



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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February 2, 2018

Bergman & Barrett
Michael T. Barrett

[Redacted address information]

Re: Mary Lou Forsell

[Redacted subject information]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Barrett:

I am writing in reference to the action of the Board of Trustees ("Board") of the Teachers' Pension and Annuity Fund (TPAF) in denying your client, Mary Lou Forsell's request for Deferred retirement benefits. At its October 5, 2017 meeting, the TPAF Board considered all relevant documentation and denied Ms. Forsell's request because she was removed for cause directly related to her employment and she is therefore not eligible for Deferred retirement benefits. At its meeting of January 11, 2018, the Board considered your appeal and denied a hearing in the Office of Administrative Law as there are not issues of material facts in dispute. Findings of Fact and Conclusions of Law, as outlined below were presented and approved by the TPAF Board at its February 1, 2018 meeting.

The Board considered your written submission at the January 11, 2018, meeting as well as all relevant documentation, and finds that, based upon the facts presented therein, the statute governing the TPAF and relevant case law render Ms. Forsell ineligible for Deferred retirement benefits.

FINDINGS OF FACT

The Board made the following findings of fact:

Mary Lou Forsell was enrolled in the TPAF on September 1, 1994, as a result of her employment as a teacher with the Montgomery Township Board of Education. On September 1, 2001, Ms. Forsell transferred to the West Windsor Plainsboro Regional School District where she was employed as a Computer Teacher. She held that title until her termination on January 13, 2012.

The record indicates that the West-Windsor Plainsboro Regional School District certified tenure charges against Ms. Forsell for unbecoming conduct, lack of professionalism and failure to protect the privacy rights of students. The original Statement of Tenure charges incorporated six separate specifications; at trial the Board abandoned Specification 4 and 5.

Specification 1, based upon an observation of Ms. Forsell's class on June 8, 2010, alleged, as its most important concern, that she permitted or otherwise allowed inappropriate photographs to be displayed in her classroom.

Specification 2, alleged that in connection with her position as junior and then as senior class advisor, Ms. Forsell had caused embarrassment and humiliation to a student by violating her privacy and discussing matters concerning the student's family's finances in inappropriate circumstances.

Specification 3 alleged that Ms. Forsell had referred to classified students in a derogatory manner and had expressed herself in a manner that raised concern as to her ability to properly engage with parents of a classified student.

Specification 6 alleged that Ms. Forsell had refused to make appropriate accommodations for classified students.

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On March 16, 2011, the matter was transferred as a contested case to the Office of Administrative Law (OAL). The Administrative Law Judge (ALJ) issued the Initial Decision on November 23, 2011, and concluded that Ms. Forsell was guilty of conduct unbecoming a teacher and ordered her dismissal from her tenured employment. In its decision dated January 9, 2012, the Acting Commissioner of Education adopted the Initial Decision. The matter was forwarded to the State Board of Examiners for appropriate action regarding Ms. Forsell's certificates. On July 25, 2013, the State Board of Examiners suspended Ms. Forsell's Comprehensive Business Certificate for a period of two years.

On October 17, 2016, Ms. Forsell filed an *Application for Retirement Allowance*, requesting a Service retirement to be effective on February 1, 2017. However, at the time Ms. Forsell was removed from her tenured teaching position, she was vested with 17 years and 1 month of service and was under the age of 60. Therefore, Ms. Forsell was only eligible to apply for a Deferred retirement. On October 25, 2016, the Division received the *Certification of Service and Final Salary Retirement* from the West Windsor Plainsboro Regional School District, certifying that Ms. Forsell was dismissed from her position. Based on this information, Ms. Forsell's application was referred to the Board Office for a potential honorable service review. On July 24, 2017, you and Ms. Forsell received notification of the pending honorable service review.

On August 17, 2017, the Division received your request to reschedule the matter due to Ms. Forsell's scheduled family vacation out of state commencing September 5, 2017 through September 12, 2017. On September 6, 2017, you were notified that your request for a postponement had been granted and would be considered by the Board at its October 5, 2017 meeting. At its meeting of October 5, 2017, the TPAF Board reviewed whether Ms. Forsell was eligible for Deferred retirement after her termination for conduct unbecoming a teacher. The Board considered your personal statements, the statements of Ms. Forsell and your submissions.

