



## State of New Jersey

PHILIP D. MURPHY  
*Governor*

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
P. O. Box 295

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SONIA RIVERA-PEREZ  
*Acting Director*

January 9, 2026

Sent via email to: [REDACTED]

Oxford Cohen, PC  
Samuel Wenocur, Esq.  
[REDACTED]

RE: Thomas O'Dowd  
TPAF [REDACTED]

Dear Mr. Wenocur:

At its meeting on November 13, 2025, the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) considered your September 26, 2025 appeal of the Division's March 31, 2025 determination that (1) Thomas O'Dowd's (O'Dowd) August 1, 2024 retirement is non-bona fide because he did not separate from employment as required by the provisions of N.J.A.C. 17:3-6.2; (2) he should have remained an active member of TPAF upon commencement of his job at the Livingston Board of Education (Livingston) pursuant to N.J.S.A. 18A:66-53.2 and N.J.A.C. 17:3-2.1(a); and (3) he did not qualify for post-retirement employment under the provisions of P.L. 2021, c. 408 (C.408), and its extension under P.L. 2023, c. 121 (C. 121).

By way of background, the Board originally considered the matter at its meeting of August 14, 2025. At that meeting, a motion was made to affirm the Division's March 31, 2025 administrative determination but failed to carry as it lacked the requisite four votes as required by N.J.S.A. 18A:66-56. Consequently, the Division's determination that O'Dowd's post-retirement employment violated TPAF rules stood. As such, the Division required him to (1) repay all of the overpaid benefits that he had received as determined by the Division, (2) re-enroll in his original TPAF membership account, and (3) pay the requisite pension contributions for the period covering

September 1, 2024 through June 30, 2025. At the August 14, 2025 meeting, the Board also approved O'Dowd's Service retirement effective July 1, 2025, under Option B.

After careful reconsideration at the November 13, 2025 meeting, the Board affirmed the Division's March 31, 2025 determination, and finding no genuine issue of material fact in dispute, the Board directed the Secretary to prepare Findings of Fact and Conclusions of Law as outlined below, which was approved by the Board at its January 8, 2026 meeting.

### **FINDINGS OF FACT**

The record before the Board establishes that O'Dowd was enrolled in the TPAF on September 1, 1994, as the result of his employment with the Cranford Township Board of Education as a Teacher. On September 1, 1996, he transferred to Summit Board of Education (Summit). On or about February 22, 2024, O'Dowd filed an application for Service retirement benefits to become effective August 1, 2024.<sup>1</sup>

On or about March 4, 2024, O'Dowd applied for three TPAF-eligible teaching positions with the Livingston. On the cover letter submitted with his job application, he wrote: "I have submitted my retirement papers to the state to retire as of 8/1/24 but I want to continue to teach for years. So to start the school year in another public school the district would have to submit a letter of critical need in the subject area [...]" (emphasis added).

On April 15, 2024, Livingston completed a Candidate Recommendation Form for O'Dowd formally recommending his for the Teacher of Science (dual certification in Physics and Chemistry) position at Livingston High School.

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<sup>1</sup> The Board notes O'Dowd filed several retirement applications with effective dates prior to August 1, 2024, that were either changed or cancelled. With each filing, he acknowledged the terms and conditions of retirement, certified that he agreed to comply with all said terms and conditions, and certified that he had read the post-retirement employment restrictions and made no pre-arrangement to return to employment in any capacity.

The records further establish that on April 19, 2024, O'Dowd contacted the Division's Office of Client Services (Client Services) and presented a hypothetical scenario about post-retirement work. The Board notes that he did not disclose that he had already applied for, interviewed for, and been recommended for a position. As a result, the representative provided general guidance and could not offer specific advice, however the representative clearly advised O' Dowd that he and his employer needed to obtain approval from the New Jersey Department of Education for his employment to be permissible.

On May 1, 2024, Summit certified that O'Dowd resigned from their location effective July 31, 2024 and that he did not make a pre-arrangement to return to employment with them in any capacity. On August 1, 2024, the Board approved his application for Service retirement under his selection of Option B, at its meeting. On that same date, the Board sent O'Dowd a letter advising him that his retirement had been approved and notified him that:

In accordance with law, you have until thirty days after (A) the effective date of your retirement, or (B) the date your retirement was approved by the Board of Trustees, whichever is the later date, to make any changes to your retirement.

