended without pay for the month of June 2019. (See R-4.)

Simadiris filed an action in Lieu of Prerogative Writ in the Superior Court, Law Division, seeking to set aside the Board's resolution based upon an alleged violation of the Open Public Meetings Act. (Stip. at ¶ 2.) The Office of Controversies and Disputes held the tenure case in abeyance pending the resolution of the court litigation. (Stip. at ¶ 3.)

On August 21, 2019, the Honorable Ernest M. Caposela, A.J.S.C., issued an Order invalidating the Board's May 22, 2019 resolution. (See J-2; Stip. at ¶ 4.)

By letter dated August 26, 2019, Rojas informed Simadiris that she was suspended with pay effective September 2, 2019, and until such time that a decision is rendered in the Board's appeal of Judge Caposela's decision. (R-3.) In September 2019, the Board refunded Simadiris the month's salary deducted in June 2019. (See R-5.)

On September 13, 2019, the Board filed a Notice of Appeal with the Appellate Division regarding Judge Caposela's order. (Stip. at ¶ 6.) At the Board's request, and with Simadiris's consent, the Department continued to hold the tenure case in abeyance pending the Board's appeal. (Stip. at ¶ 5.)

On January 21, 2021, the Appellate Division issued a decision in which the court reversed Judge Caposela's order and "remanded for the entry of an order dismissing . . . [Simadiris's] complaint." (See J-3; Stip. at ¶ 7.)

Simadiris filed a petition for certification to the New Jersey Supreme Court, which the Court denied on September 9, 2021. (See J-4; Stip. at ¶ 8.) At this point in time, the litigation was concluded, and the Board's initial resolution reinstated. (Stip. at ¶ 8.)

On or about September 12, 2021, the Board's attorney advised the Office of Controversies and Disputes of the results of the above litigation and requested that the tenure case proceed. (Stip. at ¶ 9.) On September 27, 2021, the Department appointed Arbitrator James Mastriani to conduct the tenure proceeding. (Stip. at ¶ 10.) Arbitrator Mastriani scheduled the tenure hearing to begin on December 13, 2022, and the hearing is still in progress. (Stip. at ¶¶ 11, 14.)

Apart from the June 2019 pay that was withheld and then refunded, Simadiris remained on the Board's payroll throughout the years of litigation and through December 2022. On December 12, 2022, the Board's attorney e-mailed a letter to Simadiris's attorney which advised that Simadiris's salary would be reduced by $2,000 gross per paycheck, beginning with her first paycheck in January 2023, to reimburse the District for compensation erroneously paid relating to her 120-day suspension and perfect attendance incentives. (See R-2; Stip. at ¶ 12.) On January 15, 2023, the Board began withholding $2,000 per pay period, which ended after Simadiris's May 31, 2023 paycheck when the assessed overpayment was collected in full. (See R-7; Stip. at ¶ 13.)

Rojas has been involved with Human Resources since 2006 and has served as the Assistant Superintendent of Human Resources since 2017. Rojas offered credible testimony regarding the facts surrounding the District's recoupment of monies erroneously paid to Simadiris.

Simadiris's suspension was not implemented in September 2021, after the Supreme Court's denial of certification on September 9, 2021. Rojas testified about the various issues the District faced in reopening the schools after being closed for the 2020–2021 year due to COVID. He described that during this timeframe the District was in the process of reopening the schools, and the District was then having "issues" with the teachers' union that was "pushing back on . . . [the] reopening of schools," which "occupied a lot of . . . [the District's] time through that period of . . . legal battles going back and forth[.]" The District also had to navigate the return to school of approximately 25,000 students and approximately 4,000 staff. The Human Resources Department,

which was responsible for implementing Simadiris's suspension, had a major role in the reopening of schools.

