

New Jersey Commissioner of Education
Final Decision

Lillian Rodriguez-Mayor, Matthew Swartz, Vate Tcherro, Sanyika Montague, Latisha Lagrier, Vickie Leaverette, O'Lan Nickson, Lawrence Sullivan, Vanessa Coggins, Nancy Kresge, Jennylynd Lewis, Miriam Lugo, Nydia Morales, Jessica Valle, and Valerie Walker¹,

Petitioners,

v.

Board of Education of the City of Newark, Essex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioners and respondent Board of Education of the City of Newark (Board) pursuant to *N.J.A.C. 1:1-18.4*, and the replies thereto, have been reviewed and considered.

The Board employed petitioners as teaching staff members during the 2020-2021 and 2021-2022 school years. Petitioners allege that the Board failed to provide them with written notice, as required by *N.J.S.A. 18A:29-14*, when withholding their salary increments for the 2021-

¹ During the pendency of the proceedings, the parties agreed that petitioners Vanessa Coggins and O'Lan Nickson should be dismissed from the matter because they received their salary increments for the 2021-2022 school year. Additionally, petitioner Sanyika Montague withdrew his claim. For these reasons, the Commissioner hereby dismisses Vanessa Coggins, O'Lan Nickson, and Sanyika Montague from this matter.

2022 school year. Accordingly, they seek restoration of their salary increments for the 2021-2022 school year and all corresponding benefits and emoluments.

The Board concedes that it did not provide petitioners with written notice pursuant to *N.J.S.A. 18A:29-14*. However, the Board disagrees that its violation of the notice requirement requires restoration of the petitioners' salary increments. Instead, the Board contends that it is undisputed that petitioners' teaching performance was rated unsatisfactory during the 2020-2021 school year, which warranted the withholding of their increments during the 2021-2022 school year regardless of the notice issue.

Because the parties agreed that none of the facts were disputed, they filed motions for summary decision. The Administrative Law Judge (ALJ) made findings of fact based upon the parties' Stipulation of Facts and Joint Exhibits. After considering the parties' positions and analyzing *N.J.S.A. 18A:29-14* and related case law, the ALJ granted petitioners' motion for summary decision upon concluding that the Board's withholding of petitioners' salary increments without having provided written notice was arbitrary, capricious or unreasonable. The ALJ directed the Board to pay petitioners' salary increments for the 2020-2021 school year, although a review of the entirety of the Initial Decision makes clear that the salary increments at issue were withheld during the 2021-2022 school year due to unsatisfactory performance during the 2020-2021 school year.

In their exceptions, petitioners argue that the 2021-2022 school year is when the increments were withheld, not the 2020-2021 school year; that petitioners Coggins, Nickson, and Montague are no longer part of the case and should be dismissed; and that the ALJ did not address their request to restore all corresponding benefits and emoluments.

In response to petitioners' exceptions, the Board contends that the Initial Decision is substantively flawed due to the aforementioned factual errors and the failure to dismiss three petitioners from the case; that petitioners do not defend the incorrect legal standard applied by the ALJ because it serves their interests; and that the ALJ's failure to address petitioners' request for corresponding emoluments further demonstrates that the Initial Decision is flawed and needs to be rejected in its entirety.

In its own exceptions, the Board agrees with petitioners that the 2021-2022 school year is when the increments were withheld, and that petitioners Coggins, Nickson, and Montague should be dismissed from the case. However, the Board contends that the ALJ's decision to restore petitioners' increments was arbitrary, capricious, and unreasonable; that should the Commissioner consider a remand, no hearing is required because petitioners stipulated that they received unsatisfactory performance ratings for the 2020-2021 school year; and that petitioners no longer employed by the Board should be excluded from any potential increment restoration.

In response to the Board's exceptions, petitioners agree that the Board withheld the increments at issue during the 2021-2022 school year, and that Coggins, Nickson, and Montague should be dismissed from the case. They maintain, however, that the ALJ's conclusion is correct because he properly interpreted and applied the plain language of the governing statute and relevant case law. Additionally, petitioners argue that the Board lacks legal support for its contention that retirees should be excluded from any increment restoration in this matter.

Upon review, the Commissioner concurs substantially with the ALJ's findings and conclusions as stated in the Initial Decision, with certain minor exceptions explained herein.

Contrary to the Board's contentions, the Commissioner does not find that the Initial Decision is fatally flawed or should be rejected in its entirety.

At the outset, the Commissioner agrees with both parties that the increments withheld during the 2021-2022 school year are the increments at issue, and that Vanessa Coggins, O'Lan Nickson, and Sanyika Montague should be dismissed from the case. It is apparent from a complete reading of the Initial Decision, including the factual findings, that the ALJ understood that the increments withheld during the 2021-2022 school year are the increments at issue. The Commissioner finds that the ALJ's direction on pages 18 and 19 of the Initial Decision that increments withheld during the 2020-2021 school year be restored were typographical errors. The Commissioner further finds that the ALJ addressed the circumstances concerning Coggins, Nickson, and Montague on page 2, footnote 1 of the Initial Decision. Although the ALJ did not expressly exclude them from the relief granted to petitioners, the Commissioner deems that procedural oversight to be harmless and easily remedied in the final decision.

Turning to the central legal issue, the Commissioner agrees with the ALJ that the Board's decision to withhold petitioners' increments without providing written notice was arbitrary, capricious, or unreasonable. The Legislature granted boards of education discretion "to withhold increments from teachers who had not performed well during the previous year." *Probst v. Bd. of Educ. of Borough of Haddonfield*, 127 N.J. 518, 526 (1992). N.J.S.A. 18A:29-14 provides, in relevant part:

Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons

therefor, to the member concerned. The member may appeal from such action to the commissioner under rules prescribed by him. The commissioner shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. . . . It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment.

