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NICHOLAS CILENTO, : SUPERIOR COURT OF NEW JERSEY  
: APPELLATE DIVISION  
:  
Petitioner / Appellant, : Appellate Div. Dt. No. A-002151-22T2  
:  
v. : On Appeal from the Final Administrative  
: Decision of the Commissioner of Education  
BOARD OF EDUCATION :  
OF THE TOWNSHIP OF : Dept. of Education Agency Dkt. No. 249-12/21  
WOODBIDGE, : Commissioner of Education Dec. No. 35-23  
MIDDLESEX COUNTY, :  
: OAL Dkt. No. EDU 01414-22  
Respondent / Respondent. :  
: Administrative Action

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**BRIEF AND APPENDIX ON BEHALF OF PETITIONER / APPELLANT  
NICHOLAS CILENTO**

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December 12, 2023

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**PRELIMINARY STATEMENT**

This Appeal concerns the right of a teacher to pursue relief from a defective Final Agency Decision (“FAD”) which unlawfully cost him his tenured teaching position, and which awaits this Court’s review. The Department of Education (“DOE”) has found that the right does not exist. Petitioner / Appellant Nicholas Cilento (“Mr. Cilento”) has already appealed the unlawful FAD of the DOE that cost him his job. *See In the Matter of the Certificates of Nicholas Cilento*, App. Div. Dkt. No. A-3586-21T2 (the “License Appeal”). Now, he appeals the DOE’s second FAD (the “Job FAD”) holding that he cannot recover his position, even if the License Appeal is successful.

As we will demonstrate, *infra*, the Job FAD was arbitrary, capricious, unreasonable, and contrary to law. It ignored the procedural impossibilities presented by Mr. Cilento’s challenges to its actions. It failed to decide issues timely raised and pursued by Mr. Cilento. Ultimately, the DOE’s actions denied Mr. Cilento Due Process of law, and were contrary to principles of Fundamental Fairness. For these, and all the reasons set forth, *infra*, the Job FAD must be set aside.

Mr. Cilento was a tenured teacher employed by the Woodbridge Township School District Board of Education (“Woodbridge”). The DOE, by and through an Arbitrator issued an FAD in a teacher tenure case, brought and heard pursuant to

the Tenure Employees Hearing Law, N.J.S.A. 18A:6-10 et. seq.. (the “TEHL”). That FAD (the “Tenure FAD”) directed that Mr. Cilento retain his position as a tenured teacher with Woodbridge.

Thereafter, the DOE issued the License FAD in a teacher license suspension / revocation proceeding, brought against Mr. Cilento pursuant to N.J.A.C. 6A:9B-4.5, and suspended Mr. Cilento’s Teaching Certificate. By operation of law, this terminated him from the same tenured teaching position which the Tenure FAD had directed that he retain. The DOE’s issuance of such inconsistent and contradictory FADs is currently the subject of the License Appeal, which is pending before this Court.

Notwithstanding the determinations of the Tenure FAD, Woodbridge, upon its receipt of the License FAD, terminated Mr. Cilento’s employment. As the result of the DOE’s timeliness requirements, specifically N.J.A.C. 6A:3-1.3(i), Mr. Cilento was compelled to initiate a challenge to Woodbridge’s termination of his employment before his challenge to the License FAD could be considered by the Commissioner of Education (the “Commissioner”), or the License Appeal heard by this Court.

Now, adding insult to injury, the DOE has issued a third FAD (the “Job FAD”) that forecloses Mr. Cilento’s ability to return to his teaching position in Woodbridge, even if this Court ultimately vacates the License FAD. Essentially, Mr. Cilento is

“out of luck,” and loses his job, even if the FAD which removed him from his job was incorrectly decided and unlawful. The DOE has determined that Mr. Cilento has no recourse, even if he is right.

It is the most fundamental principle of our jurisprudence that where there is a legal right, there must also be a remedy by suit or action at law where that right is invaded. *Marbury v. Madison*, 1 Cranch 137, 163, 5 U.S. 137, 163, 2 L.Ed. 60 (1803). Through its contravention of this basic principle, the Job FAD is rendered an arbitrary and irrational act of government; a violation of Mr. Cilento’s right to Due Process, and an affront to the principles of Fundamental Fairness that obtain in our legal proceedings.

For these, and all the reasons set forth herein, this Court must reverse the Job FAD, and Grant Mr. Cilento’s Appeal.

### **PROCEDURAL HISTORY**

On October 17, 2019, Woodbridge certified tenure charges against Mr. Cilento to the DOE, pursuant to the TEHL. **See Pa3-Pa4**. Pursuant to N.J.S.A. 18A:6-16, the DOE assigned the tenure charges to Arbitrator Barbara Deinhart for hearing and disposition. On December 5, 2020, the Arbitrator issued the Tenure FAD, maintaining Mr. Cilento in his tenured teaching position with Woodbridge. **Pa1-Pa13**.

On February 26, 2022, the DOE, State Board of Examiners (the



"Examiners") issued an Order to Show Cause (the "OSC") to Mr. Cilento pursuant to N.J.A.C. 6A:9B-4.5, directing him to show cause why his Teaching Certificates should not be revoked. **Pa14-Pa16**. Mr. Cilento opposed the OSC; however, on October 28, 2021, the Examiners issued an Order of Suspension ("OOS") to Mr. Cilento, directing that his Teaching Certificates be suspended for a period of two years. **Pa17-Pa20**. Mr. Cilento appealed the OOS to the Commissioner of Education, (the "Commissioner") pursuant to N.J.A.C. 6A:4-1.3(b). On June 23, 2022, the Commissioner issued the License FAD, upholding the OOS. **Pa21-Pa25**. On July 25, 2022, Mr. Cilento filed his Notice of Appeal of the License FAD with this Court. **Pa26-Pa29**. The License Appeal remains pending before this Court. **Pa30-Pa32**.

As a result of the OOS, Woodbridge terminated Mr. Cilento from his tenured teaching position. **Pa33**. Mr. Cilento then filed a Verified Petition of Appeal (the "Verified Petition") with the Commissioner pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3-1.3, challenging the lawfulness of that termination, in light of the Tenure FAD. **Pa34-Pa37**.

Mr. Cilento's Verified Petition was transmitted as a contested case to the Office of Administrative Law. On November 18, 2022, Administrative Law Judge ("ALJ") Tricia Caliguire entered an Initial Decision granting Summary Decision in favor of Woodbridge, dismissing Mr. Cilento's Petition, and foreclosing his ability to return to his tenured

teaching position, even if this Court ultimately decides the License Appeal in his favor. **Pa38-Pa45.** Mr. Cilento took exceptions to the Initial Decision to the Commissioner; however, on February 6, 2023, the Commissioner issued the Job FAD, upholding ALJ Calguire’s Initial Decision. **Pa46-Pa49.** This Appeal (hereinafter the “Job Appeal”) follows. **Pa50-Pa54.**

### STATEMENT OF FACTS

Mr. Cilento was a highly-regarded Special Education teacher and tenured teaching staff member employed by Woodbridge. He also suffered from chronic alcoholism, which he successfully managed during many years of commendable service to Woodbridge’s students. **Pa2-Pa4.**

In May 2019, during a difficult time in his personal life, Mr. Cilento experienced a relapse, and consumed a *de minimis* amount of alcohol while at work. When confronted by Woodbridge administration, he promptly complied with a directive to undergo an alcohol breath test, which found no detectible alcohol. No students observed, or were involved, in the incident. Mr. Cilento did not, in any way, fail to discharge his duties and responsibilities. He immediately and voluntarily admitted himself into an alcohol rehabilitation program, which he successfully completed. **Pa2-Pa4; Pa8-Pa11.**

Following a plenary hearing, on December 5, 2020, the Arbitrator the

Tenure FAD. **Pa1-Pa13**. She determined that, while Mr. Cilento had engaged in conduct unbecoming a teaching staff member, the penalty of termination was unwarranted on the record. Instead, the Arbitrator maintained Mr. Cilento in his position, while imposing a three-month, unpaid disciplinary suspension, and other conditions. **Pa11-Pa12**. Woodbridge did not seek to vacate, nor otherwise challenge, the Award. Mr. Cilento, likewise, accepted the judgment of the Arbitrator, which was final and binding. See N.J.S.A. 18A:6-17.1(e). Thereafter, Mr. Cilento promptly and successfully resumed his teaching duties in Woodbridge.

On February 26, 2021, the Examiners issued the OSC. **Pa14-Pa16**. The OSC was based exclusively upon the factual findings made by the Arbitrator, in the Tenure FAD. The OSC further acknowledged that the Arbitrator had determined that "the appropriate penalty for [Mr.] Cilento's conduct is not dismissal, but rather a three (3) month suspension and reinstatement on a Last Chance Basis." **Pa16, at ¶7**. Mr. Cilento opposed the OSC. No further factfinding or plenary hearing was conducted. No additional factual record was adduced. Rather, the Examiners merely provided Mr. Cilento the opportunity to appear before them, to address the issue of the penalty that should be imposed. **Pa18**. The Examiners then issued the OOS, based solely upon the factual record developed before the Arbitrator. **Pa17-Pa20. Da46-Da49**. Upon their receipt of the OOS, Woodbridge

terminated Mr. Cilento.