In or around the Fall of 2022, Rojas discovered that Simadiris had not been placed back on suspension without pay after the Supreme Court's decision. Rojas determined to start the recoupment in January 2023. He explained that "it's the human part of Human Resources," he "didn't want to start deducting her pay through the Christmas holiday and through the winter break," and the recoupment started "after the holidays and gave her that extra month in order to have . . . a nice holiday with her family." Rojas also made the decision to utilize the original calculation from May 23, 2019, resulting in forty-one days, instead of calculating the full 120 days from the date of the Supreme Court's decision. Utilizing this calculation, Simadiris was overpaid for seven days in May 2019, twenty days in June 2019, and fourteen days in September 2019 for a total of forty-one days equaling $16,643.54. (See R-6.)[2] Rojas explained that when a teacher is suspended without pay, the summer months count towards the 120-day suspension even though the teacher does not receive a paycheck in July and August. It was also determined that $2,000 per paycheck, rather than Simadiris's full salary, would be withheld. Rojas explained that "it had to be a number that . . . satisfied the District enough to get the money back, but we were able to spread it out long enough where it wouldn't take that huge of a hit on somebody's paycheck, where they wouldn't receive a paycheck at all."

In his role as the Assistant Superintendent for Human Resources, Rojas has routinely dealt with salary adjustments, including the recoupment of monies. He has done recoupments "hundreds of times in [his] career[.]" Rojas explained that "if there is an overpayment or if someone was paid erroneously, we recoup the money as quickly as we can . . . within reason [and] [u]sually we try to spread it out as much as we can, allowing the staff member to continue to live and pay his or her bills, yet the District recouping the funds that it paid out erroneously." In making salary adjustments, including the recoupment of monies, Rojas has never gone to the Board for a resolution to take that

[2] The overpayment also included $3,000 relating to payment of perfect attendance stipends during years that Simadiris was on paid suspension.

action, and he did not obtain a resolution regarding the recoupment of monies from Simadiris.

LEGAL DISCUSSION AND CONCLUSIONS

Pursuant to N.J.S.A. 18A:6-14:

> Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the arbitrator is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made. Should the charge be dismissed at any stage of the process, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed at any stage of the process and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal . . . . Should the charge be sustained on the original hearing or an appeal therefrom, and should such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be reinstated immediately with full pay as of the time of such suspension.
>
> [Emphasis added.]

The Legislature's intent in enacting the statute was "to alleviate 'the economic hardship endured by teachers . . . suspended without pay pending the outcome of charges filed against them and certified for [a] hearing[.]'" Pugliese v. State-Operated Sch. Dist. of City of Newark, 454 N.J. Super. 495, 505 (App. Div. 2018) (quoting In re Grossman, 127 N.J. Super. 13, 35-36 (App. Div. 1974)).

Simadiris does not dispute the salary withholding calculation. She also acknowledges that the Board was authorized to begin withholding her salary for the 120-calendar day period after the denial of certification by the Supreme Court on September 9, 2021. The crux of Simadiris's position is that the Board violated N.J.S.A. 18A:6-14 and

acted ultra vires when it waited more than 440 calendar days before implementing its salary withholding. According to Simadiris, the Board had 120 calendar days from September 9, 2021 to begin withholding her pay, and the Board is without the power to begin the assessment more than 120 calendar days from the date that all restrictions were lifted. Simadiris also alleges that the Board had no statutory authority to modify the amount of the assessment by collecting $2,000 per pay period.

The principles governing statutory construction are well settled. The "overriding objective in determining the meaning of a statute is to 'effectuate the legislative intent in light of the language used and the objects sought to be achieved.'" McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001) (citation omitted). The Supreme Court explained in Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012) (citations omitted):

> The objective of all statutory interpretation is to discern and effectuate the intent of the Legislature. To achieve that objective, we begin by looking at the statute's plain language, ascribing to the words used "their ordinary meaning and significance." We do not view the statutory words in isolation but "in context with related provisions so as to give sense to the legislation as a whole." If the Legislature's intent is clear on the face of the statute, then we must apply the law as written. It is not our function to rewrite a plainly written statute or to presume that the Legislature meant something other than what it conveyed in its clearly expressed language.

"If the plain language leads to a clear and unambiguous result, then [the] interpretive process is over." Richardson v. Bd. of Trs. Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007). It is not the function of this forum "to 'rewrite a plainly-written enactment,' or to presume that the drafter intended a meaning other than the one 'expressed by way of the plain language.'" U.S. Bank, N.A. v Hough, 210 N.J. 187, 199 (2012) (citation omitted).