The letter also advised O'Dowd that:

If you are considering working after retirement, you should be aware of the restrictions imposed by law and regulations governing post-retirement employments. It is your responsibility to inform your prospective employer that you are receiving retirement benefits from a New Jersey public retirement system, and to understand the impact employment will have on those retirement benefits. In some instances, your retirement benefits may be suspended or even cancelled entirely, and if this occurs, you will be responsible for the repayment of any benefits you were not entitled to receive. You may also be required to re-enroll in your former retirement system or a different retirement system, and make pension contributions to that system. Please read Fact Sheet #86 regarding Post-Retirement Employment Restrictions located on the Division of Pensions and Benefits' website:

<http://www.nj.gov/treasury/pensions/documents/factsheets/fact86.Pdf>

Upon reading Fact Sheet #86, if you have any additional questions regarding return to public employment, please contact the Office of Client Services at (609) 292-7524.

At the August 13, 2024 Livingston Board of Education meeting, Livingston approved O'Dowd's appointment as a Teacher of Physical Science. On April 14, 2024, Livingston sent O'Dowd a job offer confirming his appointment as a Teacher of Physical Science at Livingston High School, effective August 28, 2024. At the September 10, 2024 Livingston Board of Education meeting, O'Dowd's start date was retroactively amended to September 3, 2024.

On September 1, 2024, O'Dowd's retirement became due and payable. On October 8, 2024, the Division received a *Notification of Employment after Retirement* Form<sup>2</sup> (RTE Form) from Livingston stating that O'Dowd was hired by them as a full-time High School Science Teacher on August 28, 2024, at an annual salary of \$101,700. After the receipt of the RTE Form, the Division contacted Livingston to request additional records and information to document the hiring process.<sup>3</sup>

Based upon the information provided by Livingston, the Division found that O'Dowd's August 1, 2024 retirement is considered non-bona fide because he did not separate from employment as required by the provisions of N.J.A.C. 17:3-6.2. Consequently, the Division found that O'Dowd's acceptance of a TPAF-eligible position with Livingston post-retirement requires reenrollment pursuant to N.J.S.A. 18A:66-53.2, and that he is required to repay to the TPAF all

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<sup>2</sup> The Board notes that public employers are required to complete the RTE Form and submit it to the Division within 15 calendar days of the date of hire when they engage the services of any individual who is retired from a state-administered retirement system; however, the RTE Form was not received by the Division until October 8, 2024.

<sup>3</sup> The Division's review required an analysis of wage reports from the New Jersey Department of Labor.

the overpaid benefits he has received as well as the requisite pension contributions as determined by the Division. An administrative determination letter outlining the findings above was issued to O'Dowd and Livingston on March 31, 2025.

Subsequently, on May 30, 2025,<sup>4</sup> you filed an appeal on O'Dowd's behalf and requested that the Board find his August 1, 2024 retirement bona fide or in the alternative find that he "not be required to reimburse the State for any money or benefits received as a result of inadvertently violating any pension retirement requirements."

Thereafter, via letter dated June 9, 2025, Susan Burman, Director of Human Resources, Livingston Public Schools sent a letter to the Division in support of O'Dowd's appeal. Ms. Burman claimed that it was Livingston's understanding that the waiver to hire retired teachers for emergency assignments due to the COVID-19 Pandemic for up to two years was still in effect. Ms. Burman also claimed that although O'Dowd applied for and was later recommended for a teaching position in April 2024, that Livingston did not officially offer him a teaching position until August 5, 2024; on the belief that he had retired June 30, 2024. Ms. Burman explained that when they learned that his retirement date was August 1, 2024, Livingston passed an amended resolution to ensure that he was hired at least thirty days (September 3, 2024) after the effective date of his retirement.

As previously stated, the Board considered your appeal and submissions at its meeting on August 14, 2025 but was unable to pass a motion regarding O'Dowd's return to employment. The Board noted however that O'Dowd terminated his employment with Livingston effective June 30, 2025. Accordingly, the Board approved the manual retirement application for Service retirement benefits effective July 1, 2025, under O'Dowd's selection of Option B.

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<sup>4</sup> On May 9, 2025, a 15-day extension was provided to file an appeal of the Divisions March 31, 2025 administrative determination.

On September 26, 2025, you filed an appeal of the Board's August 19, 2025 decision. In your appeal you note that the decision was not based upon a decision by the majority of the Board; there was no employment arrangement with Livingston prior to O'Dowd's August 1, 2024 retirement; and O'Dowd reasonably relied on Livingston's assertions about his ability to work as a TPAF-retiree without being required to reenroll in the fund. Finally, you requested an administrative hearing in the Office of Administrative Law as you claim there are clear disputes of material facts in this matter.

