

JAMES EDWARD WALKER,	:	
	:	
PETITIONER,	:	
	:	
V.	:	
BOARD OF EDUCATION OF THE CITY	:	
OF LONG BRANCH, MONMOUTH,	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
-----:	:	COMMISSIONER OF EDUCATION
JOHN WILLIAMS	:	DECISION
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE CITY	:	
OF LONG BRANCH, MONMOUTH,	:	
COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioners, two nontenured corridor aides who were under contract with respondent, contended they had been wrongfully suspended without pay following arrest on charges of impairing the morals of two students and for sexual assault. Matters were consolidated.

ALJ noted that the language of the statute clearly permits suspensions without pay in only two circumstances: when an employee is indicted or when tenure charges are brought against an employee (*Slater*) and the statute is not limited to tenured employees. Thus, the ALJ concluded that petitioners were entitled to pay from December 2, 1996, the first day of their suspension, until March 12, 1997, the day of their indictments. ALJ further concluded that petitioners' back pay award was subject to mitigation reflecting any money they may have earned elsewhere during the applicable time period.

Commissioner adopted initial decision as his own, entering summary judgment in favor of petitioners and ordering the Board to pay petitioners for the time they were suspended without pay, offset by earnings received elsewhere during the applicable time period.

JULY 25, 1997

OAL DKT. NOS. EDU 674-97S and EDU 675-97S (CONSOLIDATED)
 AGENCY DKT. NOS. 6-1/97 and 12-1/97

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Timely exceptions were filed by the Board in accordance with *N.J.A.C.* 1:1-18.4.

The Board generally recasts and reiterates arguments raised before the Administrative Law Judge (ALJ) contending that *N.J.S.A.* 18A:6-8.3 should not be strictly interpreted where, as here, circumstances militate in favor of a petitioner's suspension without pay. It notes that the spirit of the law should sustain the Board's action to suspend nontenured petitioners without pay where an employee himself has admitted criminal wrongdoing to the superintendent.

Upon a careful and independent review, the Commissioner concurs with the findings and conclusions of the ALJ, for the reasons expressed therein, that petitioners are entitled to summary judgment pursuant to the clear language of *N.J.S.A. 18A:6-8.3*. In so ruling, the Commissioner is satisfied that the ALJ fully and fairly considered and rejected the Board's arguments concerning the equities in applying such statute to the present facts.

Accordingly, the Commissioner affirms the initial decision of the OAL, entering summary judgment in favor of petitioners, and orders that the Board pay petitioners for the time they were suspended without pay, offset by earnings received elsewhere during the applicable time period.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JULY 25, 1997