



State of New Jersey

MIKIE SHERRILL
Governor

DR. DALE G. CALDWELL
Lt. Governor

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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AARON BINDER
State Treasurer

SONIA RIVERA-PEREZ
Acting Director

January 22, 2026

Sent via email and regular mail

Thomas Korbin, Esquire

[REDACTED]

RE: Anthony Vainieri
PERS [REDACTED]

Dear Mr. Korbin:

FINAL ADMINISTRATIVE DETERMINATION

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) determination that your client, Anthony Vainieri, violated PERS rules regarding post-retirement employment. At its meeting on October 16, 2024, the PERS Board considered your personal statements, the statements of Sharon Fenstermacher of the Division of Pensions and Benefits' (Division) External Audit Unit (EAU), and all documentation in the record concerning the EAU's determination that his return to employment violated PERS rules. Thereafter, the Board affirmed the EAU's determination.

By letter dated January 17, 2025, you appealed the Board's determination. The Board was prepared to consider the appeal at its meeting on February 19, 2025. However, prior to the meeting you requested a postponement due to a scheduling conflict, which the Board approved. At its meeting on April 23, 2025, the Board considered your presentation on Mr. Vainieri's behalf via phone. After careful review, the Board found no genuine issue of material fact in dispute and denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft a Final Administrative Determination.

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Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its January 21, 2026, meeting.

FINDINGS OF FACT

The Board made the following findings of fact:

The record before the Board establishes that Mr. Vainieri was enrolled in the PERS effective April 1, 1990, with North Bergen Township (Township), as a result of his employment as a Legislative Research Officer. Division records indicated that he remained with this employer and held the same position at the time of his resignation on May 23, 2023;¹ however, in a letter dated November 1, 2023, you advised that Mr. Vainieri's held the title of Deputy Director of Public Affairs.

On or about February 3, 2023, Mr. Vainieri submitted an application for Early retirement benefits with an effective date of June 1, 2023. The application (p. 3) required him to agree to comply with all of the applicable retirement application terms and conditions, including the fact that he had made no pre-arrangement to return to public employment after retirement in any capacity. Mr. Vainieri also certified on the application that he read the Post-Retirement Employment Restrictions. At its meeting on June 21, 2023, the Board approved his application for Early retirement benefits.

Records provided by the Township establish that Mr. Vainieri filed an Application for Nominating Petition and accompanying Request for Ballot Grouping on March 2, 2023. These documents were filed with the Township in order to allow Mr. Vainieri to run for the Commissioner seat in the May 9, 2023, election.

¹ On January 1, 1996, he accepted a second position with the State of New Jersey as a Legislative Aide, thus becoming a multiple member with the PERS. He terminated this employment on or about December 4, 2007.

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On or about March 6, 2023, the Township filed with the Division its *Certification of Service and Final Retirement*, indicating that he would resign from the Township on May 31, 2023. The Township also certified that Mr. Vainieri “**did make a pre-arrangement** to return to employment with this location in any capacity.” (emphasis supplied). On the same day, the Township contacted the Division requesting guidance regarding Mr. Vainieri’s proposed post-retirement employment. The Division advised the Township that if a member returns to the same employer post-retirement, PERS’ rules require a 180-day separation from employment after that member’s retirement date, with no pre-arrangement, to return to the same employer.

On or about March 15, 2023, Mr. Vainieri cancelled his retirement application. On or about March 16, 2023, the Township again contacted the Division on his behalf requesting information about post-retirement employment requirements and were referred to Fact Sheet #86. On or about March 20, 2023, the Certifying Officer of Hudson County² contacted the Division on his behalf requesting information about withdrawing his Defined Contribution Retirement Program (DCRP) account because he would be resigning from this elected position to run for office as a newly elected official in the Township. On or about April 13, 2023, Mr. Vainieri separated from his elected position as Hudson County Freeholder and withdrew the DCRP account associated with this elected office on May 12, 2023.

On or about April 21, 2023, Mr. Vainieri re-filed his retirement application requesting an Early Retirement under the Maximum Option with an effective retirement date of June 1, 2023. Again, the retirement application required Mr. Vainieri to agree to comply with all of the applicable retirement application terms and conditions, that he had made no pre-arrangement to return to public employment after retirement in any capacity, and that he read the Post-Retirement Employment Restrictions.

² This elected position made Mr. Vainieri eligible for DCRP enrollment.

