

JORGE TAIPE, :
 PETITIONER, : COMMISSIONER OF EDUCATION
 V. : DECISION
 BOARD OF EDUCATION OF THE CITY :
 OF ELIZABETH, UNION COUNTY, :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner – a tenured bilingual science teacher who has been employed by the respondent Board for over seventeen years – appealed a suspension without pay that began on January 20, 2017 following an accusation of inappropriate contact with a student. To date, petitioner has not been charged with or indicted for any criminal offenses, and tenure charges have not been filed against him; accordingly, petitioner argued that the Board’s action of suspending him without pay is a direct violation of his tenure rights and New Jersey law. Petitioner filed a motion for summary decision requesting reinstatement to the Board’s payroll and back pay for all salary withheld from the initial date of suspension.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; pursuant to *N.J.S.A. 18A:6-8.3* and past case law, the only circumstances under which a tenured teacher may be suspended without pay are if they have been indicted for a crime, or if tenure charges have been preferred against them; it is undisputed that neither of these circumstances are present in the instant matter; the Board asserted that the suspension without pay was warranted due to “serious accusations” against petitioner, but failed to cite any authority wherein an assertion of “serious allegations” may override the applicable statutes and case law. Accordingly, the ALJ concluded that the suspension without pay was unlawful; the petitioner’s motion for summary decision was granted, and the Board was ordered to reinstate petitioner to the payroll and award back pay for all salary withheld from the initial date of suspension.

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 Commissioner ordered that petitioner be reinstated to the payroll with back pay for all salary withheld during his suspension without pay.

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.

OAL DKT. NO. EDU 03908-17
AGENCY DKT. NO. 29-2/17

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

Upon such review, the Commissioner adopts the Administrative Law Judge's recommended decision for the reasons expressed therein. Accordingly, petitioner's motion for summary decision is granted and petitioner is to be reinstated to the payroll with back pay for all salary withheld during his suspension without pay.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: September 12, 2017
Date of Mailing: September 12, 2017

*This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 03908-17

AGENCY DKT. NO. 29-2/16

JORGE TAIBE,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY
OF ELIZABETH, UNION COUNTY,**

Respondent.

Nicholas Poberezhsky, Esq., attorney for Petitioner Jorge Taibe (Caruso Smith
Picini, attorneys)

Heather Savage Ford, for respondent (Deputy Counsel to the Board of Education,
City of Elizabeth)

Record Closed: July 14, 2017

Decided: August 2, 2017

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE

Petitioner is a tenured teacher with the Board of Education of the City of Elizabeth. Petitioner was accused of inappropriate contact with two minor students and

was suspended without pay effective January 20, 2017. Petitioner appeals the suspension without pay.

PROCEDURAL HISTORY

Petitioner Jorge Taibe (petitioner) filed the instant appeal with the New Jersey Commissioner of Education, received on February 14, 2017, by the Department of Controversies and disputes.

The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on March 21, 2017.

I received petitioner's Motion for Summary Decision on May 16, 2017, response on June 20, 2017 and petitioner's final response on June 23, 2017. A telephonic conference was scheduled for July 14, 2017, but was not conducted. The parties have not requested oral argument and I determine that the written submissions are sufficient to dispose of the matter.

STATEMENT OF FACTS

The following facts are not in dispute and **I FIND** them to be the facts of the case.

Petitioner has been employed as a bilingual science teacher by respondent for over seventeen years and is tenured.

Petitioner was suspended without pay on January 20, 2017, due to an allegation of inappropriate contact with two students. Petitioner was never charged criminally and tenure charges were not brought against petitioner or certified by the Commissioner of Education.

ISSUE

Petitioner only disputes the withholding of pay and not the actual suspension.

LEGAL DISCUSSION

Petitioner seeks 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.” The 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.”

Tenure is a status in a particular position created by statute, not the agreement of the parties. Accordingly, it is a “statutory right imposed upon a teacher’s contractual employment’ [that] may not be forfeited or waived.” Spiewak v. Rutherford Bd. of Educ., 90 N.J. 63, 77 (1982) (quoting Zimmerman v. Newark Bd. of Educ., 38 N.J. 65, 72 (1962); citing Red Bank Educ. Ass’n v. Red Bank Bd. of Educ., 78 N.J. 122, 141 (1978)). Tenure was designed to protect employees “from dismissal ‘for unfounded, flimsy or political reasons.’” Wright v. Bd. of Educ. of E. Orange, 99 N.J. 112, 118 (quoting Zimmerman, supra, 38 N.J. at 71).

N.J.S.A. 18A:6-8.3 provides that --

[a]ny employee of officer of a board of education in this State who is suspended from employment, office or position, 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, except that in

the event of charges against such employee or officer brought before the board of education or the Commissioner of Education pursuant to law, such suspension may be with or without pay or salary as provided in chapter 6 of which this section is a supplement.

As the Appellate Division has explained:

A tenured local school employee may be suspended pending disposition of an indictment or of tenure charges that may lead to dismissal. See Romanowski v. Bd. of Ed. of Jersey City, 89 N.J.Super. 38 (App. Div. 1965) . . . A local school board employee may also be suspended if he is indicted, and N.J.S.A. 18A:6-8.3 provides that the suspension may be without pay.

Thus, 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.

[Slater v. Bd. of Educ. of Ramapo-Indian Hills Regional High School Dist., 237 N.J.Super. 424, 426 (App. Div. 1989)]

The only circumstances under which a tenured school employee may be suspended without pay is if they have been indicted for a crime or if tenure charges have been preferred against them. In the case at bar it is undisputed that neither of these two circumstances are present. Respondent argues that the suspension without pay is warranted due to the “serious allegations” asserted by the two complaining students. Respondent fails to cite any authority wherein the assertion of “serious allegations” may override the aforementioned statutes and case law. The suspension without pay is therefore unlawful and should be overturned.

ORDER

It is hereby **ORDERED** that the Petitioner's Motion for Summary Decision be **GRANTED**; it is further **ORDERED** that petitioner is reinstated to the payroll and awarded back pay for all salary withheld from the initial date of the suspension.

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, 2017

Jude - Anthony Tiscornia

DATE

JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

8/2/17

Date Mailed to Parties:

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