

**New Jersey Commissioner of Education**  
**Final Decision**

Tracy Van Duyn and Diane Galatro,

Petitioners,

v.

Board of Education of the Borough of South River,  
Middlesex 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 respondent, Board of Education of the Borough of South River (Board), unlawfully terminated petitioners' employment as tenured teachers after they had given the Board 60 days' notice of their resignations, pursuant to *N.J.S.A. 18A:28-8*, but before the 60-day notice periods had expired.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby granted. The Board shall reimburse petitioner Tracy Van Duyn in the amount of \$563.49.

IT IS SO ORDERED.<sup>1</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 7, 2025  
Date of Mailing: February 10, 2025

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<sup>1</sup> 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

**CORRECTED**

**INITIAL DECISION**

OAL DKT. NO. EDU 10695-2022

AGENCY DKT. NO. 307-11/22

**TRACY VAN DUYN AND  
DIANE GALATRO,**

Petitioners,

v.

**BOROUGH OF SOUTH RIVER  
BOARD OF EDUCATION,  
MIDDLESEX COUNTY,**  
Respondent.

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**Edward Cridge, Esq.,** for petitioners (Mellk Cridge, LLC, attorneys)

**Christopher B. Parton, Esq.,** for respondent (Kenny, Gross, Kovats & Parton,  
attorneys)

Record Closed: July 12, 2024

Decided: January 13, 2025

BEFORE **CARL V. BUCK III**, ALJ:

## **STATEMENT OF THE CASE**

Petitioners, Tracy Van Duyn (Duyn)<sup>1</sup> and Diane Galatro (Galatro)<sup>2</sup>, allege that they were involuntary terminated by respondent, Board of Education of the Borough of South River, Middlesex County (Board), in violation of their tenure rights.

## **PROCEDURAL HISTORY**

On or about November 15, 2022, petitioners filed a Verified Petition (Petition) with the Commissioner of Education. The Office of Controversies and Disputes of the Department of Education (Department) transmitted the contested case to the Office of Administrative Law, where it was filed on December 1, 2022. The case was subsequently assigned to me on December 14, 2022.

A number of conferences were held and the parties made several attempts at resolving the matter which were unfortunately unsuccessful. The hearing on the matter was ultimately scheduled for July 11, 2024. No post hearing submissions were made and the record was closed on July 12, 2024. Extensions to file this Initial Decision were requested and granted.

## **JOINT STIPULATION OF FACT**

The following are Joint Stipulations filed by the parties and as such I find them as FACT:

1. Petitioners Tracy Van Duyn, 1--- J----- Street, P----- Borough, New Jersey 0---, and Diane Galatro, 3---P--- Avenue, F-----, New Jersey 0----, are and at all times relevant to this matter were certified and licensed teaching staff members pursuant to the regulations of the New Jersey Department of Education.

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<sup>1</sup> Duyn was terminated on August 30, 2022.

<sup>2</sup> Galatro was terminated on August 29, 2022.

2. Respondent South River Board of Education is a body corporate and politic charged with the provision of a thorough and efficient, free, public education to the school-aged residents of the Borough of South River, Middlesex County, New Jersey.
3. Up to and including the 2021-2022 school year, both petitioners were employed by respondent as tenured, certified teaching staff members.
4. Both petitioners were reappointed by respondent for the 2022-2023 school year.
  - a. Van Duyn's 2022-2023 compensation was established at \$83,250, consisting of a salary of \$80,150, in addition to special education stipend of \$600 and twenty-three year longevity of \$2,500.
  - b. Galatro's 2022-2023 compensation was established at \$85,350, consisting of a salary of \$80,150, in addition to master's degree increment of \$2,000 and twenty-four year longevity of \$3,200.
  - c. Pursuant to respondent's final, approved 2022-2023 school calendar **[EXHIBIT J-1]**, the 2022-2023 work year for ten-month teaching staff members, including both Petitioners, was to consist of 182 workdays.
  - d. Applying the above, Van Duyn's 2020-2023 per diem compensation, had she remained in Respondent's employ for the 2022-2023 school year, would have been \$457.42.