Because the withholding of salary increments falls within the Board's discretionary powers, petitioners challenging increment withholdings must prove by a preponderance of evidence that the Board's actions were arbitrary, capricious, or unreasonable. *Kopera v. Bd. of Educ. of W. Orange*, 60 N.J. Super. 288, 294 (1960). In deciding whether a board action is arbitrary, capricious, or unreasonable, the Commissioner must determine whether the board followed the law. *In re Herrmann*, 192 N.J. 19, 28 (2007). In this case, the Board concedes that it did not follow the written notice requirement mandated by N.J.S.A. 18A:29-14 but nonetheless withheld the increments. The record fully supports the conclusion that the Board's withholding of petitioners' increments did not comply with law and is therefore arbitrary, capricious, or unreasonable.

The Commissioner also agrees with the ALJ's plain language reading of N.J.S.A. 18A:29-14 as it pertains to the appropriate remedy for the Board's arbitrary, capricious, or unreasonable actions. "In interpreting a statute, [the] overriding goal is to give effect to the Legislature's intent." *Richardson v. Bd. of Trs.*, 192 N.J. 189, 195 (2007). The "best indicator" of the Legislature's intent "is the statutory language." *Ibid.* "If the plain language leads to a clear and unambiguous result, then [the] interpretive process is over." *Ibid.* As cited above, N.J.S.A. 18A:29-14 directs the Commissioner, on appeal, to "either affirm the action of the board of education or direct that the increment or increments be paid." Because the Commissioner agrees

with the ALJ that the Board's actions in withholding the increments were arbitrary, capricious, or unreasonable, the Commissioner does not affirm the Board's actions. Instead, pursuant to the clear and unambiguous language of *N.J.S.A. 18A:29-14*, the Commissioner must direct that the increments be paid.

The cases upon which the Board relies in their exceptions are distinguishable from the present matter and do not require the Commissioner to bypass the mandate expressed within *N.J.S.A. 18A:29-14*. For instance, the Board incorrectly cites *Dore v. Bedminster Board of Education*, 185 *N.J. Super.* 447 (App. Div. 1982) for the broad proposition that a board's failure to follow procedures under Title 18A does not serve to reverse the board action under scrutiny. In *Dore*, the petitioner, a nontenured teacher, contended that because the board did not conduct three evaluations of his teaching performance during the 1975-1976 school year as required by *N.J.S.A. 18A:27-3.1*, its decision not to renew his employment contract was arbitrary, capricious, or unreasonable. *Id.* at 450-51.

The Appellate Division in *Dore* rejected the petitioner's argument and concluded that "the lack of strict compliance" with the statute at issue was not "a sufficient reason to afford petitioner either reinstatement or financial reward." *Id.* at 455. The court reasoned that while the statute required at least three evaluations during each school year, it "does not provide for any penalty in the event a local board fails to follow the proscribed procedures." *Id.* at 456. Thus, the court concluded that the Commissioner lacked the power to reinstate the petitioner or penalize the board of education under the circumstances presented. *Ibid.*

This case is different. For one thing, *Dore* does not address *N.J.S.A. 18A:29-14*. And *N.J.S.A. 18A:29-14* is distinguishable from *N.J.S.A. 18A:27-3.1* because the plain language of

N.J.S.A. 18A:29-14 grants the Commissioner authority to “direct that the increment or increments be paid.” The Appellate Division’s concern in *Dore* was that the Commissioner lacked authority under the controlling statute to either reinstate the petitioner or penalize the district for its failure to conduct the requisite number of teacher evaluations. That concern is not present here, as the Commissioner possesses the statutory authority to direct that increments be paid if petitioners establish that the board’s action in withholding the increments was arbitrary, capricious, or unreasonable. Petitioners in this case have met their burden.

In further support of its position that the notice deficiency does not automatically make the Board’s withholding of the increments arbitrary, capricious, or unreasonable, the Board cites *Margaret Sidberry v. Board of Education of the City of Trenton*, OAL Dkt. No. EDU 06610-09, Initial Decision (Sept. 24, 2010), *adopted*, Commissioner Decision No. 464-10 (Nov. 8, 2010). There, the board of education denied Sidberry a salary increment for the 2009-2010 school year based upon unsatisfactory performance as a school psychologist, specifically noncompliance with completion of Individualized Education Plans (IEPs) for which she had been reprimanded. She contended that the increment withholding was arbitrary, capricious, or unreasonable because she did not receive written notice as required by *N.J.S.A. 18A:29-14*.

Notably, Sidberry did receive a hand-delivered “Rice” notice² advising her that she could appear at the April 27, 2009, board meeting to discuss the withholding of her increment for the 2009-2010 school year. Initial Decision, at 20. In response, she wrote a letter to the board arguing why her increment should not be withheld and appeared at the meeting. *Ibid*. The ALJ

² A “Rice” notice issued by a board of education provides an employee with notice that the board intends to discuss a personnel matter at an upcoming meeting that could adversely affect the employee. *Rice v. Union County Reg’l High Sch. Bd. of Educ.*, 155 N.J. Super. 64, 73-74 (App. Div. 1977).

found that after the board voted to withhold her increment, it sent a letter to Sidberry dated April 28, 2009, which advised her of the intention to withhold her increment for the 2009-2010 school year but failed to provide the reason for the withholding. *Id.* at 22-23. Although Sidberry claimed she never received the letter, the ALJ found “this Letter is evidence that the required notice was given by the Board” and that failure to recite the reasons for the increment withholding was insufficient to invalidate the board’s action because Sidberry “was aware of the reasons, eloquently stated her defenses thereto in her letter to the board dated April 27, 2009, and she attended the Board meeting wherein her case was discussed.” *Id.* at 23. The Commissioner agreed with the ALJ “that the salary withholding should not be nullified on the basis that the Board did not satisfy the procedural requirements outlined in *N.J.S.A. 18A:29-14*,” explaining that “[i]t was abundantly clear from the record that the petitioner was fully aware of the reason why her increment was withheld,” *i.e.*, failure to submit IEPs. Final Decision at 1-2.

