106-25
OAL Dkt. No. EDU 17066-24
Agency Dkt. No. 346-10/24

New Jersey Commissioner of Education

Final Decision

Jason Manzella,

Petitioner,

v.

Board of Education of the Township of Washington, Morris County,

Respondent.

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

Petitioner, a tenured teacher employed by the Board, contends that the Board violated *N.J.S.A.* 18A:6-8.3 when it suspended him without pay absent an indictment or the filing of tenure charges against him. He concedes that he has not reported to work since the start of the 2024-2025 school year because he was arrested in Virginia and ordered not to leave the state until his case has concluded. The Board filed a motion to dismiss the petition, which was converted to motion for summary decision by the Administrative Law Judge (ALJ). Petitioner filed a cross-motion for summary decision. The ALJ granted petitioner's cross-motion upon concluding that, pursuant to *N.J.S.A.* 18A:6-8.3 and relevant case law, the Board could not suspend petitioner without pay because he has not been indicted and no tenure charges have been filed against him.

Consequently, the ALJ recommended that petitioner receive all requisite back pay, benefits, and attorney fees and costs.

In its exceptions, the Board argues that it never suspended petitioner and, thus, *N.J.S.A.* 18A:6-8.3 and *N.J.S.A.* 18A:6-10 are not applicable. Rather, the Board claims that petitioner failed to report to work at the beginning of the 2024-2025 school year and has since been on an unauthorized leave of absence. Consequently, the Board asserts that it need not pay petitioner pursuant to Board Policy 3212 because he is not reporting to work. It denies that its failure to pay petitioner constitutes a reduction in compensation in violation of the tenure laws, and it maintains that it lacks authority to pay petitioner for services not rendered. Finally, the Board disputes the award of attorney fees to petitioner and claims that the ALJ offered no legal justification for same.

In response, petitioner argues that the Commissioner should adopt the Initial Decision in its entirety. He maintains that the July 22, 2024, letter he received from the Interim Superintendent unequivocally states that she suspended him effective the first day of the 2024-2025 school year with the approval of the Board President, pursuant to *N.J.S.A.* 18A:25-6 and *N.J.S.A.* 18A:6-8.3. The letter further states that the suspension will be with pay unless he is indicted or incarcerated. He argues that the ALJ correctly concluded as a matter of law that the Board cannot refuse to pay him for failing to report to work because he has not been indicted, he is not incarcerated, and the Board has not filed tenure charges.

Upon review, the Commissioner concurs with the ALJ that the Board violated *N.J.S.A.* 18A:6-8.3 when it withheld petitioner's salary during his suspension. The statute provides that a tenured Board employee suspended from employment "other than by reason of indictment,

pending any investigation, hearing or trial or any appeal therefrom, shall receive his full pay or salary during such period of suspension." *N.J.S.A.* 18A:6-8.3. *See Slater v. Bd. of Educ. of Ramapo-Indian Hills Reg'l High Sch. Dist.*, 237 *N.J. Super.* 424, 426 (App. Div. 1989) ("[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.").

The Commissioner finds that the Board's claim in its exceptions that it never suspended petitioner is belied by the record. Petitioner received a letter (Petitioner's Exhibit P-A in evidence) from the Interim Superintendent dated July 22, 2024, which states:

> This correspondence is to advise you that, as a result of allegations reported to me by the Virginia Police that you have engaged in inappropriate contact with minors, I am hereby suspending you effective the first day of the 2024-2025 school year. The suspension will be with pay unless you are indicted or incarcerated, at which time it shall be without pay. This action is being taken pending the outcome of the investigation into the allegations.
>
> My action is being taken with the approval of the President of the Board, pursuant to the provisions of *N.J.S.A.* 18A:25-6 and *N.J.S.A.* 18A:6-8.3. During the period of your suspension, you are not to be present on any of the Washington Township School District's property for any reason without prior authorization from me. I shall be reporting your suspension to the Board at its meeting on August 13, 2024.
>
> The Board's discussion shall be conducted in closed executive session to ensure that your privacy rights are protected. However, if you wish to waive your privacy rights and have this discussion held in public, you may do so by filing a written request with me no later than 12:00 p.m. on August 9, 2024.

This letter fully supports the ALJ's finding that on "July 22, 2024, the superintendent sent a letter to Manzella informing him that he would be suspended with pay effective on the first day of

school for the 2024-2025 school year and that this suspension would be discussed by the Board at its meeting on August 13, 2024." Initial Decision, at 3.