- e. Applying the above, Galatro's 2020-2023 per diem compensation, had she remained in respondent's employ for the 2022-2023, school year would have been \$468.96.
  - f. Pursuant to the final, Board-approved calendar for the 2022-2023 school year in respondent South River [**EXHIBIT J-1**], the first workday for ten-month teaching staff members for the 2022-2023 school year was September 6, 2022.
- 5. On or about August 12, 2022, pursuant to N.J.S.A. 18A:28-8, Galatro notified respondent that she would be resigning from her tenured teaching position, effective sixty (60) days thereafter.
  - 6. Based upon these notifications and the 60-day notice requirements, Galatro's nominal final day of employment with and compensation by respondent would have been October 10, 2022.
  - 7. On or about August 16, 2022, pursuant to N.J.S.A. 18A:28-8, Van Duyn notified respondent that she would be resigning from her tenured teaching position, effective sixty (60) days thereafter.
  - 8. Based upon these notifications and the sixty-day notice requirements, Van Duyn's nominal final day of employment with and compensation by respondent would have been October 15, 2022.
  - 9. On August 24, 2022, the North Brunswick Board of Education, which is not a party to this litigation, took formal, public action to hire, appoint and employ both petitioners as fulltime teaching staff members for the 2022-2023 school year.

- a. North Brunswick appointed Van Duyn as a teacher of students with disabilities at North Brunswick Township Middle School, at a 2022-2023 salary of \$81,199 per Step M of the BA+30 salary guide, “effective October 25, 2022 or sooner as determined by the Superintendent”. (J.2).
  - b. North Brunswick appointed Galatro as a mathematics teacher at North Brunswick High School, at a 2022-2023 salary of \$82,524 per Step M of the Masters salary guide, “effective October 25, 2022 or sooner as determined by the Superintendent”. (J-2).
  - c. Pursuant to the approved 2022-2023 school calendar in North Brunswick (J-3) , the 2022-2023 work year for ten-month teaching staff members, including both Petitioners, was to consist of 186 days.
  - d. Applying the above, Van Duyn’s 2022-2023 per diem in North Brunswick, once she commenced employment, would be \$436.55.
  - e. Applying the above, Galatro’s 2022-2023 per diem in North Brunswick, once she commenced employment, would be \$443.68.
  - f. Pursuant to the final, Board-approved calendar for the 2022-2023 school year in North Brunswick (J-3), the first workday for ten-month teaching staff members for the 2022-2023 school year was August 30, 2022.
10. On or about August 29-30, 2022, both petitioners engaged in discussions with respondent’s Assistant Superintendent of Schools, Dr. Joseph Trivisonno. As a result of those discussions, both petitioners were removed from respondent’s payroll effective August 29-30, 2022, and neither petitioner was compensated by respondent for any days of the 2022-2023 ten-month employee work year.

11. Van Duyn commenced employment in North Brunswick on September 6, 2022 (J-4), and continued to be employed and compensated in North Brunswick at all times through and including the end of her notice period with respondent.

12. Galatro commenced employment in North Brunswick on August 30, 2022 (J-5), and continued to be employed and compensated in North Brunswick at all times through and including the end of her notice period with respondent.

13. Notice Period Compensation – Van Duyn:

- a. From August 30 through and including October 15, 2022, there were twenty-seven (27) workdays for ten-month teaching staff members in Respondent South River. (J-1).
- b. At her per diem rate of \$457.42 in respondent South River, Van Duyn would have been paid a total of \$12,350.34 for those twenty-seven (27) days.
- c. From her employment commencement date of September 6, 2022, in North Brunswick through and including October 15, 2022, there were twenty-seven (27) work days for ten-month teaching staff members in North Brunswick. (J-3).
- d. At her per diem rate of \$436.55 in North Brunswick, Van Duyn was actually paid a total of \$11,786.85 for those twenty-seven (27) days.

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## e. Van Duyn Summary:

	<u>Days</u>	<u>Per Diem</u>	<u>Total</u>	<u>Difference</u>
i. South River	27	\$457.42	\$12,350.34	
ii. North Brunswick	27	\$436.55	\$11,786.85	\$563.49

14. Based upon the foregoing and the attached, if the Court finds that respondent wrongfully discontinued payment to Van Duyn as of August 30, 2022, the total amount of damages owed is \$563.49.