Succinctly stated, the plain and unambiguous language of N.J.S.A. 18A:6-14 does not support Simadiris's position. By its terms, a board of education possesses the statutory right to suspend an employee without pay upon certification of tenure charges, provided that the suspension may not exceed 120 calendar days. The statute does not

purport to establish a strict timeline for when the employee's pay can be withheld. Rather, the 120-day limit refers to the maximum number of days that pay can be withheld pending the arbitrator's determination.

Simadiris's reliance on Pugliese is misplaced. That case dealt with the effect of a prior Appellate Division decision vacating and remanding for reconsideration an arbitrator's award sustaining tenure charges against two teachers. Specifically, the Appellate Division was "asked to construe N.J.S.A. 18A:6-14 and determine what impact [its] decision to remand had on the suspended educators' entitlement to back pay while the remand was pending." Pugliese, 454 N.J. Super. at 499. The court explained that "[t]he statute provides for an educator's suspension without pay for 120 days or until the issuance of a final determination of the disputed tenure charges, whichever is sooner [and,] [i]f the matter is not resolved within 120 days, compensation must resume until a determination is reached." Id. at 499-500. The court held that "compensation continues under the statute despite the fact there has been an initial award terminating employment that was vacated and remanded, without a dismissal of the tenure charges." Id. at 500. The court concluded that its "vacating of the arbitrator's determinations meant there was no final decision made that terminated . . . [the teachers'] right to compensation once it resumed after 120 days of their suspensions." Id. at 507. In other words, unlike here, the teachers in that case had already been subject to a 120-day suspension.

I **CONCLUDE** that the Board acted consistent with the statutory directive. The Board complied with N.J.S.A. 18A:6-14 when it adopted a resolution on May 22, 2019, certifying the tenure charges against Simadiris and "suspend[ing] [her], without pay, effective May 23, 2019, in connection with the Certification of Tenure Charges to the Commissioner[.]" (R-1.) Simadiris cites no statute, regulation, or other authority to support her stance that a second Board resolution was required to implement her suspension. In short, there is no legal requirement that the Board must revote on tenure charges and a tenure suspension after the Appellate Division reinstated the Board's May 23, 2019 resolution. No ruling invalidated the suspension portion of the Board's resolution. And, just as the tenure charge portion of the resolution is valid as evidenced by the ongoing tenure arbitration proceedings, the suspension without pay contained in the same resolution also remains valid and enforceable. Further, in implementing

Simadiris's suspension, the Board withheld forty-one days' worth of pay, which is significantly less than the 120 calendar days authorized by N.J.S.A. 18A:6-14.

Additionally, it is well settled that actions within a school board's authority are entitled to a presumption of validity and will not be overturned in the absence of an affirmative showing that the decision was arbitrary, capricious, or unreasonable. Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966). Stated differently, the exercise of a school board's discretionary powers may not be disturbed unless shown to be "patently arbitrary, without rational basis or induced by improper motives." Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). I **CONCLUDE** that the Board's actions cannot be said to be arbitrary, capricious or unreasonable.

Rojas credibly described the many issues that his office faced relative to the reopening of the District's schools following their closure due to the COVID pandemic, along with his lack of awareness until the Fall 2022 that Simadiris had not served the tenure suspension. At that point, the Board had the right, if not the duty, to implement the suspension and recover the salary erroneously paid to Simadiris. Clearly, Simadiris sustained no harm due to the delayed implementation of her suspension. Simadiris further sustained no financial harm that she should not have anticipated. Plainly, Simadiris was aware of the Board's May 22, 2019 resolution suspending her without pay, which could not be implemented due to the trial court's order and until after the completion of the litigation regarding the validity of that resolution. Simadiris was also aware that she had not served the imposed suspension and had received a refund of the monies that had been withheld in June 2019. Beyond this, by following the original suspension timetable, rather than the date of the Supreme Court's decision, the Board imposed the suspension for only forty-one days instead of the allowable 120 days. The Board also waited until after the holidays to start the suspension and provided Simadiris with advance notice in December 2022 of the salary deductions. And the Board accommodated Simadiris by spreading the forty-one-day suspension over a period of months so that only a portion of her pay would be withheld every two weeks, rather than withholding her full salary for a consecutive forty-one-day suspension.

In sum, I **CONCLUDE** that the Board had the authority to implement Simadiris's suspension through the salary deductions, and the Board's actions regarding the implementation of Simadiris's statutory authorized suspension were not arbitrary, capricious or unreasonable.