In response to that termination, Mr. Cilento filed his Verified Petition, charging that the OOS was arbitrary, capricious, contrary to and in violation of law, and that, in light of the Tenure FAD, without legal force or effect. **Pa35, ¶ 4.** Consequently, Woodbridge's termination of his tenured employment, based upon the OOS, was likewise unlawful and violated his tenure rights pursuant to N.J.S.A. 18A:6-10 and N.J.S.A. 18A:28-5. **Pa35, ¶¶7-8.** Mr. Cilento sought an Order, *inter alia*, reinstating him in in his tenured position, upon the vacation of the OOS by the Commissioner, or any Court of competent jurisdiction. **Pa36.**

In granting Summary Decision in favor of Woodbridge, ALJ Caliguire determined:

The question here is not whether the action of the State Board [of Examiners] was legal, it is whether the action of respondent in November 2021, made in reliance on the decision of the State Board, was legal. There is no reason to delay a decision on the latter issue to account for circumstances that may change years after the Woodbridge Board acted. I **CONCLUDE** that respondent acted appropriately and in accordance with the law to remove petitioner from his tenured teaching position as petitioner did not have a valid teaching certificate at the time of respondent's decision. As respondent notes, any violation of petitioner's property and/or due process rights may be addressed by an action against the State Board for damages and other appropriate relief if the action of the State Board is found to be invalid.

**Pa44.**

Accordingly, ALJ Caliguire granted Woodbridge's Motion for Summary Decision, and dismissed his Verified Petition, foreclosing his ability to return to his

tenured position. Mr. Cilento took exceptions to ALJ Caliguire's Initial Decision to the Commissioner, and, thereafter, the Commissioner issued the Job FAD.

In the Job FAD, the Commissioner made clear that Mr. Cilento had neither meaningful opportunity, nor recourse, to challenge the termination of his tenured employment:

The Commissioner is not persuaded by petitioner's exceptions. The "procedural dilemma" petitioner discusses does not affect the outcome of this case. Petitioner appropriately initiated the challenge of his termination within the 90-day limitations period, and it is of no moment that his appeal is still pending in the Appellate Division. Additionally, the Commissioner disagrees with petitioner that the ALJ needed to determine whether the Board of Examiners acted contrary to law in issuing the Order of Suspension. That issue has already been decided by the Commissioner and is pending in the Appellate Division, and it is not relevant to a determination of this matter. Regarding petitioner's alleged property right in his tenured teaching position and violation of due process, the Commissioner finds that petitioner received the process that he was due in the suspension matter, the appeal before the Commissioner, and the matter herein. The Commissioner agrees with petitioner that a separate action against the Board of Examiners in the future would not result in reinstatement to his position, as petitioner seeks, but finds that the viability of a future matter does not affect this case. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition is hereby dismissed.

**Pa48-Pa49.** As a result, Mr. Cilento has initiated the Job Appeal before this Court.

**LEGAL ARGUMENT**  
**THE JOB FAD MUST BE SET ASIDE**

**POINT ONE**  
**THE STANDARD OF REVIEW**  
**(Not Addressed Below)**

Agency action will be set aside by this Court where it is arbitrary, capricious, or unreasonable. *In re Warren*, 117 N.J. 295, 296 (1989). This Court can intervene where agency action is clearly inconsistent with its statutory mission, or other state policy. *George Harms Constr. v. Turnpike Auth.*, 137 N.J. 8, 27 (1994). Under this standard, judicial review generally contemplates three inquiries: [1] whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; [2] whether the record contains substantial evidence to support the findings on which the agency bases its action; and [3] whether, in applying the legislative policy to the facts, the agency erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors. *Jersey City v. Jersey City Police Officers Benevolent Assoc.*, 154 N.J. 555, 567 (1998).

In *Bayshore Sewerage Co. v. Dept. of Environmental Protection*, 122 N.J. Super 184, 199-200, (Ch. Div. 1973), the court explicated the concept of "arbitrary and capricious" action:

In the law, "arbitrary" and "capricious" means having no rational basis. *Bicknell v. United States*, 422 F. 2d 1055, 1057 (5th Cir. 1970). The terms "arbitrary" and "capricious" embrace a concept which emerges from the due process clauses of the 5th and 14th Amendments of the United States Constitution and operate to guarantee that acts of government will be grounded on established legal principles. *See Canty v. Bd. of Education, City of New York*, 312 F. Supp. 254, 256 (D.C.S.D.N.Y. 1970). Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached. *State v. Johns*, 66 Wash. 2d 199, 401 P. 2d 841, 842 (Wash. Sup. Ct. 1965); *Tacoma v. Welcker*, 65 Wash. 2d 677, 399 P. 2d 330, 335 (Wash. Sup. Ct. 1965); *In re West Laramie*, 457 P. 2d 498, 502 (Wyo. Sup. Ct. 1969); *State v. Bruno*, 61 Wash. 2d 461, 378 P. 2d 691, 696 (Wash. Sup. Ct. 1963); *Miller v. Tacoma*, 61 Wash. 2d 374, 378 P. 2d 464, 474 (Wash. Sup. Ct. 1963); *Petition of City of Bellevue*, 62 Wash. 2d 458, 383 P. 2d 286, 288 (Wash. Sup. Ct. 1963); *Urmston v. North College Hill*, 114 Ohio App. 213, 175 N.E. 2d 203, 206 (Ct. of Appeals, Hamilton Co. 1961); *Wagoner v. Arlington*, 345 S.W. 2d, 759, 763-764 (Tex. Civ. App. 1961); *DuPont-Fort Lewis School Dist. #7 v. Bruno*, 79 Wash. 2d 736, 489 P. 2d, 171, 174 (Wash. Sup. Ct. 1971). Moreover, the court should not substitute its judgment for that of an administrative or legislative body if there is substantial evidence to support the ruling. *Kansas City Southern Ry. Co. v. Louisiana Public Service Comm'n.*, 254 La. 160, 223 So. 2d 132, 136 (La. Sup. Ct. 1969).

This Appeal involves a discrete legal issue: whether an administrative agency can foreclose a petitioner's ability to obtain relief from an unlawful FAD, as a consequence of the timelines attendant to appellate litigation. It is well-established that this Court reviews such legal issues *de novo*. *L.A. v. Bd. of Educ. Of Trenton*, 221 N.J. 192, 204 (2015); *Univ. Cottage Club of Princeton N.J. Corp. v. N.J. Dept.*

*of Env'tl. Prot.*, 191 N.J. 38, 48 (2007); *In re Taylor*, 158 N.J. 644, 656-58 (1999).

For all the reasons set forth, *infra*, this Court owes no deference to the DOE's irrational, procedurally deficient, and fundamentally unfair action.

**POINT TWO**  
**THE PROCEDURAL DILEMMA FACED BY MR. CILENTO**  
**(Addressed Below at Pa48-Pa49)**

Following the termination of his employment by Woodbridge, Mr. Cilento faced a procedural dilemma. Pursuant to N.J.A.C. 6A:3-1.3(i), Mr. Cilento was required to file his Verified Petition with the Commissioner, challenging that termination, within 90 days of that event. The Commissioner acknowledged that this was the case in the Job FAD. **Pa48**. Mr. Cilento received Woodbridge's termination letter on or about November 9, 2021. **Pa33**. Accordingly, he was required to initiate his Verified Petition by no later than February 22, 2022. Mr. Cilento filed his Verified Petition on or about December 30, 2021, so as to meet the timeliness requirements of N.J.A.C. 6A:3-1.3(i).

The Commissioner, however, did not issue the License FAD until June 23, 2022 (**Pa21-Pa25**), some four months after the expiration of Mr. Cilento's window to file his Verified Petition. Likewise, Mr. Cilento's timely-filed Appeal of the License FAD has been fully briefed, and remains pending before this Court. **Pa30-Pa32**. In all, nearly two years have passed since Mr. Cilento's Verified Petition would have



been due, yet the critical issue—the lawfulness of the OOS and License FAD—is still open.

The “90 day rule” established by N.J.A.C. 6A:3-1.3(i) is strictly construed by the Commissioner, and is consistently enforced. *See, e.g., The Banyan School v. NJ State Dept. of Ed., Office of School Finance*, Comm. of Ed. Dec. No. 108-17. As the Commissioner acknowledged, had Mr. Cilento waited for the Commissioner to issue the License FAD<sup>1</sup> before filing his Verified Petition, he would have been barred from doing so, as out of time. **See Pa48**. Mr. Cilento had no choice but to file his Verified Petition when he did, in an effort to timely preserve and protect his rights.

Essentially, Mr. Cilento was put in an impossible position—forced either to assert his rights before they had ripened via an Appellate decision overturning the License FAD, or to waive them, if he waited until an Appellate decision issued. A party who timely invokes and preserves his rights cannot be punished by the delays inherent in the legal process. That, however, is exactly what has occurred here. An agency which prevents a party from preserving and asserting his rights, due to the timelines inherent in appellate litigation, has acted arbitrarily, capriciously, and unreasonably. The Job FAD should, accordingly, be Vacated by this Court.

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<sup>1</sup> Or this Court’s decision on the License Appeal.

**POINT THREE**  
**THE LICENSE FAD WAS ARBITRARY, CAPRICIOUS, UNREASONABLE,**  
**AND CONTRARY TO LAW**  
**(Not Addressed Below)**

As briefed before this Court in connection with the License Appeal<sup>2</sup>, the License FAD was arbitrary, capricious, unreasonable, and contrary to law. By issuing inconsistent FADs (the Tenure FAD and the License FAD), the DOE's action was irrational, and violated principles of res judicata, collateral estoppel, and interagency privity. As a consequence, the License FAD that predicated the termination of Mr. Cilento's employment by Woodbridge must be set aside. This Court's decision in the License Appeal will address and determine the legality of the License FAD, and of the DOE's action in issuing incompatible decisions based on the same factual record.