Unlike in *Sidberry*, petitioners in the present matter were not informed that their increment withholding would be discussed at an upcoming Board meeting, were not afforded the opportunity to contest it before the Board voted, and were not invited to appear at the Board meeting during which the increment withholding was discussed. Moreover, the board in *Sidberry* produced evidence that it partially complied with the statutory notice requirement in *N.J.S.A. 18A:29-14* by sending Sidberry a letter notifying her of the increment withholding within the 10-day timeframe but without stating the reason for the withholding. In this case, the Board concedes that it did not send any written notice to petitioners notifying them of the increment withholding as required by *N.J.S.A. 18A:29-14*. All told, the Commissioner’s decision in *Sidberry* was based upon unique factual circumstances in that case that are not present here. And while

the ALJ in *Sidberry* concluded that *N.J.S.A. 18A:29-14* “does not set forth the consequences for the failure of the board of education to provide such notice,” Initial Decision at 23-24, a reading of the statute’s plain language offers reasonable support for the opposite conclusion.

More recently, in *Neil Thomas v. State-Operate School District of the City of Newark*, OAL Dkt. No. EDU 13591-15, Initial Decision (June 26, 2017), *adopted*, Commissioner Decision No. 221-17 (Aug. 10, 2017), the Commissioner agreed with the ALJ that the district’s violation of the written notice requirement codified at *N.J.S.A. 18A:29-14* warranted restoration of Thomas’s salary increment for the 2014-2015 school year. There, the district withheld Thomas’s increment following two years of unsatisfactory ratings which led to the filing of tenure charges against him. Initial Decision, at 4-5. An arbitrator dismissed the tenure charges and ordered that Thomas be reinstated to his teaching position with appropriate back pay and benefits. *Id.* at 5. When Thomas returned to work, he realized that his increment had been withheld when his back pay appeared insufficient. *Id.* at 6. When questioned, the district conceded that it had not provided Thomas with written notice of the increment withholding pursuant to *N.J.S.A. 18A:29-14*. *Id.* at 11.

Citing the Legislature’s use of the word “shall” in *N.J.S.A. 18A:29-14*, the ALJ in *Thomas* concluded that “[a] district’s obligation to provide notice of the decision to withhold a teacher’s increment, and the ability of a teacher to appeal the withholding of the increment, are mandatory and imperative terms of public employment reflecting a public policy position established by the legislature and are accordingly non-negotiable.” *Id.* at 19. The ALJ also highlighted the statutory language which makes clear that the Commissioner “shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid.”

Id. at 10. Accordingly, the ALJ recommended restoration of Thomas's increment based upon the procedural violation of *N.J.S.A. 18A:29-14*, and the Commissioner ordered the district to restore it for that same reason.

The Board's attempt to distinguish *Thomas* in its exceptions is unavailing. The Board claims that the holding in *Thomas* "was a result of the dismissal of a preceding inefficiency tenure charge requiring reinstatement and restoration of back salary, as well as the invalidity of CBA language permitting automatic increment withholdings, none of which are in play in this case." Board's Exceptions, at 18. However, a review of the Initial Decision and Final Decision in *Thomas* makes clear that the holding was dictated by the plain language of *N.J.S.A. 18A:29-14* and the district's failure to comply with the written notice requirement. The Board's exceptions ignore both the ALJ's application of *N.J.S.A. 18A:29-14* and the Commissioner's restoration of Thomas's salary increment based expressly upon the district's violation of the statutory notice requirement.

As to petitioners' claim in their exceptions that the ALJ did not address their request to restore all corresponding benefits and emoluments, the Commissioner agrees that this request was not discussed in the Initial Decision. Because this legal issue does not involve any contested material facts, the Commissioner can address it herein without the need for a remand.

The New Jersey Supreme Court has previously recognized "the lasting effect of withholding actions on a teacher's future compensation." *Probst*, 127 *N.J.* at 527. "[T]eachers who have been subject to a withholding 'will always lag one step behind' their colleagues due to the 'effect of an earlier employment decision.'" *Id.* at 527 (quoting *N. Plainfield Educ. Ass'n v. Bd. of Educ. of Borough of N. Plainfield*, 96 *N.J.* 587, 595 (1984)). As petitioners point out in their

exceptions, the reduction in petitioners' salaries during the 2021-2022 school year resulting from the increment withholding reduced their pensionable salaries and future (or current) pension benefits. The Commissioner agrees that increment restoration in this case affects not only petitioners' 2021-2022 salaries but also warrants recalculation of their salaries for subsequent years of employment with the Board.

Additionally, the Commissioner finds that the Board has offered no legal support for its assertion—raised for the first time in their exceptions—that petitioners who are no longer employed by the district should be excluded from restoration of their increments.

Accordingly, the Initial Decision, with modifications as explained herein, is adopted as the final decision in this matter, and the petition of appeal is hereby granted. The Board is directed to restore petitioners' salary increments for the 2021-2022 school year along with all corresponding benefits and emoluments.

IT IS SO ORDERED.³



COMMISSIONER OF EDUCATION

Date of Decision: October 15, 2026

Date of Mailing: October 15, 2026

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION ON

MOTION TO DISMISS

OAL DKT. NO. EDU 00842-22

AGENCY DKT. NO. 225-11/21

**LILLIAN RODRIGUEZ-MAYOR,
MATTHEW SWARTZ, VATE TCHERO,
SANYIKA MONTAGUE, LATISHA LAGRIER,
VICKIE LEAVERETTE, O'LAN NICKSON,
LAWRENCE SULLIVAN, VANESSA COGGINS,
NANCY KRESGE, JENNYLIND LEWIS,
MIRIAM LUGO, NYDIA MORALES, AND
JESSICA VALLE AND VALERIE WALKER,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE CITY
OF NEWARK, ESSEX COUNTY,**

Respondent.

Katheleen Naprstek Cerisano, Esq., (Zazzali, Fagella, Nowak, Kleinbaum & Freidman, P.C., attorneys), petitioners

Bernard Mercado, Esq. (General Counsel, Board of Education of the City of Newark, attorneys), for respondent

Record Closed: June 18, 2026

Decided: July 24, 2026

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioners, who are current or former teaching staff members employed by Respondent Board of Education of the City of Newark, Essex County, (the Board) allege that the Board's determination to withhold Petitioners' salary increments violates N.J.S.A. 18A:29-14, by failing to provide Petitioners' with notice, and that the same violates N.J.S.A. 10:4-6, N.J.S.A. 10:4-12.

