

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.

New Jersey Commissioner of Education

Final Decision

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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

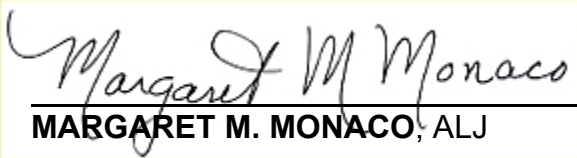
Based on the foregoing, I **ORDER** that petitioner's Petition of Appeal be and hereby is **DISMISSED WITH PREJUDICE**.

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, 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