The Job Appeal is not addressed to the underlying legality of the License FAD. Rather, the Job Appeal concerns Mr. Cilento's ability to protect and preserve his constitutionally protected property interest in his tenured teaching position with Woodbridge, while his appeal of the License FAD continues. As discussed, *infra*, the Job FAD deprived Mr. Cilento of that opportunity, by acting as though the legality of the License FAD was entirely irrelevant to Mr. Cilento's ultimate right to obtain relief.

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<sup>2</sup> See Pa31, Amended Appellate Brief filed February 24, 2023; Pa30, Reply Brief filed May 10, 2023.

**POINT FOUR**  
**THE JOB FAD FAILED TO RULE UPON THE CLAIMS BROUGHT AND**  
**PRESERVED IN THE VERIFIED PETITION**  
**(Addressed Below at Pa48-Pa49)**

In the Verified Petition, Mr. Cilento alleged that:

- 3:** Respondent's summary termination of Petitioner's employment was premised solely upon an Order of Suspension issued by the Department of Education, State Board of Examiners, as against Respondent's Teaching Certificates, captioned *In the Matter of the Certificate of Nicholas Cilento*, Examiners Docket No. 2021-123 (hereinafter the "Order").
- 4:** The Order was arbitrary, capricious, unreasonable, contrary to and in violation of law, and has and is entitled to no legal force or effect.
- 5:** Petitioner has Appealed the Order to the Commissioner of Education, said appeal being docket at Commissioner of Education Docket No. 9-12/21A (hereinafter the "Appeal"). The Appeal is currently pending before the Commissioner of Education.
- 6:** Petitioner, by way of the Appeal, seeks to overturn and vacate the Order.
- 7:** Since the Order was arbitrary, capricious, unreasonable, contrary to and in violation of law, and without legal force or effect, and Respondent's termination of Petitioner was based solely upon the Order, Respondent's termination of Petitioner was, consequently, arbitrary, capricious, unreasonable, contrary to and in violation of law, and without legal force or effect.

**See Pa35.** In her Initial Decision, however, ALJ Caliguire failed to actually rule on the merits of Mr. Cilento's claims. She offered no determination as to whether the OOS was, in fact, arbitrary, capricious, unreasonable, or contrary to law. Rather,

instead of addressing the issue specifically presented by paragraph 4 of the Verified Petition, ALJ Caliguire opined:

The question here is not whether the action of the State Board was legal, it is whether the action of respondent in November 2021, made in reliance on the decision of the State Board, was legal.

**Pa44.** Indeed, ALJ Caliguire specifically rejected the premise that she had to weigh the legality of the DOE's action in issuing inconsistent FADs. **Pa44.** In making this ruling, she failed to address the legal claims, and substantive merits of Mr. Cilento's Verified Petition.

Likewise, in the Job FAD, the Commissioner opined that the lawfulness of the License FAD, and this Court's review of same, were of no moment:

The Commissioner is also in accord with the ALJ that a decision on this matter is not dependent on the outcome of the case at the Appellate Division. Whether the Board's actions in November 2021 were arbitrary, capricious or unreasonable will not change if petitioner is successful in his pending appeal. As such, the ALJ appropriately declined to place this matter on the inactive list....**Pa48.**

Additionally, the Commissioner disagrees with petitioner that the ALJ needed to determine whether the Board of Examiners acted contrary to law in issuing the Order of Suspension. That issue has already been decided by the Commissioner and is pending in the Appellate Division, and it is not relevant to a determination of this matter. **Pa48-Pa49.**

Continuing, the Commissioner acknowledged that, even if the License Appeal is successful, Mr. Cilento would not be able to recover his tenured teaching position with Woodbridge, i.e., remedy the consequences of the unlawful License FAD:

The Commissioner agrees with petitioner that a separate action against the Board of Examiners in the future would not result in reinstatement to his position, as petitioner seeks, but finds that the viability of a future matter does not affect this case.

**Pa49.** Under all these circumstances, and even though Mr. Cilento pursued timely appeals of both the License FAD, and the Job FAD, the Commissioner determined that Mr. Cilento had received Due Process in connection with the termination of his employment:

Regarding petitioner's alleged property right in his tenured teaching position and violation of due process, the Commissioner finds that petitioner received the process that he was due in the suspension matter, the appeal before the Commissioner, and the matter herein.

**Da49.**

By deciding the License Appeal, this Court will determine whether the License FAD was unlawful. In connection with the Job Appeal, this Court must determine whether the License FAD's unlawfulness, "matters," for purposes of the relief that Mr. Cilento can obtain. As discussed, *infra*, the DOE's determination that the License FAD's unlawfulness "doesn't matter" is tantamount to a Due Process violation, requiring this Court's reversal.

**POINT FIVE**  
**THE JOB FAD VIOLATED MR. CILENTO'S RIGHT TO DUE PROCESS**  
**(Addressed Below at Pa49)**

A public employee has a protected liberty interest in his employment. *Dolan v. City of East Orange*, 287 N.J. Super. 136, 143 (App. Div. 1996); *Matter of Carberry*, 114 N.J. 574, 583-84 (1989). Administrative proceedings must comport with principles of due process, and fundamental fairness. *Matter of Wolf*, 231 N.J. Super. 365, 376-377 (App. Div. 1989), *certif. denied*, 117 N.J. 138 (1989). "The touchstone of due process is protection of the individual against arbitrary action of government." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

The United States Constitution requires that the holder of such a property right be given an opportunity to present his claim of entitlement. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148 (1982). As the Court wrote:

[w]hile the legislature may elect not to confer a property interest...it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards.... [T]he adequacy of statutory procedures for the deprivation of a statutorily created property interest must be analyzed in constitutional terms.

*Id.* at 432. The fundamental requirement of due process is the opportunity to be heard at a meaningful time, and in a meaningful manner. *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976); *Doe v. Poritz*, 142 N.J. 1, 106 (1995).

As a consequence of the Job FAD, Mr. Cilento had no "meaningful"

opportunity to be heard. This is self-evident, on the face of the Job FAD, which determined that Mr. Cilento could mount no challenge to Woodbridge's termination of his employment, even if the basis of that termination was an unlawful act by government.

Likewise, whether or not Woodbridge was compelled by the OOS / License FAD to terminate Mr. Cilento's employment as a tenured teacher is not and cannot be dispositive of Mr. Cilento's right to obtain relief as against those unlawful decisions. If Mr. Cilento's right to his tenured position was violated by the License FAD, the incontrovertible remedy is his reinstatement in that position. *See, e.g., Virginia Bush v. Bd. of Ed. of Warren County Voc. Schl. Dist.*, Comm. of Ed. Dec. No. 164-09, ("it is well-established that the appropriate remedy as a consequence of a Board's [of Education's] violation of an individual's tenure rights is reinstatement along with back pay and emoluments.") By dispossessing him of the possibility of that, or any remedy, whatsoever, the Job FAD denied Mr. Cilento Due Process.

**POINT SIX**  
**THE JOB FAD VIOLATES PRINCIPLES OF FUNDAMENTAL FAIRNESS**  
**(Not Addressed Below)**

Besides violating Mr. Cilento's right to Due Process, the Job FAD violates the doctrine of Fundamental Fairness.

The doctrine of Fundamental Fairness serves to protect citizens generally against unjust and arbitrary governmental action, and specifically against governmental procedures that tend to operate arbitrarily. *Constantine v. Township of Bass River*, 406 N.J. Super. 305, 320 (App. Div. 2009). It serves this purpose in the absence of an explicit statutory or constitutional protection to be invoked. Fundamental Fairness is an integral part of Due Process, and is often extrapolated from or implied in other constitutional guarantees. The doctrine serves the imperative of minimizing arbitrary action by government. *Doe v. Poritz*, 142 N.J. 1, 109 (1995).

There is no bright-line test to determine when a court should apply the fundamental-injustice exception. Rather, our courts examine whether the judicial system has provided a fair proceeding leading to a just outcome. *State v. Mitchell*, 126 N.J. 565, 587 (1992).

New Jersey's procedural rules seek to achieve finality and judicial economy: their application must be balanced, however, against the doctrine of Fundamental Fairness. *State v. Martini*, 187 N.J. 469, 481 (2006).



Here, Mr. Cilento's ability to protect and preserve his tenured teaching position were caught between the timeliness requirements of N.J.A.C. 6A:3-1.3(i) and the appellate litigation process. Under these circumstances, it is fundamentally unfair to deny a diligent litigant the opportunity to contest or obtain relief from the consequences of adverse government action.

### **CONCLUSION**

For all the foregoing reasons, this Court should grant Mr. Cilento's Appeal, and vacate the Job FAD.

Respectfully submitted,

MELLK CRIDGE LLC

*s/ Edward Cridge*

Edward A. Cridge, Esq.