Following its review, the Board denied Ms. Forsell's application for Deferred retirement because the documentation confirmed that she was removed for cause for misconduct directly related to her employment as a teacher. Thus, the Board determined that as a matter of law she is prohibited under N.J.S.A. 18A:66-36 from receiving a Deferred retirement.

On November 30, 2017, you wrote a letter of appeal requesting a hearing in the OAL. At its meeting of January 11, 2018, the TPAF Board denied your hearing request essentially for the reasons set forth in the Board's letter dated October 24, 2017, and because there are no issues of fact to be adduced at a hearing; the issue before the Board is a purely legal question.

CONCLUSIONS OF LAW

The Board reached the following conclusions of law:

The Board denied Ms. Forsell's application for retirement benefits and determined that she is prohibited under N.J.S.A. 18A:66-36 to receive a Deferred retirement. N.J.S.A. 18A:66-36 states in pertinent part:

Should a member of the Teachers' Pension and Annuity Fund, after having completed 10 years of service, be separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for conduct unbecoming a teacher or other just cause under the provisions of N.J.S.18A:28-4 to 18A:28-5 and 18A:28-9 to 18A:28-13 inclusive, such person may elect to receive, in lieu of the payment provided in N.J.S.18A:66-34:

(Emphasis added)

- a. The payments provided for in N.J.S.18A:66-37, if he so qualified under said section; or
- b. A deferred retirement allowance beginning at age 60,
...

(Emphasis added)

In making its determination, the Board noted that the West Windsor Plainsboro Regional School District certified tenure charges against Ms. Forsell, charging her with unbecoming

conduct, lack of professionalism, and failure to respect the privacy rights of students, On appeal, the ALJ found that Ms. Forsell was guilty of the charges and concluded that her behavior warranted dismissal from her tenured employment. The Commissioner adopted the Initial Decision of the ALJ and Ms. Forsell was dismissed from her tenured employment.

The documentation substantiates that Ms. Forsell was removed from her tenured employment for conduct unbecoming a teacher that occurred during the performance of her job duties. On October 17, 2016, Ms. Forsell filed her retirement application requesting a Service retirement, effective February 1, 2017. However, the Board found that at the time of Ms. Forsell's termination for conduct unbecoming a teacher (January 13, 2012), she was vested with 17 years and one month of service credit in the TPAF and was age 54; therefore, the only benefit she was eligible to apply for was a Deferred retirement. However, as it is undisputed that Ms. Forsell was removed from employment for conduct unbecoming a teacher, the Board denied her Deferred retirement application.

The Board determined that Ms. Forsell did not satisfy the eligibility requirement in the TPAF Deferred retirement statute, which provides Deferred retirement only to members, who, unlike Ms. Forsell, are "separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for conduct unbecoming a teacher or other just cause[.]" The language of the statute is plain and clear. Additionally, in the case *In the Matter of Suzanne Hess*, 422 N.J. Super. 27, 37 (2010) the Court held that "forfeiture of deferred retirement benefits pursuant to N.J.S.A. 43:15A-38 is conditioned on an involuntary removal due to misconduct related to employment." See also Robert Joya v. Dept of Treasury, Div. of Pensions and Benefits, Dkt. No. A3616-10T3, decided October 9, 2012. The finding in Hess is applicable here and, consequently, the Board determined that Ms. Forsell is not eligible for Deferred retirement as the charges that led to her dismissal touched upon and were directly related to Ms.

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Forsell's employment with the West Windsor Plainsboro Regional School District, thereby making her ineligible for a Deferred retirement benefit.

As noted above, this matter does not entail any disputed questions of fact, and the TPAF Board was therefore able to reach its findings of fact and conclusions of law on the basis of the retirement system's enabling statutes and regulations and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

You have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey

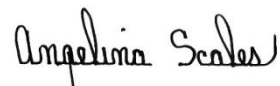
Appellate Division

PO Box 006

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Sincerely,



Angelina Scales, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

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c : Amy Chung, DAG (ET)
Jeff Ignatowitz, DAG (ET)
Mary Lou Forsell |