PROCEDURAL HISTORY

On December 2, 2021, Petitioners filed a petition of appeal (Petition) with the New Jersey Department of Education, Commissioner of Education (Commissioner), which was amended on January 11, 2022, to include the following named Petitioners who will be referred to collectively herein as "Petitioners": Lillian Rodriguez-Mayor, Matthew Swartz, Vate Tchero, Sanyika Montague, Latisha Lagrier, Vickie Leaverette, O'lan Nickson, Lawrence Sullivan, Vanessa Coggins, Nancy Kresge, Jenny Lind Lewis, Miriam Lugo, Nydia Morales, Jessica Valle and Valerie Walker.¹

In the petition, Petitioners allege that the Board violated N.J.S.A. 18A:29-14 by neglecting to provide them with notice after the Board voted to withhold their increments. Petitioners further allege that the Board did not notify them that their increments would be a subject of the Board's June 22, 2021, meeting, otherwise known as "Rice" notice, in violation of N.J.S.A. 10:4-12. Petitioners also allege that "[e]ven if the Board had a purported reason or reasons to withhold [Petitioners'] increment, the Board's purported

¹ By correspondence dated August 8, 2024, Petitioners Vanessa Coggins and O'lan Nickson requested to be dismissed herein, as they did not have their increments withheld and instead, received their full salary increments. This occurred despite Petitioners Coggins and Nickson having unsatisfactory performance during the prior 2020-21 school year.

By correspondence dated, April 20, 2026, Petitioner Sanyika Montague withdrew herein, as she had settled her claim in the Petition with the Board.

reasons were arbitrary, capricious, or unreasonable, and therefore in violation of [Petitioners'] rights under N.J.S.A. 18A:29-14.” As relief, Petitioners have asked the Commissioner to find that the Board violated their procedural rights under N.J.S.A. 10:4-12 and N.J.S.A. 18A:29-14 and, as a result, to order to the Board to restore their increments for the 2021-2022 school year.

On January 31, 2022, The Board filed an answer with the Commissioner. In its answer, the Board stated that it did not know whether Petitioners were provided “Rice” notice prior to the June 22, 2021, school board meeting, but admitted that it failed to provide Petitioners the notice required under N.J.S.A. 18A:29-14. The Board denied that the appropriate remedy for the alleged violation of the notice requirements under N.J.S.A. 18A:29-14 is the restoration of Petitioners’ increments. The Board also denies that its decision to withhold the increments was arbitrary, capricious, or unreasonable.

On February 3, 2022, the Commissioner transmitted the matter to the Office of Administrative Law as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.A.C. 1:1-1.1 to -21.6.

This matter was scheduled for a hearing on January 23, 2024. On January 16, 2024, the parties requested to file mutual motions for summary decision in lieu of a hearing, as they agreed that there were no facts in dispute, and a ruling on the applicable law was appropriate. Thereafter, a motion filing schedule was agreed upon, which was amended on November 14, 2024.

On December 20, 2024, the parties filed their respective motions for summary decision. On January 10, 2025, the filed their respective reply briefs in opposition to the motion for summary decision filed herein. In their cross-motions, the parties dispute whether the consequences of the Board’s failure to comply with the notice requirements under N.J.S.A. 18A:29-14 is the restoration of Petitioners’ increments for the 2021-2022 school year.

I closed the record on June 18, 2026.

FINDINGS

The parties have submitted a Stipulation of Facts and Joint Exhibits, which are incorporated below in the Initial Decision as **FACT** herein:

1. The Board is responsible for the administration and operation of the public schools in the City of Newark in Essex County, New Jersey.
2. Petitioners were all certified teaching staff members employed by the Board during the 2020-21 school year and during the 2021-22 school year.
3. Petitioners are compensated for their service as certified teaching staff members pursuant to salary guides set forth in collective negotiations agreements between the Board and the Newark Teachers Union, Local 481, American Federation of Teachers, AFL-CIO ("NTU"). The most recent collective negotiations agreement ("Agreement") was effective July 1, 2019, through June 30, 2024. (J-1).
4. Article XIV of the Agreement between the Board and NTU addresses the salary of teaching staff members and Section IA includes the following provision: The granting of employment and adjustment increments is not automatic. Employment and/or adjustment increments may be withheld for performance and/or disciplinary reasons in accordance with N.J.S.A. 18A:29-14. Id.
5. As a result of New Jersey legislation enacting the Teacher Effectiveness and Accountability for the Children of New Jersey Act ("TEACHNJ") on August 6, 2012, all teaching staff members in New Jersey public schools are currently required by law to have their job performance assessed by the school district utilizing a model evaluation rubric approved by the Commissioner of Education in which they receive one of the following annual ratings: "Highly Effective" ("HE"), "Effective" ("EF"), "Partially Effective" ("PE") or "Ineffective" ("IE"). N.J.S.A. 18A:6-123(b)(l). A

performance annual evaluation rating of either "Partially Effective" ("PE") or "Ineffective" ("IE") is considered unsatisfactory performance under TEACHNJ. Any tenured teaching staff member who receives two consecutive performance annual evaluation ratings of either PE or IE shall be served with a charge of inefficiency in order to be removed from their tenured employment by a school district under N.J.S.A. 1SA:6-17.3.

6. As a result of Petitioners receiving either a PE or IE performance annual evaluation rating, the Board approved a resolution at its June 22, 2021, Board meeting authorizing the withholding of increments of a number of certified teaching staff members including Petitioners. All teaching staff members were identified on the resolution solely by employee identification numbers rather than names. (J-2).
7. The Board did not provide each of the Petitioners with written notice of their increment withholdings following the Board meeting as required under N.J.S.A. 18A: 29-14, and Petitioners would learn of the same subsequently thereto.
8. During the 2020-21 school year petitioner Lillian Rodriguez-Mayor (Rodriguez-Mayor) held the position of Social Worker.
9. For the 2020-21 school year, petitioner Rodriguez-Mayor received a performance rating of Partially Effective in a mid-year evaluation dated February 10, 2021. She ultimately received a performance annual evaluation rating of Ineffective in an annual evaluation dated May 11, 2021.
10. Rodriguez-Mayor resigned her employment with the Board effective May 31, 2022.
11. During the 2020-21 school year petitioner Matthew Swartz (Swartz) held the position of Teacher of Physical Education.