ORDER

Based on the foregoing, I **ORDER** that petitioner's Petition of Appeal be and hereby is **DISMISSED WITH PREJUDICE**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING 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.

October 1, 2024
DATE

Margaret M Monaco
MARGARET M. MONACO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____
jb

APPENDIX

List of Witnesses

For Petitioner:

None

For Respondent:

Luis Rojas

List of Exhibits in Evidence

Joint:

J-1 Stipulation of Undisputed Material Facts

J-2 Order dated August 21, 2019

J-3 Appellate Division decision dated January 21, 2021

J-4 Order dated September 9, 2021

For Petitioner:

P-1 Paycheck statements

P-2 Order dated October 13, 2020

For Respondent:

R-1 Board Resolution dated May 22, 2019

R-2 E-mail dated December 14, 2022, and letter to Marcella Simadiris from Karen Murray, Esq., dated December 12, 2022

R-3 Letter to Marcella Simadiris from Luis Rojas, Jr., dated August 26, 2019

R-4 Payroll record from March 15, 2019 through June 30, 2019

R-5 Payroll record from September 15, 2019 through October 15, 2019

R-6 Salary overpayment calculation

R-7 Salary recoupment schedule

R-8 Salary information

459-24

State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

KEVIN DEHMER
Acting Commissioner

December 19, 2024

Janelle Edwards-Stewart, Esq.
Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway
Morristown, NJ 07962

Re: ***In the Matter of Gisselle Bond, Roselle Board of Education, Union County, Agency Dkt. No. 239-7/24, Commissioner Decision No. 321-24SEC***

Dear Ms. Edwards-Stewart,

I have reviewed the materials filed in connection with respondent's Motion for a Stay of the Commissioner's decision of September 4, 2024. Upon review and consideration of the submission, the Motion for a Stay is hereby granted.

Sincerely,

Kevin Dehmer
Acting Commissioner

KD/JS
c: School Ethics Commission
459-24L

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
BUREAU OF CONTROVERSIES AND DISPUTES

In the Matter of the Tenure Hearing
of Tiffany Trockenbrod

Montgomery Township Board of Education (Somerset County),

"Petitioner,"

-and-

Tiffany Trockenbrod,

"Respondent."

DECISION APPROVING SETTLEMENT

Agency Docket No. 295-9/24

Appearances:

For the Petitioner:
Stephen R. Fogarty, Esq.
Fogarty & Hara

For the Respondent
Ronald J. Ricci, Esq.
Ricci & Fava

On or about September 5, 2024, the Montgomery Township Board of Education filed tenure charges against Respondent Tiffany Trockenbrod with the State of New Jersey Department of Education Bureau of Controversies and Disputes. On or about September 9, 2024, an Answer to the tenure charges was submitted on behalf of the Respondent. On September 11, 2024, I was assigned as the arbitrator for the above referenced matter. Subsequent to correspondence, conference calls and videoconferences with counsel, an in-person hearing was scheduled for November 11, 26, December 2, 3, 18, 2024, and January 13, 2025.

On November 26, 2024, the parties agreed to conduct settlement discussions in lieu of an evidentiary hearing. At that time, the parties reached general terms for a settlement, but further discussions were required. On December 2, 2024, I conferred with Counsel to confirm that the parties were in the process of drafting a settlement agreement that needed to be reduced to writing for review and approval. On December 18, 2024, a Settlement Agreement (including terms for Release) and Petitioner's letter supporting the basis of the settlement was forwarded to me for review. [*See* Attachments]. That day, I conducted a final conference with the parties' Counsel, Board Superintendent Mary McLoughlin, and the Respondent to discuss the terms of settlement.

N.J.A.C. 6A:3-5.6 requires the arbitrator to issue a brief decision approving the settlement of tenure charges and explaining why the arbitrator is approving the terms of settlement.