<p>NICHOLAS CILENTO,                      Petitioner-Appellant,  v.  WOODBRIIDGE TOWNSHIP BOARD OF EDUCATION, MIDDLESEX COUNTY,                      Respondent-Respondent.</p>	<p>SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION  DOCKET NO.: A-2151-22T2                      <u>CIVIL ACTION</u>  On Appeal from the Final Administrative Decision of the Commissioner of Education  Dep't of Education Docket No. 249-12/21  Commissioner of Education Dec. No. 35-23  OAL Docket No. 1414-22</p>
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**RESPONDENT WOODBRIDGE TOWNSHIP BOARD OF EDUCATION'S  
MERITS BRIEF AND APPENDIX (Ra1-114)**

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## PRELIMINARY STATEMENT

On November 18, 2021, the Respondent Woodbridge Township Board of Education (“Woodbridge BOE”) terminated Petitioner-Appellant Nicholas Cilento’s employment. Cilento, a tenured teacher at the time, had been caught surreptitiously drinking vodka at Colonia High School during work hours. After the Woodbridge BOE brought tenure charges, an arbitrator found Cilento liable and imposed a three-month suspension. Shortly after the arbitrator’s decision, on October 28, 2021, the New Jersey State Board of Examiners (the “State Board”)—the entity legislatively charged with regulating the issuance and revocation of teaching certificates, *see* N.J.S.A. § 18A:6-38—suspended Cilento’s teaching certificate for a period of two years. Cilento appealed that decision and it remains pending before the Appellate Division under *In re Certificates of Nicholas Cilento*, Docket No. A-2151-22 (App. Div. filed July 25, 2022)(the “*State Board Appeal*”). Critically, Cilento did not seek a timely stay of the State Board’s administrative order under N.J.A.C. § 6A:9B-4.16.

On November 18, 2021—more than three weeks after the State Board suspended Cilento’s teaching certificate and after providing Cilento written notice—the Woodbridge BOE terminated Cilento’s employment based on N.J.S.A. § 18A:26–2. That statutory provision prohibits school districts from employing teachers who do not possess a valid teaching certificate. The State Board’s

suspension of Cilento’s certificate—and Cilento’s failure to stay that administrative order—compelled the Woodbridge BOE to part ways with him.

Cilento then filed a Petition of Appeal with the Commissioner of Education (the “Commissioner”) alleging the Woodbridge BOE’s decision to terminate him was arbitrary and capricious. He sought reinstatement and backpay, including retroactive benefits. After the matter was transferred to the Office of Administrative Law (OAL), the Hon. Tricia M. Caliguire, A.L.J., granted the Woodbridge BOE’s motion for summary decision, finding that it terminated Cilento consistent with the applicable law and facts that existed at the time. Judge Caliguire rejected Cilento’s contention that the Woodbridge BOE’s decision could be deemed arbitrary and capricious based on the outcome of the *State Board Appeal*. In other words, the ALJ correctly recognized that the Woodbridge BOE had to act based on the facts and circumstances that existed in November 2021, not based on what a reviewing court may do many months later. The Commissioner denied Cilento’s appeal.

Cilento now appeals to this Court. The crux of Cilento’s argument is that he was placed in an unfair and irreconcilable position. He complains that N.J.A.C. § 6A:3-1.3(i) required him to file his petition within 90 days of the Woodbridge BOE’s decision to terminate him, but yet the underlying basis for that decision—the State Board’s decision to suspend his certificate—was still on appeal and awaiting resolution. He believes that the soundness of the Woodbridge BOE’s decision to

terminate his employment depends upon the *State Board Appeal*. Respectfully, Cilento is wrong.

Once the State Board suspended his teaching certificate, the Woodbridge BOE had no choice under N.J.S.A. § 18A:26–2 but to terminate Cilento. Doing otherwise would mean ignoring State law. Deeming the Woodbridge BOE’s decision in November 2021 arbitrary and capricious—and therefore forcing it to reinstate Cilento and give him backpay—based on the Appellate Division’s forthcoming decision in the *State Board Appeal* is illogical. The Woodbridge BOE, like any governmental entity, must act based on the facts that exist at the time, not the facts that may exist in the future. Following the law is not arbitrary and capricious.

Cilento’s claims of procedural unfairness cannot withstand even cursory scrutiny. Knowing the consequences to his employment once the State Board suspended his certificate, Cilento should have immediately sought a stay of the State Board’s administrative order under N.J.A.C. § 6A:9B-4.16. The regulation expressly envisions stays of such administrative decisions and imposes a 30-day deadline. Cilento missed this deadline. A stay would have permitted Cilento to maintain a valid teaching certificate pending resolution of the *State Board Appeal*. The procedural “dilemma” of which he complains was the product of missing a deadline, not a defect in the law or the Woodbridge BOE’s decision. Thus, the Commissioner’s decision should be affirmed.

## PROCEDURAL AND FACTUAL BACKGROUND

### A. The Parties.

The Woodbridge BOE operates and manages the Woodbridge Township School District. (Pa39<sup>1</sup>). The district is comprised of 25 schools--17 elementary schools, five middle schools, and three high schools, including Colonia High School.<sup>2</sup> The Woodbridge BOE employs approximately 1,150 school teachers and staff.<sup>3</sup>

Cilento was a teacher employed by the Woodbridge BOE until his termination on November 18, 2021. Cilento was first hired as a Special Education teacher for the 2007-08 school year. (Ra3<sup>4</sup>). Cilento ultimately attained tenure with the Woodbridge BOE.

### B. The Underlying Tenure Charges.

On the morning of May 21, 2019, Colonia High School Principal Kenneth Pace received information that Cilento had been drinking in the school lobby while on duty on the previous day. (Pa3-Pa4). Pace learned that school staff members had observed Cilento drinking from a water bottle that emanated a strong smell of alcohol. (Pa2-Pa3).

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<sup>1</sup> "Pa" refers to Plaintiff's Appendix.

<sup>2</sup> Schools, Woodbridge Township School District, <https://www.woodbridge.k12.nj.us/>

<sup>3</sup> Certificated Staff, NJDOE Data & Reports, <https://www.nj.gov/education/doedata/cs/index.shtml> (last visited March 13, 2024).

<sup>4</sup> "Ra" refers to Respondent Woodbridge Township Board of Education's Appendix.

Cilento was in the lobby for morning duty on May 21st and had brought with him a water bottle identical to that seen by staff members on May 20th. (Pa2). Pace proceeded to the lobby and confiscated the water bottle, which once again, emanated a strong odor of alcohol. (Ra6-Ra7). Surveillance footage taken between 7:20 a.m. and 8:10 a.m. on May 21st shows Cilento drinking from the water bottle. (Ra7).

After initially lying about whether the water bottle he drank from belonged to him, Cilento confessed it contained alcohol--specifically, vodka--and that he was drinking while on the job. (*Id.*). A toxicology analysis confirmed the liquid contained alcohol. (Ra11).

Cilento was criminally charged with violating N.J.S.A. § 2C:33-16, which prohibits bringing alcoholic beverages on school premises without the express written permission of the school. (Ra12).

The Woodbridge BOE's regulations provide for certifying tenure charges whenever a tenured employee is caught drinking alcoholic beverages on school premises. (Ra13-Ra14). Accordingly, the Woodbridge BOE filed tenure charges against Cilento to remove him from employment. (Pa3-Pa4). The charges were as follows:

- Charge I: Unbecoming conduct and/or other just cause, including insubordination – consuming alcohol during work in violation of established standards of professional behaviour;

- Charge II: Unbecoming conduct, insubordination, and/or other just cause – publicly consuming alcohol during work in violation of state law;
- Charge III: Unbecoming conduct, insubordination, and/or other just cause – publicly consuming alcohol during work in violation of state law;
- Charge IV: Insubordination and unbecoming conduct and/or other just cause – violations of district policy; and
- Charge 5: Pattern of course of unbecoming conduct over a protracted period of time. (Pa3-Pa4).

The Arbitrator found the evidence undisputed and sustained charges I-IV. (Pa4). The Arbitrator found that Cilento “possessed and used alcohol on school premises while on duty on May 20 and 21, 2019”; that “such conduct is contrary to established standards of professional behaviour, Board policies, New Jersey State Law, and Woodbridge Municipal Code, and constitutes conduct unbecoming a teacher”; and that Cilento “knew that such conduct was improper.” (*Id.*).

The Arbitrator, however, did not find dismissal warranted. (Pa11). Instead, the Arbitrator found that “a three-month unpaid suspension and reinstatement on a Last Chance basis [] is the appropriate penalty for Mr. Cilento’s misconduct.” (*Id.*). The Woodbridge BOE abided by the Arbitrator’s decision and reinstated Cilento.

C. The State Board Suspends Cilento's Teaching Certificate.

On March 3, 2021, the State Board, exercising its authority under N.J.A.C. § 6A:9B-4.4, issued Cilento an Order to Show Cause as to why his certificate should not be revoked. (Pa14-Pa16). On April 1, 2021, Cilento filed an Answer, which did not deny tenure charges had been filed, but rather, asserted that the penalty imposed by the arbitrator speaks for itself. (Pa18).

On April 13, 2021, pursuant to N.J.A.C. 6A:9B-4.6(e), the State Board sent Cilento a hearing notice. (*Id.*). Because no material facts were in dispute, the notice invited Cilento to “submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder, as well as arguments with regard to the appropriate sanction in the event that the Board found just cause to take action against his certificate.” (*Id.*). The notice also offered Cilento a chance to appear before the State Board in-person. (*Id.*).

In response, Cilento filed a written submission arguing that the decision in the tenure matter “bars the imposition of any suspension or revocation on his teaching certificates.” (*Id.*). According to Cilento, the arbitrator’s decision precluded any further discipline against him. (*Id.*).

On July 30, 2021, Cilento and his counsel appeared before the State Board for a hearing. (Pa19). There, he repeated his arguments that the arbitrator’s decision precluded any action against his teaching certificate by the State Board. (*Id.*).