12. For the 2020-21 school year, Swartz received a performance rating of Partially Effective in a mid-year evaluation dated January 20, 2021. He ultimately received a performance annual evaluation rating of Partially Effective in an annual evaluation dated May 7, 2021.
13. Swartz resigned his employment with the Board effective April 1, 2022.
14. During the 2020-21 school year petitioner Vate Tchero (Tchero) held the position of World Language Teacher.
15. For the 2020-21 school year Tchero received a performance annual evaluation rating ineffective in an annual evaluation dated June 9, 2021.
16. Tchero resigned his employment with the Board at the end of the 2022-23 school year.
17. During the 2020-21 school year petitioner Sanyika Montague (Montague) held the position of Teacher.
18. For the 2020-21 school year Montague received a performance annual evaluation rating of Partially Effective in an annual evaluation dated May 4, 2021.
19. During the 2020-21 school year petitioner Latisha LaGrier (LaGrier) held the position of Teacher.
20. For the 2020-21 school year LaGrier received a performance annual evaluation rating of Partially Effective in an annual evaluation dated June 14, 2021.
21. LaGrier resigned her employment with the Board effective November 27, 2022.

22. During the 2020-21 school year petitioner Vickie Leaverette (Leaverette) held the position of Teacher.
23. For the 2020-21 school year, petitioner Leaverette received a performance annual evaluation rating of Partially Effective in an annual evaluation dated June 14, 2021.
24. During the 2020-21 school year petitioner Lawrence Sullivan (Sullivan) held the position of Teacher.
25. For the 2020-21 school year Sullivan received a performance annual evaluation rating of Partially Effective in an annual evaluation dated June 4, 2021.
26. During the 2020-21 school year petitioner Nancy Kresge (Kresge) held the position of Special Education Teacher.
27. For the 2020-21 school year, petitioner Kresge received a mid-year performance rating of Partially Effective in a mid-year evaluation dated February 3, 2021, and ultimately received a performance annual evaluation rating of Partially Effective in an annual evaluation dated April 27, 2021.
28. During the 2021-21 school year, petitioner Jenny Lind Lewis (Lewis) held the position of Elementary Teacher.
29. For the 2020-21 school year Lewis received a performance rating of Partially Effective in a mid-year evaluation dated February 5, 2021, and ultimately received a performance annual evaluation rating of Partially Effective in an annual evaluation dated April 19, 2021.
30. During the 2020-21 school year petitioner Miriam Lugo (Lugo) held the position of Elementary Teacher.

31. For the 2020-21 school year Lugo received a performance rating of Effective in a mid-year evaluation dated February 3, 2021, and ultimately received a performance annual evaluation rating of Partially Effective in an annual evaluation dated March 29, 2021.
32. Lugo resigned her employment with The Board effective June 30, 2022, for retirement purposes.
33. During the 2020-21 school year petitioner Nydia Morales (Morales) held the position of Elementary Teacher.
34. For the 2020-21 school year Morales received a performance rating of Partially Effective in a mid-year evaluation dated February 5, 2021, and ultimately received a performance annual evaluation rating of Partially Effective in an annual evaluation dated May 7, 2021.
35. During the 2020-21 school year petitioner Jessica Valle (Valle) held the position of Elementary Teacher.
36. For the 2020-21 school year Valle received a performance rating of Ineffective in a mid-year evaluation dated February 5, 2021, and ultimately received a performance annual evaluation rating of Ineffective in an annual evaluation dated April 19, 2021.
37. During the 2020-21 school year petitioner Valerie Walker (Walker) held the position of Elementary Teacher.
38. For the 2020-21 school year Walker received a performance rating of Partially Effective in a mid-year evaluation dated February 8, 2021, and ultimately received a performance annual evaluation rating of Partially Effective in an annual evaluation dated April 27, 2021.

39. During the 2020-21 school year, the teaching performance of all Petitioners was rated as unsatisfactory.

LEGAL ANALYSIS AND CONCLUSIONS

I. The standards for summary decision.

Under N.J.A.C. 1:1-12.5, “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). Summary decision may be granted if “[t]he papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). And “[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid.

It is well established that when a movant demonstrates a right to summary judgment, the burden shifts to the opponent of the motion to demonstrate by competent evidence that a genuine issue of material fact exists requiring a trial. Robbins v. Jersey City, 23 N.J. 229, 241 (1957); James Talcott, Inc. v. Shulman, 82 N.J. Super. 438, 443 (App. Div. 1964). And “[m]ere sworn conclusions of ultimate facts, without material basis or supporting affidavits by persons having actual knowledge of the facts, are insufficient to withstand a motion for summary judgment.” Talcott at 443.

Inasmuch as the parties have stipulated to the facts herein, along with exhibit J-1, concerning Incremental Withholdings, I **CONCLUDE** that there are no material issues of fact that must be determined and this matter is ripe for summary decision.

II. The law governing increment withholdings.

Under N.J.S.A. 18A:29-14, by which school boards may withhold teachers’ salary increments:

Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the member concerned. The member may appeal from such action to the commissioner under rules prescribed by him. The commissioner shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid.

[N.J.S.A. 18A:29-14.]

Under the rules prescribed by the Commissioner of Education, “[i]f a district board of education acts to withhold a teaching staff member's salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14, the teaching staff member may file a petition of appeal[.]” N.J.A.C. 6A:3-4.1.

As the Supreme Court explained in Bd. of Educ. of Bernards Twp. v. Bernards Twp. Educ. Assoc., 79 N.J. 311 (1979), “N.J.S.A. 18A:29-14 explicitly authorizes a local board to withhold an increment only for ‘inefficiency or other good cause,’” such that “[t]he decision to withhold an increment -- although directly affecting the work and welfare of a teacher - is thus dependent upon an evaluation of the quality of the services which the teacher has rendered.” Id. at 321. Because “[t]he purpose of the statute is thus to reward only those who have contributed to the educational process thereby encouraging high standards of performance,” “[i]n determining whether to withhold a salary increment, a local board is therefore making a judgment concerning the quality of the educational system.” Ibid.