### **CONCLUSIONS OF LAW**

The issue before the Board is whether O'Dowd properly separated from employment as required by the provisions of N.J.A.C. 17:3-6.2 and whether his retirement should be cancelled pursuant to N.J.S.A. 18A:66-53.2.

N.J.A.C. 17:3-6.2 states:

A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or 30 days after the date of retirement, whichever is later.

N.J.S.A. 18A:66-53.2 states in pertinent part:

a. Except as provided in subsection b. of this section, if a former member of the retirement system who has been granted a retirement allowance for any cause other than disability, becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be reenrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of reenrollment. Such person shall be treated as an active member for determining disability or death benefits while in service and no benefits pursuant to an optional selection with respect to his former

membership shall be paid if his death shall occur during the period of such reenrollment.

...

[(Emphasis added).]

Additionally, N.J.A.C. 17:3-2.1 states:

(a) Any person appointed by the State, local board of education, or charter school to a position listed in the definition of "teacher" found at N.J.S.A. 18A:66-2.p or as a regular, full-time employee in a position that meets the following conditions shall be required to become a member of the Fund effective as of the date of their employment:

1. The position requires a valid certificate issued by the State Board of Examiners, pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.A.C. 6A:9, and the person employed holds this valid certificate;

2. The position is covered by Social Security; and

3. Salary requirements and full-time weekly work hours to qualify for enrollment are met, based on the date of eligibility for enrollment:

[. . .]

iii. If eligibility for enrollment began after May 21, 2010, regular full-time hours of 32 hours per week are required for enrollment, pursuant to the provisions of N.J.S.A. 18A:66-4.b(4).

In this matter, O'Dowd's retirement date was August 1, 2024, and his retirement was approved by the Board on that date. Therefore, his retirement did not become due and payable, or final until September 1, 2024 as required in N.J.A.C. 17:3-6.2. Prior to his retirement becoming due and payable, Livingston approved O'Dowd's appointment as a Teacher on August 13, 2024, to be effective August 28, 2024. Both the appointment date and effective date were prior to the September 1, 2024 due and payable date.

The Board notes that at the August 28, 2024 meeting, Livingston retroactively amended O'Dowd's start date to September 10, 2024, which would be after the date O'Dowd's retirement

became due and payable. Regardless of the retroactive date change, O'Dowd's appointment was approved by the Board on August 13, 2024 – prior to when his retirement became due and payable.

Furthermore, regardless of whether O'Dowd returned to employment prior to his retirement becoming due and payable, O'Dowd returned to a full time TPAF-eligible position, which required his retirement to be cancelled. N.J.S.A. 18A:66-53.2(a) and N.J.A.C. 17:3-2.1(a). Even accepting O'Dowd's arguments that he actually began his employment on September 10, 2024, his retirement would still have to be cancelled and he would have to return any pension benefits received.

Additionally, the statutory exemption under C. 408 and C. 121 permitted retired teachers or professional staff members who provide services to return to employment to fulfill a "critical need of a school district" during the school years 2021-2022 or 2022-2023, without requiring re-enrollment in the TPAF. The exemption applies only to retirees who had already been granted the exemption in previous school years or by June 30, 2024. Since O'Dowd retired effective August 1, 2024, after the law expired, this exception does not apply to him.

Accordingly, the Board found that O'Dowd's August 1, 2024 retirement was not bona fide pursuant to N.J.A.C. 17:3-6.2 and that his retirement should have been cancelled pursuant to N.J.S.A. 18A:66-53.2(a). Consequently, as a non bona fide retiree, O'Dowd is required to repay to the TPAF all of the overpaid retirement benefits he has received as determined by the Division; he will be re-enrolled in his original TPAF membership account; and he is required pay the requisite pension contributions for the period covering September 1, 2024 through June 30, 2025.

The Board finds that the statutory and regulatory requirements are clear and unambiguous. Because there were no disputes of material fact, the Board was able to reach its



Oxfeld Cohen, PC  
Samuel Wenocur, Esq.  
Re: Thomas O'Dowd  
January 9, 2026  
Page 9

Findings of Fact and Conclusions of Law in this matter without the need for an administrative hearing. Accordingly, this correspondence constitutes the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

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

Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Sincerely,

A handwritten signature in blue ink, appearing to read "Saretta Dudley", is placed over a rectangular stamp area.

Saretta Dudley, Secretary  
Board of Trustees  
Teachers' Pension and Annuity Fund

G-3/ SD

c: D. Walsh (ET); K. Ozol (ET); S. Scott (ET); K. Brzostowski (ET); S. Fenstermacher (ET)

DAG Alison Keating (ET)

Thomas O'Dowd (via email to: [REDACTED])