On September 17, 2021, the State Board voted to suspend Cilento’s teaching certificate for a period of two years. (Pa20). On October 28, 2021, the State Board issued a written decision. (Pa17-Pa20). In its written decision, the State Board found Cilento’s “conduct in drinking alcohol at work, along with bringing alcohol to school clearly indicates a serious lapse in judgment.” (Pa19).

The State Board rejected Cilento’s argument that it was bound by the penalty assessed by the arbitrator. (Pa20). The State Board noted that Cilento’s position “would essentially hamstring the Board from exercising its responsibility and statutory authority on revocation/suspension of educator certificates, usurping the Board’s expertise and authority on these matters.” (*Id.*). The State Board emphasized it “is a separate body and applies its own, independent decision as to whether the specific conduct established in the tenure proceedings warrants action on an educator’s teaching certificates.” (*Id.*).

Cilento appealed the State Board’s decision to the Commissioner. (Pa21-Pa25). The Commissioner affirmed the State Board’s decision. (*Id.*). Cilento then appealed the Commissioner’s decision to the Appellate Division, where it remains pending. (Pa26-Pa29).

Critically, Cilento did not file a timely motion to stay the State Board’s decision under N.J.A.C. § 6A:9B–4.16. That provision requires parties to make a motion for stay within 30 days of the “mailing date of the [State Board’s] decision

that is at issue.” N.J.A.C. § 6A:9B–4.16. Cilento failed to make such a motion until December 6, 2021, which was 33 days after the State Board mailed him the decision. (Ra40). The State Board then refused to consider his motion because it was untimely. (*Id.*). Cilento then renewed his motion for a stay before the Commissioner, who subsequently rejected it as both untimely and without merit. (Ra100-Ra101). It does not appear Cilento made any subsequent motion to appeal the denial of a stay to the Appellate Division under Rule 2:9-7.

D. The State Board’s Decision Forced The Woodbridge BOE To Summarily Dismiss Cilento.

N.J.S.A. § 18A:26-2 provides in pertinent part: “[n]o teaching staff member shall be employed in the public schools by any board of education unless he is the holder of a valid certificate” to teach public school students; *see also* N.J.A.C. § 6A:9B-5.1(a)(“[p]ursuant to N.J.S.A. 18A:26–2, any person employed as a teaching staff member by a district board of education shall hold a valid and appropriate certificate”).

On November 9, 2021, consistent with this law, Woodbridge BOE Superintendent Joseph E. Massimino sent Cilento a letter advising him that he was no longer eligible to work for the Woodbridge BOE. (Pa33). Superintendent Massimino advised that he would recommend Cilento’s termination to the full board at its next meeting and that the termination would be retroactive to the date of the

State Board’s decision. (*Id.*). On November 18, 2021, the board voted to approve Cilento’s termination retroactive to October 28, 2021. (Pa41).

E. Cilento Appeals The Woodbridge BOE’s Decision, Demands Reinstatement And Backpay.

On December 30, 2021, Cilento filed a Petition of Appeal challenging the Woodbridge BOE’s decision, claiming it was “arbitrary, capricious, unreasonable, contrary to and in violation of law, and without legal force or effect.” (Pa34-Pa37). In his Petition of Appeal, Cilento alleged that, because he had appealed the Commissioner’s decision upholding the State Board’s decision to suspend his teaching certificate, the Woodbridge BOE somehow acted arbitrarily and capriciously in terminating his employment. (Pa35). It’s undisputed that the State Board’s decision to suspend Cilento’s teaching certificate was never stayed. Cilento sought reinstatement and backpay, including his salary and benefits. (*Id.*). The Commissioner transferred the matter to the OAL.

F. Woodbridge BOE Successfully Moves For A Summary Decision, The Commissioner Affirms The ALJ’s Decision.

On September 7, 2022, the Woodbridge BOE moved for summary decision. The Woodbridge BOE argued that, whatever the merits of Cilento’s appeal of the State Board’s decision, the Woodbridge BOE cannot—as a matter of law—be found to have acted in an arbitrary and capricious matter by terminating Cilento. It was undisputed that Cilento did not have a valid teaching certificate as of November 28,

2021, the day the Woodbridge BOE terminated him. Thus, the Woodbridge BOE argued, under N.J.S.A. 18A:26–2, Cilento could not continue to hold his position.

In response, Cilento moved for a cross-motion, arguing that the matter should be stayed pending the Appellate Division’s decision in the *State Board Appeal*.

On November 18, 2022, the Hon. Tricia M. Caliguire, A.L.J., issued an Initial Decision granting the Woodbridge BOE’s motion. The ALJ found that the relevant question was “not whether the action of the [State Board] was legal,” but rather “whether the action of respondent in November 2021, made in reliance on the decision of the [State Board], was legal.” (Pa44). The ALJ held that the Woodbridge BOE “acted appropriately and in accordance with the law to remove petitioner from his tenured teaching position as petitioner did not have a valid teaching certificate at the time of respondent’s decision.” (*Id.*).

Upon review, the Commissioner concurred with the ALJ’s decision and issued a Final Decision adopting the findings and recommendations in the Initial Decision. The Commissioner “agree[d] with the ALJ that the Board was not arbitrary, capricious, or unreasonable in terminating petitioner.” (Pa48). The Commissioner noted that N.J.A.C. § 6A:9B-5.1(c) required the Woodbridge BOE to remove Cilento from his employment once he lost his teaching certificate. (*Id.*).

Cilento appealed the Commissioner’s decision to this Court under Rule 2:23(a). The Woodbridge BOE now responds.

## STANDARD OF REVIEW

“Appellate review of an administrative agency's decision is limited.” *Zimmerman v. Diviney*, 477 N.J. Super. 1, 14 (App. Div. 2023). “Ordinarily, an appellate court will reverse the decision of the administrative agency only if it is arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole.” *Mejia v. New Jersey Dep't of Corr.*, 446 N.J. Super. 369, 376 (App. Div. 2016)(citations and quotations omitted). The “judicial role is restricted to four inquiries: (1) whether the agency's decision offends the State or Federal Constitution; (2) whether the agency's action violates express or implied legislative policies; (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and (4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.” *George Harms Const. Co. v. New Jersey Tpk. Auth.*, 137 N.J. 8, 27 (1994).

**ARGUMENT**

THE COMMISSIONER CORRECTLY HELD THAT THE WOODBRIDGE BOE'S DECISION TO FOLLOW THE LAW AND TERMINATE CILENTO WAS NOT ARBITRARY AND CAPRICIOUS.

“[T]he Legislature [] has the constitutional responsibility of providing a thorough and efficient system of public education.” *Rotondo v. Carlstadt-East*, 276 N.J. Super. 36, 38 (App. Div. 1994)(citations omitted). “The Legislature chose to fulfill its responsibility by creating a State Board of Education, the office of the Commissioner, and local school districts, and delegating to them portions of its constitutional responsibilities.” *Id.* at 39. While local school districts have the authority to adopt rules and regulations, such laws must “not [be] inconsistent with [the statute] or with the rules of the state board.” *Id.* (citing N.J.S.A. § 18A:11-1(c))(second alteration in original). In other words, a “local government may not act contrary to State law.” *Summer v. Teaneck*, 53 N.J. 548, 554 (1969).

N.J.S.A. § 18A:26-2’s command is plain: “[n]o teaching staff member shall be employed in the public schools by any board of education unless he is the holder of a valid certificate to teach . . . .” There is no ambiguity, vagueness or loophole in this statutory text that allows a school district to employ a teacher who does not possess a valid teaching certificate.

The power to issue—and, most importantly here, to suspend or revoke teaching certificates—resides with the State Board. N.J.A.C. § 6A:9B-3.2. This power flows from the Legislature’s general grant of authority to the State Board “to supervise and control public education in New Jersey,” *Parsippany-Troy Hills Educ. Ass’n v. Bd. of Educ. of Parsippany-Troy Hills Twp.*, 188 N.J. Super. 161, 165 (App. Div. 1983), and the specific grant of authority to regulate teaching certificates. See N.J.S.A. § 18A:6-38. The State Board has adopted “comprehensive regulations to govern the certification of public-school educational personnel.” *Breitwieser v. State-Operated Sch. Dist.*, 286 N.J. Super. 633, 638 (App. Div. 1996).

Here, the Commissioner correctly found that the Woodbridge BOE did not act arbitrarily and capriciously in terminating Cilento’s employment. It’s undisputed that, on October 28, 2021, the State Board suspended Cilento’s teaching certificate for a period of two years. (Pa20). It’s equally undisputed that the decision was never stayed. Thus, on the date the Woodbridge BOE terminated him, it’s undisputed that Cilento did not possess a valid teaching certificate. Considering that N.J.S.A. § 18A:26-2’s plain text prohibits school districts from employing any teaching staff member who does not possess the requisite certificate, the Woodbridge BOE had no choice but to part ways with Cilento. Following the law—especially one as clear as N.J.S.A. § 18A:26-2—cannot conceivably be said to constitute arbitrary and capricious conduct.

Against these undisputed facts and crystal clear law, Cilento raises five arguments: 1) that the New Jersey Department of Education’s (NJDOE) 90-day rule prevented him from asserting his rights by forcing him to challenge the Woodbridge BOE’s decision before the Appellate Division rules on his appeal in the *State Board Appeal*; 2) he was subject to inconsistent decisions by the arbitrator in the tenure proceeding and the State Board; 3) the ALJ and Commissioner failed to address this inconsistency in their decision; 4) the Commissioner’s decision violated his due process rights; and 5) the doctrine of fundamental fairness requires the Court to step in and overturn the Woodbridge BOE’s decision. (Pb14-22). All of Cilento’s arguments are without merit.