In other words, a school board's statutory authority to withhold a teacher's increment is discretionary. Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288 (App. Div. 1960). As the Commissioner commented shortly after the Legislature enacted N.J.S.A. 18A:29-14: “Even though a board of education has the power to withhold a salary

increment, such authority cannot be wielded in a manner which ignores all the basic elements of fair play.” Fitzpatrick v. Bd. of Educ. of the Bor. of Montvale, 1969 S.L.D. 4. Prior to an increment withholding, “the most elemental requirements of due process demand at least that the employee to be so deprived be put on notice that such a recommendation is to be made to his employer on the basis of the unsatisfactory evaluation and that he be given a reasonable opportunity to speak in his own behalf.” Id. at 7. This doesn’t mean that “deprivation of a salary increase requires service of written charges, entitlement to a full[-]scale plenary hearing or the kind of formal procedures necessary to dismissal of tenured employees.” Ibid. Nonetheless, “any employee has a basic right to know if and when his superiors are less than satisfied with his performance and the basis for such judgment” because “[w]ithout such knowledge the employee has no opportunity either to rectify his deficiencies or to convince the superior that his judgment is erroneous.” Ibid. [emphasis supplied].

If a school board decides to withhold the teacher’s increment based on a teacher’s unsatisfactory evaluation, the school board must follow the procedures for doing so under N.J.S.A. 18A:29-14. First, an increment withholding may only be accomplished by “a recorded roll call majority vote of the full membership of the board of education.” N.J.S.A. 18A:29-14. Second, “[i]t shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the member concerned.” Ibid. [emphasis supplied]. Importantly, “[t]he intent of the notification requirement in N.J.S.A. 18A:29-14 is to give the affected employee opportunity to appeal the action to the Commissioner.” Hillman v. Bd. of Educ. of Caldwell-W.Caldwell, 1977 S.L.D. 218, 226.

With respect to the required notice under N.J.S.A. 18A:29-14, the Commissioner has held in some cases that the failure of a school board to either provide a teacher with 10 days’ notice or the reasons for an increment withholding requires the restoration of the teacher’s increment; in other cases in which a school board neglected to strictly follow the notice requirements, the Commissioner did not disturb an increment withholding if the teacher had actual notice of the school board’s action and the reasons for the increment withholding. A review of relevant cases indicates that, in the early to late 1970s, the Commissioner strictly interpreted the notice requirements under N.J.S.A. 18A:29-14 and

ordered school boards that failed to provide teachers with timely notice of and the reasons for an increment withholding to restore the increments.

For example, in Gill v. Clifton Bd. of Educ., 1976 S.L.D. 661, aff'd, State Bd. of Educ., 1976 S.L.D. 666, aff'd, App. Div., 1977 S.L.D. 1289, in which the school board did not timely notify the teacher of the reason for its decision to withhold her increment, the Commissioner held that “[w]hile there is no question that the Board may withhold salary increments by virtue of its authority at N.J.S.A. 18A:29-14, it must follow the precise mandate set forth.” Id. at 666. Thus, because the school board in that case violated the statutory notice requirement, the Commissioner concluded that the school board improperly withheld the teacher’s increment and ordered the school board to reimburse her.

Then, in Holly v. Passaic Bd. of Educ., 1978 S.L.D. 442, the Commissioner followed Gill and noted that “[t]he Commissioner is constrained to observe that the language of the statute is precise” and “unequivocal,” such that the school board’s failure to provide the teacher with the reasons for withholding his increment within 10 days of the board’s action resulted in the restoration of his increment. According to the Commissioner, “[t]he Board’s assertion that it complied with the statute when the Superintendent and the principal informed petitioner of his alleged deficiencies prior to its action to withhold his increment is without merit.” Id. at 444.

Thereafter, the Commissioner began to take a more relaxed view of a school board’s failure to timely notify an affected teacher after a vote to withhold his salary increment if the teacher otherwise knew that such action by the school board was likely due to a negative evaluation. In Marshall v. Bd. of Educ. of the S. Reg’l High Sch. Dist., 1978 S.L.D. 593, 596, the teacher “was in receipt of the Superintendent’s evaluation and was well aware that the Superintendent had recommended that the Board withhold his increment,” the teacher privately met with the school board about the increment withholding and was at the open meeting when the school board voted to withhold his increment. Id. at 596. Thus, “[t]o argue that the Board failed ‘to give written notice of such action, together with the reasons therefor’ in the Commissioner’s judgment places form over substance.” Ibid. While “the Board was indeed remiss in not following the letter

of the law by its failure to notify” the teacher after the vote, “such failure is not fatal in the total circumstances.” Ibid.

The Commissioner continued the “substance over form” and “total circumstances” approach with respect to a teacher’s notice of an increment withholding in Baker v. Bergenfield Bd. of Educ., 1978 S.L.D. 740, wherein, like in Marshall, the Commissioner declined to set aside a school board’s action despite its failure to give 10 days’ notice under N.J.S.A. 18A:29-14 because the teacher’s “evaluations during the 1973-1974 school year were such as to make him a likely candidate for the withholding of a salary increment and [he] had notice prior to the end of that school year of the Superintendent’s inclination to make such a recommendation to the Board.” Id. at 742. In addition, the teacher “conceded the fact that he was notified on October 4, 1974, that the Board intended to take formal action on October 8, 1974, to withhold his salary increment.” Ibid.

Then, in Martin v. Bd. of Educ. of N. Highlands Reg’l Sch. Dist., 1979 S.L.D. 852, the Appellate Division approved of the more forgiving “substance over form” and “total circumstances” assessment of a school board’s failure to provide notice within 10 days of its vote to withhold a teacher’s increment. The court explained that “the substance of the statutory requirement is satisfied when the school board acts by public recorded roll call vote prior to the commencement of the school year involved and the individual affected is informed of the reasons for the action, whether before or after the public roll call vote.” Id. at 853.

