



## NEW JERSEY LAW REVISION COMMISSION

### Tentative Report to Clarify N.J.S. 18A:6-14 Regarding Pending Tenure Charges and Back Pay

**March 19, 2020**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **June 1, 2020**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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## Executive Summary

In *Pugliese v. State-Operated School District of City of Newark*, the New Jersey Superior Court, Appellate Division, was asked to construe N.J.S. 18A:6-14 and determine what impact an appellate remand has on a suspended educator's entitlement to back pay while the remand was pending.<sup>1</sup> The plain language of N.J.S. 18A:6-14 does not address situation in which the Appellate Division vacates and remands an arbitrator's determination without dismissing the charges.<sup>2</sup>

## Relevant Statute

N.J.S. 18A:6-14 provides:

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.** However, the board of education shall deduct from said full pay or salary any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension. 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 [or she] shall be reinstated immediately with full pay as of the time of such suspension. [Emphasis added].

## Background<sup>3</sup>

Felicia Pugliese and Edgard Chavez were tenured teachers employed by the State Operated School District of the City Newark (District).<sup>4</sup> Both educators were the subject of tenure charges filed by the principals of their respective schools.<sup>5</sup> Effective September 12, 2012, the District certified the tenure charges and suspended both teachers without pay.<sup>6</sup> On February 6, and

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<sup>1</sup> *Pugliese v. State-Operated Sch. Dist. of City of Newark*, 454 N.J. Super. 495 (App. Div. 2018).

<sup>2</sup> *Id.* at 506.

<sup>3</sup> See Fig.1.

<sup>4</sup> *Pugliese*, 454 N.J. Super. at 500.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

February 15, 2013, the arbitrator issued a decision sustaining the tenure charges against Chavez and Pugliese<sup>7</sup> In addition, the arbitrator terminated the employment of both teachers.<sup>8</sup> The Chancery Division confirmed these determinations on September 16, 2013.<sup>9</sup>

The Appellate Division vacated the arbitrators award and remanded both matters to the Commissioner.<sup>10</sup> Included in its decision were specific instructions to the Commissioner to, “either decide certain legal defenses or delegate their determination to the arbitrators with instructions as to the proper legal standard to [be] utilize[d]....”<sup>11</sup>

In 2015, while awaiting the decision on their arbitration on remand, the appellants filed a petition with the Commissioner for back pay commencing from the 121<sup>st</sup> day of their suspension until the second arbitration decisions were rendered on remand.<sup>12</sup> The Commissioner transferred these matters to an Administrative Law Judge (ALJ).<sup>13</sup>

The ALJ in the Pugliese matter decided that she should receive back pay from the 121<sup>st</sup> day of her suspension.<sup>14</sup> The ALJ noted that the 2015 determination of the Appellate Division “wiped clean” the arbitration award sustaining the tenure charge, thus she had to be tried anew under the legal standards set forth by the Commissioner of Education.<sup>15</sup>

The ALJ in the Chavez matter reached a contrary conclusion, determining that the Appellate Division did not dismiss the underlying tenure charges against Chavez, but remanded the matter to be reconsidered by an arbitrator under the legal standards set forth by the Commissioner.<sup>16</sup> Further, the ALJ stated that, “by reversing and remanding the matter, our decision could not reasonably be characterized as a reversal within the meaning of N.J.S. 18A:6-14... [thus] Chavez [...] is not entitled to the restoration of his pay....”<sup>17</sup>

Both decisions were reviewed by the Commissioner on appeal.<sup>18</sup> The Commissioner adopted the ALJ’s finding in Chavez and ultimately held that neither educator was entitled to the restoration of pay pursuant to N.J.S. 18A:6-14.<sup>19</sup> The Commissioner noted that “reversal and

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 500-501.