The parties' settlement agreement expressly details the basis for resolution. In addition, the Petitioner's letter supporting the basis of the settlement addresses the six (6) standards outlined and adopted by *In re Cardonick,* State Board Decision of April 6, 1983 (1990 School Law Decisions (S.L.D.) 842, 846) that must be met before a settlement is approved. I have thoroughly reviewed and considered the parties' reasons for settlement. Having considered the stated reasons in conjunction with the issues raised in the Statement of Tenure Charges and the Statement of Evidence filed by the Petitioner and the Response to Tenure Charges filed by the Respondent, I am persuaded that the parties entered the settlement agreement knowingly and willingly and that the terms of the settlement agreement represent a reasonable basis for settlement that will serve the public's interest and are consistent with the public good.

Accordingly, and based upon the foregoing, I approve the parties' settlement agreement.

Accordingly, and based upon the foregoing, I approve the parties' settlement agreement.

Dated: December 20, 2024
Sea Girt, New Jersey

State of New Jersey }
County of Monmouth }ss:

On this 20th day of December, 2024, before me personally came and appeared Robert C. Gifford to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

Linda L Gifford
Notary Public
Expires
1-10-26

Pursuant to Referral By the Commissioner of Education
State of New Jersey
Before Timothy J. Brown, Esquire

In the matter of:

The Tenure Hearing of Anacarina Sosa	:	
Roselle Board of Education	:	**Agency Docket No. 315-9/24**
Union County	:	

Decision (Approval of Settlement)

Appearances:

On behalf of the Roselle Board of Education:
Bryant Horsley, Esquire
Sourder Shabazz & Woolridge Law Group, LLP
570 Broad Street, 15th Floor
Newark, NJ 07102

On behalf of Anacarina Sosa:
Francine Foner, Esquire
Hyderally & Associates, P.C.
32 Plymouth Street, Suite 202
Montclair, NJ 07042

Introduction

This matter arises from tenure charges of Misbehavior / Unbecoming Conduct and Other Just Cause filed against tenured school secretary **Anacarina Sosa** (Respondent) by the **Roselle Board of Education** (the District) and a November 21, 2024 referral of the tenure charges to the undersigned by the New Jersey Department of Education, Bureau of Controversies and Disputes pursuant to *N.J.S.A. 18A:6-16.*

The Tenure Charges

The Tenure Charges against Respondent contain 30 Charges. In Charges 1 through 29 the District alleged Misbehavior/Unbecoming Conduct and variously alleged neglect, fraud, time theft, insubordination, excessive absenteeism, policy violations, unhealthy workplace environment, breach of contract and endangering the welfare of a child. In Charge 30 the District alleged other just cause.

November 25, 2024 Telephonic Conference

A telephonic conference was held by the undersigned with representatives of the parties on November 25, 2024, at which time the parties notified the undersigned of their anticipated settlement of the Charges, the terms of which were to be proposed to the District's School Board on December 16, 2024.

Settlement

On December 17, 2024 the parties provided the undersigned for review and consideration a copy of their fully executed Settlement Agreement approved by the Roselle Board of Education on December 16, 2024 and signed by Respondent on December 17, 2024. (Attachment A)

On December 20, 2024 counsel for Respondent Sosa provided the undersigned a sworn affidavit executed by Respondent (Attachment B) incorporating the Settlement Agreement and confirming that she had the opportunity to review and ask all questions about the settlement, understands the settlement, has been satisfied with her representation by counsel and attorney services provided, and voluntarily enters into, and agrees to all terms of, the settlement agreement.

The Settlement Agreement settles all the outstanding charges filed against Respondent by the District, the Agreement is executed by both parties and reflects that Respondent entered into the Agreement with a full understanding of her rights; and that each party consented to the Settlement. Additionally, the written Settlement confirms that the Agreement was approved by the District Board of Education on December 16, 2024.

Approval of the Settlement is in the public interest as the parties have voluntarily entered into the Settlement and its approval avoids the expenditure of limited public resources. Based upon such considerations, I find that the Settlement meets the standards established by the State Board of Education in the matter of *In re Cardonick,* State Board Decision of April 6, 1983 *(1990 School Law Decisions (S.L.D.)* 842, 846).

Conclusion

The Settlement of the instant Tenure Charges is **Approved**.

Dated: December 23, 2024

Timothy J Brown, Esquire
Arbitrator

I, Timothy J Brown, affirm that I have executed this document as my Award in Agency Docket case No. 315-9/24 relating to tenure charges against Anacarina Sosa on this 23rd day of December, 2024.

Timothy J Brown