Similarly, in Huth v. Bd. of Educ. of the Bor. of Morris Plains, 1980 S.L.D. 847, the Commissioner upheld a teacher’s increment withholding even though the school board did not give her 10 days’ notice. In that case, “[w]hile the Commissioner deplore[d] the Board’s failure to strictly adhere to the procedural format as prescribed by statute, he nevertheless” determined that the teacher “knew, or should have known, of the Board action in regard to withholding of her increment and the reasons for said action.” Id. at 854. That is, she “knew that the Superintendent intended to recommend to the Board that her salary increment be withheld” due to an unsatisfactory evaluation and, at a hearing held by the Department of Education, she “testified that the Board’s action to withhold her salary increment came as no surprise to her.” Id. at 852.

Here, the parties rely on more recent cases to support their respective positions. The Board cites Sidberry v. Trenton Bd. of Educ., EDU 6610-09, Initial Decision, 2010 N.J. AGEN LEXIS 508 (Sept. 24, 2010), adopted, 2010 N.J. AGEN LEXIS 775 (Nov. 8, 2010). In that case, the Commissioner agreed with “the Administrative Law Judge that the Board’s decision to withhold the petitioner’s increment was reasonable based upon her failure to produce fully completed individual education plans” for special education students and that “the salary withholding should not be nullified on the basis that the Board did not satisfy the procedural requirements outlined in N.J.S.A. 18A:29-14.” 2010 N.J. AGEN LEXIS 775, **1-2. According to the Commissioner, “[i]t was abundantly clear from the record that petitioner was fully aware why her increment was withheld.” Id. at *2. Specifically, even though the teacher denied receiving the superintendent’s timely letter advising her that the school board had withheld her increment, she was nonetheless aware of her negative evaluation and “was invited before the Board to discuss her job performance, and the potential withholding of a salary increment.” 2010 N.J. AGEN LEXIS 508, *4.

In contrast, Petitioners’ rely on Neil Thomas v. State-Operated Sch. Dist. of the City of Newark, EDU 13591-15, Initial Decision, 2017 N.J. AGEN LEXIS 421 (June 26, 2017), adopted, Comm’r (Aug. 10, 2017), nj.gov/education/legal/commissioner. In Thomas, unlike in the aforementioned cases, the school board actually filed tenure charges against the teacher for inefficiency because he had received two consecutive “partially effective” annual evaluations. 2017 N.J. AGEN LEXIS 421, **4-5. Also, while the initial decision in Thomas states that the school board withheld the teacher’s increment for the 2014-2015 school year, it is not clear when, in relation to the filing of tenure charges on July 29, 2014, the school board voted to withhold the increment. Nonetheless, the school board never notified the teacher of the increment withholding and declined to restore his increment even after an arbiter dismissed the tenure charges against him. Id. at *6. Indeed, the teacher did not know his increment had been withheld for the 2014-2015 school year until he was reinstated to his position in the middle of that school year. Id. at *1-2, 5-6. And when the teacher’s union asked the school board about his insufficient paycheck, the school board responded that “[t]he Arbitrator decision [did] not state that [Petitioner’s] increment withholding be restored.” Id. at *6. The

Administrative Law Judge, on cross-motions for summary decision, granted the teacher's motion because the school board violated N.J.S.A. 18A:29-14 by failing to notify the teacher of the increment withholding. According to the judge, "[t]here is no dispute that Petitioner neither received an increment for the 2014-2015 school year, nor was he notified of the decision to withhold the increment, or the reasons supporting it. As a result, he had no opportunity to appeal the decision. Id. at *19. Ultimately, the Administrative Law Judge ordered the school board to restore the increment, and the Commissioner adopted the initial decision as the final decision in that case.

While the outcomes in similar cases arising under N.J.S.A. 18A:29-14 have been somewhat inconsistent over the years, I believe a "total circumstances" or "substance over form," rather than a strict compliance, approach is most logical when determining whether a school board's failure to provide the 10 days' notice under N.J.S.A. 18A:29-14 warrants the restoration of a teacher's withheld increment. On the one hand, "[t]he purpose of the statute is . . . to reward only those who have contributed to the educational process thereby encouraging high standards of performance," and "[i]n determining whether to withhold a salary increment, a local board is therefore making a judgment concerning the quality of the educational system", as the Board argues. Thus, it would seem anomalous, on appeal of a school board's decision to withhold an increment, to reward an underperforming teacher with the restoration of the increment just because the school board did not notify the teacher of its decision within 10 days.

On the other hand, N.J.S.A. 18A:29-14 clearly requires a school board to provide the affected teacher with notice within 10 days of its increment decision. Moreover, "[e]ven though a board of education has the power to withhold a salary increment, such authority cannot be wielded in a manner which ignores all the basic elements of fair play", as the Petitioners argue herein.

These numerous and, at times, competing considerations are best reconciled by the Appellate Division's opinion in Martin: "the substance of the statutory [notice] requirement is satisfied when the school board acts by public recorded roll call vote prior to the commencement of the school year involved and the individual affected is informed of the reasons for the action, whether before or after the public roll call vote." And to

determine whether the affected teacher was properly “informed,” the relevant factors under a “total circumstances” approach, as set forth in Marshall and Huth, include receipt of a negative evaluation, whether the teacher’s supervisor informed her of the supervisor’s intention to recommend her increment be withheld because of the unsatisfactory evaluation, and whether the teacher is given a chance to appear before the school board during the meeting at which an increment vote will be held. These factors will help determine whether, as the Commissioner stated in Huth, despite a school board’s “failure to strictly adhere to the procedural format as prescribed by statute . . . [the teacher] “knew, or should have known, of the Board action in regard to withholding of her increment and the reasons for said action.”

Here, there are no genuine issues of material fact with respect to these factors, as the parties have stipulated to material facts. The Board admits that it failed to provide timely statutory notice of its decision to withhold Petitioners’ increments for the 2021-2022 school year and Petitioners admit that they received negative evaluations for the 2020-2021 school year. The procedural requirements for increment withholdings, N.J.S.A. 18A:29-14 vests with local school districts the authority to withhold a teacher’s salary increments when that teacher has not performed satisfactorily during the prior school year. Probst v. Board of Education of the Borough of Haddonfield, 127 N.J. 518 (1992).