15. If the Court finds that Van Duyn voluntarily separated from respondent's employ as of August 30, 2022, Respondent owes Van Duyn nothing.

16. The parties agree that whether or not Galatro voluntarily separated, or was wrongfully removed from the payroll in August 2022, she is not entitled to any back pay.

The parties further stipulate to the admission into evidence of the Exhibits marked as J-6 and J-7 hereto.

### **FACTUAL DISCUSSION AND FINDINGS**

The parties have agreed on a number of facts as contained in the Joint Stipulation of Fact given above. In addition to the information contained in the stipulation, I would add the following:

**Diane Galatro** (Galatro) has been teaching for twenty-six years in New Jersey and was a tenured teacher at the district at the time of the event. Per the separation regulation she notified district that she was giving her sixty-day resignation notice on August 12, 2022. She planned to begin her new position with the North Brunswick School District (Brunswick) in mid-October 2022 – at the end of the sixty-day period. Brunswick was aware of Galatro's position with district and her sixty-day notice requirement.



During the period between her notice to the district and her leaving the district she had scheduled a medical procedure for her son – using her insurance as provided by the district.

On August 12, 2022 she gave her resignation in person to Superintendent Joseph Trivisonno (Trivisonno) with whom she discussed the beginning of the school year which was to begin on September 6, 2022. Trivisonno then left a message for her on August 29, 2022, who told her that the district was releasing her from her contract early and she could begin her employment with Brunswick early. She told Trivisonno that she had spinal surgery scheduled for her son on September 1, 2022, (approval for the surgery was received on or about August 27, 2022). She told Trivisonno that another Math teacher had resigned and that teacher should be released first due to her surgery concerns. Trivisonno told her that as the other teacher provided notice after Galatro that Galatro would have to go first.

She contacted her son's medical provider to cancel the surgery. She contacted Brunswick and found out that she could begin with Brunswick earlier than planned but she would have to submit a release letter first. She needed to then remove all items from her classroom that afternoon with the assistance of another son. The room had been set up in anticipation of beginning the school year. She also needed to remove documents from the district computer system.

On cross examination she stated that Brunswick's school year began earlier than the district and she "picked up" four working days. She was "surprised and upset" at Trivisonno's position and did not "refuse to leave" as she did not think she could refuse to leave. She did not want to leave and intended to work at the district though mid-October. She did reach out to the South River Education Association (SREA) the afternoon of August 29, 2022, but did not reach out to any attorney for the union.

She was questioned on the regulation dealing with sixty-day notice for her leaving and was aware that the parties could mutually agree on an earlier departure date. She was questioned whether she considered not cancelling the surgery, not cleaning out her room, and not leaving the district that day. She attempted to contact Trivisonno later in the day but was told that he had left for the day.

On redirect she clarified that although she would initially be paid less at Brunswick than at district, in future years it would be more financially advantageous to move to Brunswick.

**Tracy Van Duyn** (Duyn) has been teaching for twenty-two years in New Jersey and was a tenured teacher at the district at the time of the event. Per the separation regulations she notified district that she was giving her sixty-day resignation notice on August 16, 2022. She planned to begin her new position with the North Brunswick School District (Brunswick) on October 18, 2022 – at the end of the sixty-day period. Brunswick was aware of her position with district and her sixty-day notice requirement.

On or about August 16, 2022, she gave her resignation by hand delivering it to the office after inquiring if Trivisonno or another individual was in. They were not so she left her resignation. Trivisonno left a message for her on August 29, 2022, on her home telephone line which she did not usually use. The message asked her to return the call. She called Trivisonno on August 30, 2022, and who told her that he had good news and that the district was releasing her from her contract early and she could begin her employment with Brunswick early. She told Trivisonno that she had spoken with individuals at the district and knew that her replacement had not been hired. Duyn stated she wanted to stay for her sixty days and was told by Trivisonno that she had to go and that “this was not my idea”. She thought she had been fired. She called Dan Stempora the union president and told him that that she had been released from her contract. She also contacted Trivisonno’s secretary to obtain a release letter from the district.