A. Cilento’s Failure To Seek A Timely Stay Of The Decision Suspending His Certificate Is The Root Cause Of Any Procedural Dilemma.

Cilento alleges that N.J.A.C. § 6A:3-1.3(i)—which prescribes a 90-day time limit to challenge final decisions or actions of a school district—placed him in an “impossible position.” (Pb17). He complains that the regulation compelled him to challenge the Woodbridge BOE’s actions before the *State Board Appeal* was resolved, thereby effectively depriving him of a remedy even if he prevails in the *State Board Appeal*. (*Id.*). He argues that a “party who timely invokes and preserves his rights cannot be punished by the delays inherent in the legal process. That, however, is exactly what has occurred here.” (*Id.*). Respectfully, this argument lacks



merit when the Court examines it in the context of the rules governing stays of administrative orders.

N.J.A.C. § 6A:9B–4.16 expressly sets forth a party’s right to seek a stay of a decision suspending or revoking his teaching certificate. The rule provides a 30-day time limit for such applications. N.J.A.C. § 6A:9B–4.16(a)(2). Denials of a stay application are appealable to the Commissioner. *See* N.J.A.C. § 6A:9B-4.18. From there, a party dissatisfied with the Commissioner’s ruling may apply to the Appellate Division for a stay under Rule 2:9-7. In emergent cases, Rule 2:9-8 permits for a temporary stay.

Here, Cilento failed to make timely use of these procedural remedies. The State Board issued its written decision suspending Cilento’s teaching certificate on October 28, 2021 and mailed it to him on November 3, 2021. (Pa17-Pa20). Considering N.J.S.A. § 18A:26-2’s plain terms, Cilento should have anticipated the Woodbridge BOE would have to take action as to his employment. Any doubt about such action was removed on November 9, 2021, when Superintendent Massimino advised Cilento, in writing, that he would recommend his termination to the Woodbridge BOE because he no longer possessed a valid teaching certificate. (*See* Pa33). Yet, despite this explicit notice, Cilento apparently did nothing until December 6, 2021, when he filed an untimely motion for stay with the State Board, which was subsequently denied. (Ra40). This was almost three weeks after the

Woodbridge BOE made its decision. Cilento's failure to abide by timelines, not N.J.A.C. § 6A:3-1.3(i)'s 90-day timeline for challenging board actions, is the cause of any procedural unfairness he now perceives. This failure is not a basis for deeming the Woodbridge BOE's actions arbitrary and capricious.

B. The State Board Has The Right To Regulate Teaching Certificates, Not The Arbitrator.

Cilento next offers a red herring: he argues that the arbitrator's decision to impose a three-month suspension from his job, and the State Board's decision to suspend his certificate, are in conflict and, thus, constitute arbitrary and capricious conduct. (Pb18). He argues that the State Board was estopped from taking any action against his certificate once the arbitrator made his decision. (*Id.*).

At the outset, we note: this argument mischaracterizes the issue before the ALJ and Commissioner. The only issue before them was whether the Woodbridge BOE—not the State Board—acted in an arbitrary and capricious manner. The State Board wasn't even a party to the Petition of Appeal. (*See* Pa34-Pa36). What Cilento is really arguing is that the Woodbridge BOE, a local school district, should have reviewed the State Board's decision suspending his certificate, deemed it inconsistent with the arbitrator's decision, and then disregarded it. There's no authority for the Woodbridge BOE to sit in such a reviewing capacity of the State Board. Local governments must follow, not ignore, State law. *See Summer*, 53 N.J.

at 554. Cilento’s position invites unnecessary chaos—all of which he could have avoided by seeking a timely stay.

But more importantly: Cilento’s contention that the State Board was estopped from suspending his certificate after the arbitrator imposed a three-month suspension in the tenure case fails to appreciate the statutory division of authority governing an individual’s tenured employment and their teaching certificate. Under the Teacher Effectiveness and Accountability for the Children of New Jersey Act (TEACHNJ), N.J.S.A. 18A:6-117, *et seq.*, final decisions in tenure matters are made by an arbitrator, not the Commissioner. *Sanjuan v. Sch. Dist. of W.N.Y.*, \_\_\_ N.J. \_\_\_, 2024 WL 537907, at \*6 (Feb. 12, 2024). The Commissioner’s role is limited to determining whether the tenure charges filed by the local school district are “sufficient to warrant dismissal or reduction in salary of the person charged[.]” *Id.* at \*5 (citing N.J.S.A. § 18A:6-16). If the Commissioner believes the charges are sufficient, then he transfers the matter to arbitration. *Id.* (citing N.J.S.A. § 18A:6-16).

The arbitrator then has the authority to make factual determinations and impose a penalty, if warranted, including but not limited to a demotion, suspension, termination or something else. *Sanjuan*, 2024 WL 537907, at \*9. Significantly, the arbitrator’s decision “shall be final and binding and may not be appealable to the

commissioner or the State Board of Education.” N.J.S.A. § 18A:6-17.1(e). Instead, the arbitrator’s decision is only subject to judicial review and enforcement. *Id.*

Nothing in TEACHNJ, or its predecessor, the Tenure Employees Hearing Act. *L. 1967, c. 271*, permits an arbitrator to impose a penalty impacting a teaching certificate. Instead, and as explained above, the Legislature firmly committed the function of regulating teaching certificates to the State Board. *See* N.J.S.A. § 18A:6-38. Under that statute, the State Board may issue or revoke certifications pursuant to “rules and regulations” it prescribes. *Id.* Consistent with this enabling language, the State Board adopted N.J.A.C. § 6A:9B-3.2, which permits it to issue, revoke or suspend teaching certificates. Unlike an arbitrator’s decision, the State Board’s decision is appealable to the Commissioner. N.J.A.C. § 6A:9B-4.18.

Thus, the statutory division of responsibility is clear: under TEACHNJ, the arbitrator can impose discipline—be it termination, suspension, a reduction in salary, or some other penalty—upon a teacher related to his position of *employment* with the local school district. In contrast, the State Board can determine whether suspending or revoking a staff member’s teaching certificate is appropriate—this could have an impact on the individual’s *employability* with any school district, or it may have no impact at all if the individual is employed in a position that does not require a teaching certificate. The Legislature’s drawing of these lines ensures that each decisionmaker—*i.e.*, the arbitrator and the State Board—discharge their duties

so as to ensure “a thorough and efficient system of public education,” N.J. CONST., art. VIII, § IV, ¶ 1.

To be sure, subjecting license holders to different penalties by separate entities with different spheres of authority is not uncommon. For example, a prosecutor may be suspended or terminated by the county prosecutor’s office for concealing evidence. Based on that same conduct, the New Jersey Supreme Court may opt to impose a penalty aimed at the attorney’s license. Nobody would blink an eye under those circumstances. And the same should be true here. The discipline imposed by the arbitrator does not preempt the State Board’s authority to suspend Cilento’s teaching certificate. Thus, there is no merit to Cilento’s contention that the State Board’s decision—which wasn’t even before the Commissioner in this case—was arbitrary and capricious.

C. The ALJ And Commissioner Addressed The Salient Issues.

Cilento next argues that the ALJ and Commissioner should have passed upon the question of whether the State Board’s decision to suspend his certificate was proper. (Pb19-21). He contends that this omission constitutes a “[D]ue [P]rocess” violation. (Pb21). Respectfully, Cilento is wrong.

The ALJ and Commissioner did not pass upon the question of whether the State Board properly suspended Cilento’s license because they correctly found it irrelevant to the instant matter. The only question before the ALJ and Commissioner

was whether the Woodbridge BOE acted arbitrarily and capriciously by following N.J.S.A. § 18A:26-2 and terminating Cilento’s employment because he no longer possessed a teaching certificate. Cilento may not like the answer, but that makes it no less obvious under the statute. The ALJ and Commissioner correctly determined the issue actually before them. And they properly abstained from reviewing decisions made by a party—*i.e.*, the State Board—not before them.

D. The Woodbridge BOE Did Not Violate Cilento’s Due Process Rights.

Cilento also argues that the Woodbridge BOE somehow violated his due process rights by discharging him once the State Board suspended his teaching certificate. (Pb23). He claims that, “whether or not Woodbridge (sic) was compelled by the OOS/License FAD to terminate Mr. Cilento’s employment as a tenured teacher is not and cannot be dispositive of Mr. Cilento’s right to obtain relief as against those unlawful decisions.” (*Id.*).

The error in Cilento’s argument is that he continues to overlook his own failure to seek a timely stay of the State Board’s decision. The State Board’s decisions “shall be effective upon the date contained within the decision.” N.J.A.C. § 6A:9B-4.16. Once the State Board issued its decision suspending Cilento’s license on October 28, 2021, Cilento should have immediately moved to stay the decision under N.J.A.C. § 6A:9B-4.16 to avoid the consequences under N.J.S.A. § 18A:26-2. Had he done so successfully, he would have continued teaching for the

Woodbridge BOE until the Appellate Division heard his appeal in the *State Board Appeal*. Cilento's failure to timely pursue his legal remedies—which are set forth in the administrative code, *see* N.J.A.C. § 6A:9B-4.16, and Court Rules, *see* R. 2:9-7; R. 2:9-8—does not give rise to a due process violation.