Here, the Board acknowledges that it did not comply with the notice requirements under N.J.S.A 18A:29-14, and argues that a decision to withhold a salary increment “is a matter of essential managerial prerogative which has been delegated by the legislature to the board.” Citing to Gementis v. State-operated School District of the City of Newark, 2008 N.J.Agen Lexis 24, Dkt. No. EDU 01117-06 (OAL 2008(citing Reilly v. Bd. of Ed. of theTwp. of Parsippany-Troy Hills, 1989 S.L.D. 1830, 1843 (citing Colavita v. Hillsborough Twp. Bd. of Ed., 1983 S.L.D. (Nov. 3, 1983), citing Board of Education of the Twp. of Bernards, Somerset County v. Bernard Twp. Education Association, 79 N.J. 311, 321 (1979)). The Board then argues that the purpose of N.J.S.A 18A:29-14 is to “reward only those who have contributed to the educational process thereby encouraging high standards of performance so that the receipt of an increment is not a statutory right, but a reward for good performance and the acknowledgment that the teacher’s overall performance has met the high standards of performance required by the school district.”

Bernards Twp. Bd. of Ed. V. Bernards Twp. Ed. Ass'n., 79 N.J. 311, 321 (1979); North Plainfield Ed. Ass'n. v. North Plainfield Bd. of Ed., 96 N.J. 587, 594 (1984).

Finally, the Board argues that a failure to provide notice under N.J.S.A. 18A:29-14, does not serve to reverse an increment withholding or restore salary increments given the elevated arbitrary, capricious and unreasonable legal standard that Petitioners must prove. (citing Sidberry).

Petitioners argue that the notice requirements of N.J.S.A. 18A:29-14 are “imperative” and should not be diminished as merely a procedural violation as the Board has proposed. Petitioners acknowledge that while the Agreement between the Board and NTU recognizes that teaching staff members are subject to an observation and evaluation process in which there are four (4) ratings, and while Petitioners recognize that increments may be withheld for performance and/or disciplinary reasons, the Agreement also specifically states that increment withholdings “must be in accordance with N.J.S.A. 18A:29-14.” In highlighting this point Petitioners argue that the Board is certainly aware of its obligation to provide all teaching staff members including Petitioners with written notice of its decision to withhold their increments, as it was previously a party to litigation on this same issue in the Neil Thomas v. State-Operated School, matter. Petitioners argue further that the Board’s withholding of Petitioners salary increments for the 2021-2022 school year is improper and invalid. In their Petition, Petitioners allege that “[e]ven if Respondent had a purported reason or reasons to withhold [Petitioners’] increment, Respondent’s purported reasons were arbitrary, capricious, or unreasonable, and therefore in violation of [Petitioners’] rights under N.J.S.A. 18A:29-14.” In response, the Board does not offer a reason and simply argues that a procedural violation of N.J.S.A. 18A:29-14 alone does not result in Petitioners requested relief of reinstating their salary increments. I disagree.

A petitioner challenging the increment withholding by a Board has the burden of proving that the denial of the salary increment was arbitrary, capricious or unreasonable. Kopera v. Board of Education of West Orange, 60 N.J. Super. 288.

The withholding of an increment from a teaching staff member by a board of education is a significant matter. In order to protect against arbitrary, capricious or unreasonable action by the Board in withholding of a teaching staff member's salary increment, N.J.S.A. 18A:29-14, provides that "It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the member concerned." The statute provides further that "The member may appeal from such action to the commissioner under rules prescribed by him. The commissioner shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid." [emphasis provided].

In the within matter, the Board not only admits that it did not comply with the notice requirements of N.J.S.A. 18A:29-14, but provides as its reason that it was due to "employee changeover" and then maintains that because the statute does not maintain a penalty for its failure, this tribunal is powerless to reverse their action. A review of the record and the applicable law reveals that the Board's conduct is contrary to the statutory requirements of N.J.S.A. 18A:29-14, and that they are mistaken in their argument in defense of the same. Contrary to the Board's argument, a reading of N.J.S.A. 18A:29-14, reveals that the same does allow for a penalty if a school board fails to comply with the 10 day notice requirement, as the statute provides that after considering the teaching staff member's appeal from the Board's action, the Commissioner "shall either affirm the action of the board of education or direct that the increment or increments be paid." The "appeal" is the Petition filed herein, and the "action" by the Board is their admitted conduct in not complying with the 10 day notice provision, and their decision not to grant Petitioners' salary increments. (N.J.S.A. 18A:29-14).

For the forgoing reasons, I **CONCLUDE** that the Board's admitted conduct without adequate or justifiable reason in failing to provide the teaching staff member with notice as required under N.J.S.A. 18A:29-14, without reason, and their decision to deny Petitioners' salary increment was arbitrary, capricious or unreasonable, and that as a result of the same, the Board's actions is reversed, and they be directed to pay Petitioners their allowed salary increment for school year 2020-2021.

I further **CONCLUDE** that since Petitioners' moving papers demonstrate there is no genuine issue as to any material fact challenged, and the Board has not complied with the requirements under N.J.S.A. 18A:29-14, Petitioners are entitled to prevail as a matter of law under N.J.A.C. 1:1-12.5(b).

ORDER

IT IS hereby **ORDERED** that for the reasons set forth herein, Petitioners' motion for summary decision is **GRANTED** and as claimed in the Petition filed herein, the Board is directed to pay Petitioners their allowed salary increment for school year 2020-2021,

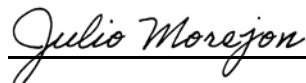
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 24, 2026

DATE



JULIO C. MOREJON, ALJ

Date Received at Agency:

July 24, 2026

Date E-Mailed to Parties:

July 24, 2026

JCM/lr

APPENDIX

List of Exhibits

Joint Exhibits

J-1A Joint Stipulation of Facts

J-1 Incremental Withholding

For Petitioners

Petitioners' letter brief in support of motion

Petitioners' reply letter brief

For Respondent

Respondent's letter brief in support of motion

Certification of Bernard Mercado, with Exhibits A through F

Respondent's reply brief