The Commissioner rejects the Board's suggestion—despite the clear and unambiguous language contained in the Interim Superintendent's letter—that petitioner was never suspended because the Board did not take any action with respect to his employment at its meeting on August 13, 2024. While the ALJ's finding on page 3 of the Initial Decision that "the Board declined to suspend Manzella" is technically correct, the Board did not need to take any action to effectuate petitioner's suspension. *N.J.S.A.* 18A:25-6 authorizes the superintendent of schools, with approval of the Board president, to suspend any teaching staff member. *See, e.g., Ott v. Bd. of Educ. of Twp. of Hamilton*, 160 *N.J. Super.* 333, 336 (App. Div. 1978) (explaining that superintendent suspended tenured teacher with pay pursuant to *N.J.S.A.* 18A:25-6 following his arrest on a drug charge). The statute's plain language does not require the suspension to be authorized or confirmed by the full Board. It only requires approval of the Board president, which the Interim Superintendent obtained.[1]

The Commissioner also rejects the Board's contention that Board Policy 3212 is relevant to this matter. It states, in relevant part, that "[a] teaching staff member who . . . is absent without authorization . . . may be subject to appropriate consequences, which may include the withholding of a salary increment, dismissal, and/or certification of tenure charges." Policy 3212, Attendance, Washington Township Board of Education, adopted Oct. 10, 2006, rev. Apr. 28, 2015, https://5il.co/15fce (last accessed March 11, 2025). This is not a case in which the Board withheld

[1] The statute's plain language provides that, after the suspension, the Board may take action by majority vote to either restore or remove the suspended teaching staff member subject to applicable tenure laws. *N.J.S.A.* 18A:25-6.

petitioner's salary increment. Moreover, boards of education are not authorized to make rules that are inconsistent with the provisions of Title 18A. *See N.J.S.A.* 18A:27-4 (stating that boards of education "may make rules, not inconsistent with the provisions of this title" which govern "salaries and time and mode of payment thereof of teaching staff members"). Thus, the Board cannot interpret Policy 3212 to allow it to suspend petitioner without pay in violation of tenure laws.

However, the Commissioner agrees with the Board that petitioner is not entitled to attorney fees and costs. The Commissioner is not authorized by statute to award attorney fees. *Balsey v. N. Hunterdon Reg'l Sch. Dist. Bd. of Educ.*, 117 *N.J.* 434, 442-43 (1990); *J.A. v. Bd. of Educ. for Dist. of S. Orange & Maplewood*, 318 *N.J. Super.* 512, 526 (App. Div. 1999). Consequently, the Commissioner rejects the ALJ's conclusion that petitioner is entitled to attorney fees and costs as contrary to law.

Accordingly, the Initial Decision, as modified, is adopted as the final decision in this matter, and the petition of appeal is hereby granted. The Board is directed to resume payment of petitioner's salary effective September 18, 2024.

IT IS SO ORDERED.[2]

COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2025
Date of Mailing: March 26, 2025

[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 17066-24
AGENCY DKT. NO. 346-10/24

JASON MANZELLA,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF WASHINGTON, MORRIS COUNTY,
Respondent.

Ronald J. Ricci, Esq. for petitioner (Ricci & Fava, LLC, attorneys)

Stacey Cherry, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: January 9, 2025 Decided: January 17, 2025

BEFORE **PATRICE E. HOBBS,** ALJ:

STATEMENT OF THE CASE

Petitioner, Jason Manzella, a tenured teacher, did not report to work since the start of the new school year because he was arrested in Virginia and ordered not to leave the state. Washington Township Board of Education (Board) has refused to pay petitioner alleging he is absent without authorization. Must respondent pay petitioner? Yes. A school board cannot reduce a tenured teacher's salary unless the teacher is indicted,

subject to tenure charges or a collective bargaining agreement authorizes it. Slater v. Board of Education of Ramapo-Indian Hills, 237 N.J. Super. 424, 426 (App. Div. 1989).