Frankly, Cilento sits in a position no different than any other litigant who has a judgment or order entered against them which they believe was incorrect and, therefore, warrants an appeal. The judgment or order may even cause a fiscal crisis which pushes the entity towards insolvency. *See, e.g., Profit Sharing Tr. for Marprowear Corp. v. Lampf, Lipkind, Prupis, Petigrow & Labue, P.A.*, 267 N.J. Super. 174 (Law. Div. 1993)(law firm which had a judgment entered against it sought a stay because “if the judgment is not stayed, the law firm will go out of business”). But this is why our Supreme Court has adopted rules, such as Rule 2:9-5 (stays of judgments entered in civil actions), Rule 2:9-7 (stays of administrative order) and Rule 2:9-8 (emergent stays), so that litigants can try and relieve themselves of any irreparable hardships by making the required motion. It's why the State Board has a similar provision, N.J.A.C. § 6A:9B-4.16, for decisions it issues. Asserting a procedural due process violation when Cilento failed to timely avail himself of the process afforded is substantively flawed and should be rejected by the Court.

E. The Doctrine Of Fundamental Fairness Cannot Save Cilento.

Finally, Cilento argues that the ALJ and Commissioner’s decision violates the doctrine of fundamental fairness. (Pb24). The doctrine of fundamental fairness “serves to protect citizens generally against unjust and arbitrary governmental action, and specifically against governmental procedures that tend to operate arbitrarily.” *Constantine v. Twp. of Bass River*, 406 N.J. Super. 305, 320 (App. Div. 2009)(quotations and citations omitted). “Although the doctrine of fundamental fairness has been applied in many contexts, ‘there is [always] one common denominator[,] ‘a determination that someone was being subjected to potentially unfair treatment and there was no explicit statutory or constitutional protection to be invoked.’” *Id.* (citing *Doe v. Poritz*, 142 N.J. 1, 108 (1995))(alterations in original).

Here, the Court should reject Cilento’s argument that his “ability to protect and preserve his tenured teaching position were (sic) caught between the timeliness requirements of N.J.A.C. § 6A:3-1.3(i) and the appellate litigation process.” (Pb25). There is nothing fundamentally or even remotely unfair about the circumstances faced by Cilento here. Contrary to Cilento’s position, he had available legal procedures—most notably, the stay provisions of N.J.A.C. § 6A:9B-4.160 and Rule 2:9-7—that would have allowed him to try and avoid the statutory consequences compelled by the suspension of his certificate. He failed to avail himself of those procedures in a timely fashion. The subsequent events, including his termination, are



traceable to that failure, not some fundamental unfairness inherent within N.J.A.C. § 6A:3-1.3(i), the appellate litigation process, or the statutory scheme governing teachers and their certificates.

**CONCLUSION**

For the foregoing reasons, the Court should affirm the Commissioner's decision upholding the Woodbridge BOE's termination of Cilento.

Respectfully submitted,

**ANDERSON & SHAH, LLC**  
**ATTORNEYS AT LAW**  
*Attorneys for Respondent Woodbridge  
Township Board of Education*

By: /s/ Roshan D. Shah  
Roshan D. Shah, Esq.

Dated: March 25, 2024

NICHOLAS CILENTO,

Appellant,

v.

BOARD OF EDUCATION OF  
THE TOWNSHIP OF  
WOODBIDGE, MIDDLESEX  
COUNTY,

Respondent.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO.: A-2151-22T2

CIVIL ACTION

ON APPEAL FROM A FINAL DECISION  
OF THE COMMISSIONER OF  
EDUCATION

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STATEMENT IN LIEU OF BRIEF ON BEHALF OF RESPONDENT  
COMMISSIONER OF EDUCATION

Date Submitted: MARCH 25, 2024

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On the Statement

The New Jersey Commissioner of Education files this statement in lieu of brief pursuant to Rule 2:6-4(c).

Appellant, Nicholas Cilento, appeals the Commissioner’s February 6, 2023, final agency decision, adopting in its entirety the initial decision issued November 18, 2022, by the Administrative Law Judge (“ALJ”). (Pa38-45; Pa46-49).<sup>1</sup> The ALJ found that Respondent Board of Education of the Township of Woodbridge (“Woodbridge Board”) was justified in terminating the employment of Cilento despite his tenured status, because the State Board of Examiners (“State Board”) had suspended his teaching certificates for two years. (Pa38-45). The undisputed facts are as follows.

Cilento was a tenured teacher with the Woodbridge Board and was employed from September 1, 2007, until his termination on November 18, 2021. (Pa38-Pa40). His termination arose from incidents in May 2019, when Cilento consumed alcohol on two occasions on school premises while on duty. (Pa46). As a result of the incidents, the Woodbridge Board filed four tenure charges against Cilento, alleging conduct unbecoming and other just cause, including insubordination, for consuming alcohol during work in violation of state law, municipal law, district policy, and established standards of professional behavior. (Pa40). In a fifth tenure charge, the Woodbridge Board alleged that

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<sup>1</sup> “Pa” refers to Appellant’s appendix; “Pb” refers to Appellant’s brief.

there was a pattern or course of unbecoming conduct over a protracted period.  
Ibid.

Pursuant to N.J.S.A. 18A:6-16,<sup>2</sup> an arbitrator was assigned to the tenure proceeding. (Pa46). The arbitrator determined that Cilento engaged in unbecoming conduct but did not find a pattern or course of conduct unbecoming. Ibid. Thus, the arbitrator determined that Cilento's conduct warranted a three-month suspension from employment and not termination. Ibid.; (Pa40). At the conclusion of the suspension, the Woodbridge Board reinstated Cilento to his position. (Pa40).

When the State Board learned of the findings of fact in the arbitration award, the Board issued its own order to show cause and on October 28, 2021, suspended Cilento's teaching certificates for two years. Ibid.; (Pa46). On June 23, 2022, the Commissioner upheld the State Board's order of suspension, and Cilento appealed the matter to the Appellate Division, where it is still pending under In re Certificates of Nicholas Cilento, A-3586-21T. (Pa47; Pa41).

On November 9, 2021, Woodbridge Board Superintendent Joseph E. Massimino informed Cilento that because of the State Board's order of

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<sup>2</sup> N.J.S.A. 18A:6-16 requires the Commissioner to initially review tenure charges and render a determination as to the sufficiency of the charges. If the tenure charges are sufficient to warrant dismissal or reduction in salary of the person charged, the Commissioner is required to transmit the tenure charges to an impartial arbitrator under N.J.S.A. 18A:6-17.1 for further proceedings.

suspension, he would be recommending that Cilento's employment be terminated. (Pa41). On November 18, 2021, the Woodbridge Board approved Cilento's termination from employment. Ibid.

On December 30, 2021, Cilento appealed his termination with the New Jersey Department of Education, Office of Controversies and Disputes ("C&D"). (Pa39). Cilento argued that the Woodbridge Board's decision "was arbitrary, capricious, unreasonable, contrary to and in violation of law, and without legal force or effect." (Pa41).

C&D transmitted Cilento's petition as a contested matter to the Office of Administrative Law, where it was assigned to an ALJ. (Pa39). On September 7, 2022, the Woodbridge Board moved for summary decision, and Cilento opposed the motion and cross-moved to place the matter on the inactive list, pending the Appellate Division's decision on the State Board's order suspending his teaching certificates. Ibid.

On November 18, 2022, the ALJ issued an initial decision, granting the Woodbridge Board's motion for summary decision and denying Cilento's cross-motion to place the matter on the inactive list. (Pa38-45). The ALJ initially decided that "the parties raise no dispute with respect to material facts" and that the matter can be decided as a matter of law. (Pa42). She recognized that the decisions of school boards of education "carry the presumption of validity and

will remain undisturbed absent a showing of arbitrary, capricious or unreasonable action.” Ibid.

The ALJ explained that in terminating Cilento’s employment, the Woodbridge Board was acting in compliance with N.J.S.A. 18A:26-2, which unambiguously states: “[n]o teaching staff member shall be employed in the public schools by any board of education unless he is the holder of a valid certificate to teach[.]” Ibid. And the ALJ concluded that the Woodbridge Board has “the duty to enforce rules promulgated by the State Board.” Ibid. (citing Parsippany-Troy Hills Educ. Assn. v. Bd. of Educ. of Parsippany-Troy Hills, 188 N.J. Super. 161, 166 (App. Div. 1983)). In Cilento’s case, it was undisputed that the State Board had suspended his teaching certificates for two years. (Pa39-40). Thus, the ALJ reasoned that because N.J.S.A. 18A:26-2 requires all teaching staff members to hold a valid teaching certificate in order to be employed, the Woodbridge Board was required to terminate Cilento’s employment because his teaching certificates were suspended. (Pa42-43).