Duyn then contacted Brunswick to inform that she had been released early from the district and that she could begin early. However, she could not begin until September 6, as she had prior plans (based on the starting date of the district's calendar).

She subsequently filed a Verified Petition with the Department of Education challenging her release.

On cross examination she discussed that she had been involuntarily transferred from the high school to the middle school in the summer of 2022 and felt there was hostility at the district – though not to Trivisonno. She felt the hostility arose from the Superintendent Zercher. She was an employee of the district until she received a letter from the district on August 30, 2022 – dated August 25, 2022 - stating that the board had accepted her resignation effective August 25, 2022, and that the district owed her money attributable to her health benefits payment.

She clarified that her conversation with Stempora resulted in Stempora telling her that the district could release her earlier and that she had no recourse. She was docked five days of pay from Brunswick because she could not begin until September 6, 2022, due to prearranged plans.

**Joseph Trivisonno** (Trivisonno) was the assistant superintendent for the district. He stated, “under the direction of the Superintendent I was asked to have a conversation with Ms. Galatro to see if she would be willing to part before the 60 days and start with New Brunswick at the beginning of the school year.” He made the suggestion that Galatro contact Brunswick. She had informed him that Brunswick had already arranged coverage for the sixty days. He had expected that she would get back to him. If she had told him that Brunswick could not accommodate her early then the district would continue to employ her. If Galatro said “No, I am staying through my 60 days” she would have been continued to be employed by district. He did not fire her nor did he have that authority. In his opinion Galatro's separation was consensual.

On cross examination it was clarified that he was the assistant superintendent for personnel and that changes on short notice could be extremely disruptive. He last spoke with the superintendent about the petitioners some time ago. He spoke with Galatro after her notice of August 12, and they probably discussed her teacher leader position and during that conversation they did not discuss her leaving early. After the resignation letter was received, he spoke with the Superintendent at some point between August 12 and August 29, where the superintendent asked that I contact Galatro to see if she was interested in leaving before the sixty days.

He did not remember if anyone was hired as a replacement for Galatro at that time. He did not remember if Galatro, during his conversations with her, said she did not want to be released early other than indicating the other individual may wished to leave first. It was qualified as an “offer” to leave not a directive. She was upset but she still accepted the “offer” to leave. He did not recall saying this was optional nor that if she refused, she could maintain her employment at the district during the sixty-day period.

He stated that his discussion with Duyn mirrored his conversation with Galatro in that he did not tell Duyn that she would be retained at the district if she did not accept this “offer” nor was he specific with either that this was an “offer” which could be refused.

He took his directive in taking these actions from the superintendent who he testified was not fond of Duyn.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Instructional legislation provides that:

Notice of intention to resign required

Any 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.

N.J.S.A. 18A:28-8.

Per the Tenure Employees Hearing Law (N.J.S.A. 18A:6-10—18A:6-18.1):

no person shall be dismissed or reduced in compensation, 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 . . . except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to the Tenure Employees Hearing Law, by the commissioner, or a person appointed by him to act on 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 the Tenure Employees Hearing Law.

N.J.S.A. 18A:6-10(a).

(Emphasis added.)

There was no allegation of “inefficiency, incapacity, unbecoming conduct, or other just cause” against either petitioner – therefore this provision is inapplicable. Respondent states that the petitioners were not “fired” – that they “accepted an offer to leave before their 60 day periods had expired” (paraphrasing).

Whether or not petitioners were “terminated” or had their resignations “accepted” earlier than anticipated is a semantic issue. The fact is that both petitioners gave their resignations with the required sixty-days’ notice **AFTER** receiving offers from another school district – coincidentally the same district. Those offers from Brunswick were made with knowledge and acceptance that both would have to satisfy their obligations to provide a

sixty-day notice to the district. Brunswick accepted the commitments of their new prospective employees as the commitment complies with the notice statute.

### Credibility

In evaluating evidence, it is necessary to assess the credibility of the witnesses. Credibility is the value that a finder of the facts gives to a witness' testimony. It requires an overall assessment of the witness' story in light of its rationality or 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). "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 fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . 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." Id. at 521–22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may also reject testimony as "inherently incredible" when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

I did have the opportunity to judge the credibility of petitioners as witnesses, and find that their testimony was presented clearly, plainly and with detail. The evidence showed that they both intended to honor their 60 day commitment and the inference from Respondent's counsel that Galatro wanted to "cut and run" from her commitment is repugnant.