PROCEDURAL HISTORY

On October 24, 2024, petitioner, Jason Manzella, filed a Verified Petition of Appeal with the Commissioner of Education, Office of Controversies and Disputes. On November 15, 2024, respondent filed a Motion to Dismiss in Lieu of an Answer. On November 19, 2024, the case was transmitted to the Office of Administrative Law as a contested case under N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

On December 19, 2024, I held a prehearing conference, and the parties failed to appear. A second prehearing conference was scheduled, and petitioner was directed to respond to the Motion to Dismiss. The parties were also directed to be prepared to argue the Motion to Dismiss at the second prehearing conference. On December 11, 2024, petitioner filed his opposition to the Motion to Dismiss. On January 3, 2025, respondent filed its reply.

On January 7, 2025, I held the second prehearing conference, but petitioner's counsel requested a brief adjournment. On January 8, 2025, I held a third prehearing conference and the oral argument on the Motion to Dismiss. At the conference the parties requested that I convert the Motion to Dismiss and its opposition into Cross Motions for Summary Decision because no genuine issues of material fact existed. I granted the request, and on January 8, 2025, I held oral argument and closed the record.

FINDINGS OF FACT

Based upon the documents the parties submitted in support of and in opposition to the Motion to Dismiss, I **FIND** the following **FACTS**:

1. Jason Manzella is a tenured teacher with the Washington Township Board of Education.

2. On July 22, 2024, the Morris County Prosecutor notified the Interim Superintendent of Schools, Marybeth Kopacz, that Manzella was arrested for indecent liberties with a child and sexual offense with a child by computer.

3. On July 22, 2024, the superintendent sent a letter to Manzella informing him that he would be suspended with pay effective on the first day of school for the 2024-2025 school year and that this suspension would be discussed by the Board at its meeting on August 13, 2024.

4. On August 13, 2024, the Board declined to suspend Manzella. The Board did not send any correspondence to Manzella informing him of its decision.

5. On September 18, 2024, the Board informed Manzella's attorney that Manzella had not reported to work, was considered absent without authorization, and was not going to be paid. The Board agreed to continue his benefits provided Manzella pay his proportionate contribution.

6. On September 20, 2024, the Board informed Manzella's attorney that Manzella was not suspended but that he had not reported to work and was considered absent without authorization.

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 that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). This rule is substantially like the summary judgment rule embodied in the N.J. Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). All inferences of doubt are drawn against the party filing the motion and in favor of the party against whom the motion is directed. Id. at 75. The judge's

function is to determine whether there are genuine issues of fact to be adjudicated. Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995).

No tenured teacher can be dismissed or reduced in compensation except for inefficiency, incapacity, unbecoming conduct, or other just cause, and only after a hearing. N.J.S.A. 18A:6-18. Also, a teacher who is suspended from employment, other than by reason of indictment, shall receive his full pay during the suspension. N.J.S. A. 18A:6-8.3. The Appellate Division has held that a tenured employee can be suspended without pay only if indicted or if tenure charges have been proffered, and if not, the suspension must be with pay. Slater v. Board of Education of Ramapo-Indian Hills, 237 N.J. Super. 424, 426 (App. Div. 1989). The Court went on further to state that even when the school board suspends a tenured teacher upon arrest, a suspension without pay is invalid if the teacher had not been indicted. Id. at 427-428.

Respondent argues that Manzella was not suspended but that he failed to show up for work and was therefore absent without approval. I disagree. Respondent was informed that the Manzella was detained in Virginia and could not report to work. Manzella is a tenured teacher and is subject to N.J.S.A. 18A:6-18. Respondent did not present any collective bargaining agreement authorizing its actions, only arguing that Manzella was not entitled to pay because he did not work. This argument is unpersuasive. As Slater makes plain, a school board cannot reduce a tenured teacher's salary unless the teacher is indicted, subject to tenure charges or a collective bargaining agreement authorizes it. Since Manzella has not been indicted, is not subject to tenure charges, and no collective bargaining agreement otherwise authorizes it, I **CONCLUDE** that respondent may not withhold his salary.

ORDER

I **ORDER** that respondent's Motion for Summary Decision is **DENIED**, that petitioner's Cross-Motion for Summary Decision is **GRANTED**, and that Manzella is **AWARDED** all requisite back pay, benefits, and attorneys' fees and costs.

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.

Patrice E Hobbs

January 17, 2025
DATE

PATRICE E. HOBBS, ALJ

Date Received at Agency: January 17, 2025

Date Mailed to Parties: January 17, 2025

PEH/lsr

APPENDIX

Moving Papers

Moving Papers for Petitioner:

Opposition to Motion to Dismiss dated December 11, 2025, with Exhibit A

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

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