Turning to Cilento’s motion to place the matter on the inactive list pending resolution of the State Board matter, the ALJ reasoned that the “question here is not whether the action of the State Board was legal, it is whether the action of respondent [Woodbridge Board] in November 2021, made in reliance on the decision of the State Board, was legal.” (Pa44). She, therefore, found no reason

to place Cilento's appeal of his termination on the inactive list because there was no dispute that Woodbridge's decision was required by N.J.S.A. § 18A:26-

2. Ibid.

The Commissioner reviewed the initial decision and adopted it as the final decision. (Pa49). The Commissioner explained that New Jersey regulations require school districts to “remove from the position any teaching staff member who fails to maintain the required certificate.” (Pa48) (quoting N.J.A.C. 6A:9B-5.1(c)).<sup>3</sup> Because Cilento did not have a valid certificate, as of the State Board's October 28, 2021 order of suspension, the Commissioner found that “the [Woodbridge] Board acted in accordance with law when it terminated petitioner from his teaching position.” Ibid. The Commissioner also agreed with the ALJ's denial of Cilento's motion to place the tenure matter on the inactive list, noting that the Woodbridge Board's decision to terminate Cilento had been based on the undisputed fact that his certificates was suspended and that the dispositive question of “[w]hether the Board's actions in November

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<sup>3</sup> N.J.A.C. 6A:9B-5.1(a) requires: “Pursuant to N.J.S.A. 18A:26-2, any person employed as a teaching staff member by a district board of education shall hold a valid and appropriate certificate.” And N.J.A.C. 6A:9B-5.1(c) states: “The employing school district shall remove from the position any teaching staff member who fails to maintain the mandated license, certificate, or authorization as set forth at (b) above.”

2021 were arbitrary, capricious or unreasonable [would] not change if petitioner is successful in his pending appeal” of his certificate suspension. Ibid.

Having reviewed the briefs filed by the primary parties, the factual and legal issues involved in this appeal do not warrant the filing of a separate brief on behalf of the Commissioner. Because this matter does not involve a challenge to the validity of the provisions of Title 18A of the New Jersey Revised Statutes, a separate brief on the merits is unnecessary. And the primary parties to this appeal have adequately addressed the relevant issues and the public interest does not require participation by the Commissioner in this appeal.

It is, however, the Commissioner’s position that the final agency decision should be affirmed. It is well-settled that such determination should not be vacated in the absence of a showing that the final agency decision is arbitrary or capricious, that it lacks support in the record or that it violates legislative policies expressed or fairly to be implied in the statutory scheme administered by that agency. Dore v. Bedminster Twp. Bd. of Educ., 185 N.J. Super. 447, 453 (App. Div. 1982).

N.J.S.A. § 18A:26-2 is clear that local boards of education cannot employ school teaching staff unless they hold valid teaching certificates. An examination of the record demonstrates there was no dispute that the Woodbridge Board terminated Cilento because his teaching certificates were



suspended. The Commissioner's decision is reasonable, consistent with the applicable statutes, and should be affirmed.

Respectfully submitted,

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By: /s/Sadia Ahsanuddin  
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Dated: March 25, 2024

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April 2, 2024

Superior Court of New Jersey  
Appellate Division  
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**Re: Nicholas Cilento, Petitioner/ Appellant, v. Board of Education of  
the Township of Woodbridge, Middlesex County, Respondent /  
Respondent  
Appellate Div. Dkt. No. A-002151-22T2  
Reply Brief on Behalf of Petitioner/Appellant Nicholas Cilento**

To the Honorable Judges of the Appellate Division:

We represent Petitioner/ Appellant Nicholas Cilento (hereinafter “Mr. Cilento”). We have received the Answering Brief filed by Respondent / Respondent Woodbridge Township School District Board of Education (“Woodbridge”), and the Statement in Lieu of Brief filed by the Department of Education (the “DOE”). Pursuant to *R. 2:6-5*, and *R. 2:6-2(b)* please accept this Reply Letter Brief in further support of Mr. Cilento’s Appeal.

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**TABLE OF ORDERS BEING APPEALED**

Mr. Cilento relies upon and incorporates by reference herein the Table of Orders Being Appealed as it appears in its initial Brief, at **Pb4**.

**PROCEDURAL HISTORY**

Mr. Cilento relies upon and incorporates by reference herein the Procedural History as it appears in its initial Brief, at **Pb8-Pb10**.

**STATEMENT OF FACTS**

The Association relies upon and incorporates by reference herein the Statement of Facts as it appears in its initial Brief, at **Pb10-Pb13**.

**LEGAL ARGUMENT**  
**MR. CILENTO’S APPEAL SHOULD BE GRANTED, AND THE**  
**DEPARTMENT OF EDUCATION’S FINAL AGENCY DECISION**  
**REVERSED**

In its Answering Brief, Woodbridge argues that Mr. Cilento failed to seek a timely stay of the Order of Suspension (“OOS”) entered against his Teaching Certificates by the State of New Jersey, Department of Education, State Board of Examiners (the “Examiners”). See, e.g., **Db3**. Consequently, Woodbridge claims, Mr. Cilento was at fault for the “procedural dilemma” outlined in Mr. Cilento’s Initial Brief. **See Pb12-13, Pb16-17**. Woodbridge is incorrect.

First, a party has no obligation to seek a stay / interim relief in order to preserve his final appeal rights. No germane statute, court rule, or administrative regulation imposes such a requirement. The concept is contrary to our Courts’ assessment of routine piecemeal review, which has been described as been described as “anathema to our practice.” See *Frantzen v. Howard*, 132 N.J. Super. 226, 227 (App. Div. 1975).

Our courts have held that a party’s seeking or obtaining a stay is not dispositive of the merits of their underlying appeal. See *Deutsche Bank Nat. v. Mitchell*, 422 N.J. Super. 214 (2011) (rejecting bank’s argument that appeal over sheriff’s sale was moot because of party’s failure to seek stay thereof, and vacating sheriff’s sale). Likewise, the failure to seek or obtain a stay does not, *per se*, relieve

the government from an obligation to make remedy. *See In re Increase of Fees by the New Jersey Board of Dentistry*, 84 N.J. 582 (1980) (ordering the Board of Dentistry to refund fees collected under a judicially invalidated fee schedule, though the appealing professional association had not sought a stay).

Second, Woodbridge incorrectly assumes that stays are granted automatically as of right, and that Mr. Cilento would have obtained a stay of the OOS if he had filed for one sooner. Contrarily, as the Commissioner of Education (the “Commissioner”) made clear in denying Mr. Cilento’s application for a stay of the OOS, she would not have granted that extraordinary remedy in any event:

Furthermore, **even if the Commissioner relaxed the time limitations, appellant’s motion must be denied.** Pursuant to *N.J.A.C. 6A:4-4.1(b)*, a motion for stay is considered an extraordinary remedy that may only be issued upon a finding that appellant has met each prong of the four-pronged standard for the granting of interim relief set forth in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982). Thus, a stay may be granted where necessary to prevent irreparable harm, where the legal right underlying the movant’s claim is settled, where there is a likelihood of success on the merits and where the relative hardship to the moving party favors granting such relief. *Id.* at 132-134.

Upon review of the parties’ submissions, I find that appellant has failed to meet this standard. **Specifically, appellant has failed to demonstrate that the legal right underlying his claim is settled.** Appellant argues that it is settled law that the Board does not have the authority to take action against a teacher’s certificates after the arbitrator in a tenure proceeding chose not to order the teacher’s termination. **Based on such a novel argument, the Commissioner can in no way find that the right underlying appellant’s claim is settled in his favor.**

In light of the fact that all of the *Crowe* prongs must be met in order for a stay to be granted, it is not necessary to analyze the three remaining factors. Accordingly, appellant’s request for a stay of the State Board

of Examiner's October 28, 2021 Order of Suspension is hereby DENIED.

See **Ra100-Ra101**, *emphases added*.

In the context of public employment termination cases, stays of such termination, pending litigation, are not the standard procedure. Rather, where a termination is ultimately invalidated following subsequent litigation, the appropriate remedy is reinstatement with back pay. See, e.g., N.J.S.A. 18A:6-10; N.J.S.A. 18A:6-14; N.J.A.C. 4A:2-2.10; *Phillis Stilwell v. Bd. of Ed. of Twp. of North Brunswick*, Comm. of Ed. Dec. No. 333-17 (holding Petitioner entitled to back pay following unlawful termination from tenured position). These are not the sort of complex remedies that cannot be efficiently and effectively implemented at the conclusion of proceedings on the merits<sup>1</sup>.

Woodbridge further argues that Mr. Cilento's Appeal must be Dismissed because Woodbridge was statutorily compelled, by the OOS, to terminate his

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<sup>1</sup> See, e.g., *Barrick v. State, Dept. of Treasury*, 218 N.J. 247 (2014) (discussing the complexities that obtain where there is no stay of an appeal of the award of a public contract); *Asbury Park Bd. of Ed. v. NJ Dept. of Ed.*, 369 N.J. Super. 481 (App. Div. 2004) (concerning the procedure that accompanied challenge to Department of Education regulations).

employment<sup>2</sup>. See **Db14, Db20-Db21**. Woodbridge misses the point: the Appeal is not about what Woodbridge was compelled to do; rather, it concerns Mr. Cilento's ability to meaningfully challenge the termination of his tenured employment as the result of the OOS. For all the reasons set forth in this, and Mr. Cilento's initial Brief, he must be afforded that opportunity.

### CONCLUSION

For all the foregoing reasons, Mr. Cilento's Appeal should be Granted, and the Department of Education's Final Agency Decision Reversed.

Respectfully submitted,  
MELLK CRIDGE LLC

*s/ Edward Cridge, Esq.*  
Edward A. Cridge, Esq.

Of Counsel:  
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<sup>2</sup> To the extent that Woodbridge has any complaint about being responsible for a back pay award under these circumstances, its remedy is to seek recommence at the end of the day from the Examiners—not to foist the penalty upon Mr. Cilento. In any event, the determination of back pay is separate and severable from Mr. Cilento's right to be reinstated in his tenured teaching position with Woodbridge, once the OOS is invalidated by and through the License Appeal.