Galatro had just scheduled (on approximately August 27) spinal surgery for her son (under her district health insurance) and had to cancel that surgery after her termination by the district. Galatro had her room set. She had to "break down" her

classroom – which was set for the beginning of the school year – containing her teaching materials of nineteen years, in a matter of a few hours on no notice. It is unfathomable that Galatro would agree to an early termination considering her personal circumstances and the health issues facing her son.

Query: Why would Galatro accept early termination under these conditions?

Answer: There is no logical or evidentiary reason to show why she would do so.

Duyn had a prearranged vacation scheduled based on the district's academic calendar. She would not have been able to move forward with employment at Brunswick until after that obligation.

Query: Why would Duyn accept early termination under these conditions?

Answer: There is no logical or evidentiary reason to show why she would do so.

Trivisonno, for his position as assistant superintendent for personnel, had an appalling lack of memory about hiring replacement teachers, about his conversations with Galatro's insurance concerns about her son's surgery, notwithstanding Galatro's "offer" and failure to mention to Galatro that she could refuse the "offer" and remain at the district. His statement that continuity of resources and staffing are important - while notifying two tenured teachers of an "offer" to depart early is disingenuous at best. In answering my question about his conversations with the superintendent the week before, where she instructed him to speak with the parties about possibly leaving early, he testified that he did not know why he waited until Monday, August 29, 2022 to contact the petitioners **rather than contacting them immediately after his conversation with the superintendent** and giving petitioners earlier notice of this "offer". He did not recall how many employees were leaving and he did not recall if any were offered "early release".

The fact that Galatro requested that Trivisonno contact the other Math teacher who gave her notice after Galatro is a clear indication that Galatro did not want to leave early and/ or keep her sixty-day commitment. To disregard this statement by Trivisonno

considering his statement that this was an “offer” and if disregarded that Galatro would be maintained as a teacher at the district is duplicitous. If Galatro wanted to defer to another employee that is a clear indication that she did not want to accept this “offer” and yet Trivisonno did not follow up to tell Galatro that she would be maintained as a teacher.

Respondent also contends that petitioner Duyn had a duty to mitigate her claimed damages of \$436.55 which assertion is specious and ludicrous considering she was terminated on one-day notice with preexisting plans made based on the schedule of the districted that was terminating her employment and not complying with the contractually obligated sixty-day notice period.

In view of the testimony, the applicable law, and justifiable equity to the parties I **CONCLUDE** that the Board terminated the petitioners’ employment – whether in the guise of a termination or presuming that the petitioners “accepted” an “offer” to “leave earlier” than their employment earlier than the sixty days anticipated.

I further **CONCLUDE** that petitioner Van Duyn should be awarded reimbursement of \$563.49. And I further **CONCLUDE** that petitioners’ departure from the South River School District shall be deemed a termination – not the acceptance of an offer to depart from the South River School District earlier than their obligations by Statute dictate.

### **ORDER**

It is hereby **ORDERED** that petitioner’s motion for relief is **GRANTED** and **ORDERED** that the Board make the payments to petitioners as detailed above.

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](mailto: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.



January 13, 2025

DATE

CARL V. BUCK III, ALJ

Date Received at Agency

resent 1/16/25 via email

Date Mailed to Parties:

resent 1/16/25 via email

CVB/tat

**EXHIBITS**

**JOINT:**

- J-1 South River Public Schools District Calendar 2022 - 2023 - REVISED
- J-2 Acceptance of Petitioners' Resignations on or about October 25, 2022
- J-3 North Brunswick Township School District 2022-2023 School Calendar
- J-4 North Brunswick Twp Public School District Employee Salary Composite Report
- J-5 North Brunswick Twp Public School District Employee Salary Composite Report
- J-6 Email from Van Duyn to Beth DePinto - Tue, Aug 30, 2022 at 11:21 AM
- J-7 Van Duyn - August 30, 2022 Release of Employment