<sup>13</sup> *Id.* at 501.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

remand of the proceeding did not re-trigger the 120-day rule because there is no mechanism for such contained within N.J.S. 18A:6-14.”<sup>20</sup> Both parties appealed the Commissioner’s decision.<sup>21</sup>

### Analysis

The plain language of N.J.S. 18A:6-14 addresses three circumstances that lead to the payment of compensation after a teacher has been suspended.<sup>22</sup> For a teacher who is suspended without pay, the statute provides that compensation is to resume after 120 days if: (1) The determination of the charge by the arbitrator is not made within that time; (2) the charges against the teacher are dismissed; or, (3) the charges are initially sustained but reversed on appeal.<sup>23</sup> The statute, however, does not address what occurs when the Appellate Division vacates and remands an arbitrator’s determination without dismissing the charges.<sup>24</sup> The *Pugliese* Court found no clarification in the statute’s legislative history.<sup>25</sup>

On a prior occasion, the Appellate Division had the opportunity to address the Legislature’s intent in enacting N.J.S. 18A:6-14.<sup>26</sup> The Court concluded that the purpose of 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.”<sup>27</sup> The Court continued that, “in many instances because of the volume of matters awaiting [a] hearing, a prompt disposition of the charges is not feasible....”<sup>28</sup> For 44 years, the interpretation of the Court remained unchallenged by the Legislature. Thus, the Court invoked the canon of “legislative acquiescence” in affirming its earlier interpretation of the Legislature’s intent in enacting this statute.<sup>29</sup>

The Appellate Division “summarized the impact of an order vacating and remanding an initial decisions [made by trial court or agencies] by analogizing it to the grant of a motion for a new trial.”<sup>30</sup> The Court said that its 2015 decision to reverse and remand the arbitrator’s decisions meant that no final decision had been rendered as to the educator’s tenure charges, and that Chavez and Pugliese were entitled to back pay from the 121<sup>st</sup> day of their suspension until the arbitrators reached their decision on remand from which the appellants did not appeal.<sup>31</sup>

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<sup>20</sup> *Id.* at 501-502.

<sup>21</sup> *Id.* at 503.

<sup>22</sup> *Id.* at 506.

<sup>23</sup> *Id.* See N.J.S. 18A:6-14.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 505 citing *In re Grossman*, 127 N.J. Super. 13, 35-36 (App. Div. 1974).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 506.

<sup>30</sup> *Id.* at 507 citing *In re Assignment for Old Colony Coal Co.*, 49 N.J. Super. 117, 123 (App. Div. 1958).

<sup>31</sup> *Id.* at 507 and 508.

## **Conclusion**

The current tenure employee statute, at N.J.S. 18A:6-14, does not address the payment of compensation after a teacher has been suspended if the Appellate Division vacates and remands an arbitrator's determination without dismissing the underlying charges.

Staff proposes the language set forth in the Appendix to conform the statute to the circumstances highlighted by the Appellate Division in *Pugliese v. State-Operated Sch. Dist. of City of Newark*.

## Appendix

The proposed modifications to **N.J.S. 18A:6-14, Suspension upon certification of charge; compensation; reinstatement**, (shown with ~~strikethrough~~, and underlining), follow:

a. Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made, with or without pay.

b. Compensation shall be paid as follows after an initial suspension of the person without pay:

(1) ~~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.~~ or if the determination of the arbitrator is reversed and remanded, then the full salary of such person shall be paid beginning on the one hundred twenty-first day after certification until the post-remand determination is made. For purposes of this subsection, calculation of the 120-day time period shall not include any delays which are granted at the request of such person.

(2) 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.

(3) 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.

c. 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 [or she]~~ the person shall be reinstated immediately with full pay as of the time of such suspension.

d. For purposes of this section, ~~However~~, the board of education shall deduct from said full pay or salary any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension.

## Comments

Except for the addition of the language in subsection b., the proposed modifications to the statute are not substantive in nature but involve reordering subsections c. and d. and adding subsections in the interest of clarity.

The underlined modification contained in subsection b. is based upon the language utilized by the Court in *Pugliese v. State-Operated School District of City of Newark*, 454 N.J. Super 495 (App. Div. 2018).

Pugliese v. State- Operated School District of City of Newark 454 N.J. Super 495 (2018)

Timeline - Fig.1