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On May 9, 2023, Mr. Vainieri was elected as Township Commissioner and was officially sworn in on May 16, 2023. As a result, Mr. Vainieri continued his employment with the Township beyond his June 1, 2023, PERS retirement date, which is in violation of PERS rules as delineated N.J.A.C. 17:1-17.14(a).

The Board, unaware that Mr. Vainieri had pre-arranged a return to his former employer *prior* to his retirement date, approved his retirement application at its meeting of June 21, 2023.

The Division sent a letter congratulating him on his retirement and advised 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." (Emphasis added).

Mr. Vainieri's retirement became due and payable 30 days after the date of the Board approval (June 21, 2023) or the retirement date (June 1, 2023) whichever is later, that date being July 21, 2023. During this 30-day period, Mr. Vainieri had the opportunity to cancel or amend his retirement application. Thereafter, his retirement benefit was finalized and became "due and payable". As he continued employment with the Township beyond his June 1, 2023, retirement date, he did not observe the required 180-day break in service after retirement before returning to his former employer, and is therefore not considered retired from PERS.

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The Board also noted that Fact Sheet #86, entitled "Employment After Retirement Restrictions" contains a section "**Return to Work With Your Former Employer**," which cautions retirees that:

If you are considering returning to work with your former employer, you must first determine if you have already met the requirements of a "bona fide severance of employment" as defined under N.J.A.C. 17:1-17.14(a)2 for retirees of PERS...Bona fide severance of employment means there was a complete termination of the employer/employee relationship for a period of at least 180 days from the date of retirement...

Fact Sheet #86 also includes examples of post-retirement employment situations that do not qualify as a "complete severance" of the "employment relationship" within the applicable 180-day period:

- Re-employment in a part-time position;
- Re-employment in a position that is covered by a different retirement system;
- A change in title;
- Re-employment as a contract employee, a leased employee, or an independent contractor; or
- Termination of employment with a pre-arranged agreement for re-employment.

Re-employment by a different unit of the same public employer within 90 or 180 days of retirement, whether in a position covered by the same retirement system or a different retirement system, is considered to be employment by the same employer.

Fact Sheet #86 also contains a section concerning "**Special Provisions For Elected Officials**," which states

Elected officials are also subject to the 90- or 180- day bona fide severance of employment as defined under N.J.A.C. 17:1-17.14(a)2. With the repeal of N.J.S.A. 43:15A-47.2 and N.J.S.A. 43:16A-5.1, members of the PERS and PFRS can no longer retire while holding an elected public office and collect a retirement allowance.

On or about September 20, 2023, the Township's Certifying Officer again contacted the Division regarding Mr. Vainieri's employment as an elected Commissioner. The Division advised

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that the Township should submit the *Notification of Employment After Retirement Form* (RTE Form) in order for the Division to complete its review of Mr. Vainieri's post-retirement employment. The Township also advised that Mr. Vainieri did not cash any retirement checks that he had received since June 1, 2023.

On or about December 12, 2023, the Division replied to the Township's inquiries and advised that Mr. Vainieri's retirement was not bona fide because he returned to employment without effectuating the 180-day required break in service. Therefore, he was advised to return any uncashed pension checks to the Division. The Division stopped his pension checks as of January 1, 2024.

On or about April 12, 2024, the Township filed the RTE Form advising that Mr. Vainieri had been employed as a part-time "Commissioner" at an annual salary of \$45,000, effective May 16, 2023. As a result, the EAU commenced a review of his post-retirement employment to determine compliance with all applicable PERS rules, including N.J.A.C. 17:1-17.14 and N.J.A.C. 17:2-6.2.

The Division's EAU is charged with reviewing the post-retirement employment of PERS members to determine compliance with all applicable laws and regulations governing the PERS in order to protect the fiscal integrity of the fund. As an administrator of defined benefit plans and also to protect the qualified status of these plans, the Division is required to comply with the provisions as set forth in N.J.A.C. 17:1-17.14. The Division must enforce these rules in order to be compliant with the provisions of the Internal Revenue Code as applicable to the PERS' Qualified Plan Status. In the case of a retired member of any defined benefit plan³ who has retired and began receiving a retirement benefit, but returns to employment with the same employer within the 180-day period, the Division is required to investigate and determine if there was a

³ The PERS is a defined benefit plan.

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complete termination of the employer-employee relationship to constitute a bona fide severance from employment.

In accordance with the N.J.S.A. 43:3C-18, the defined benefit plans are established as qualified governmental defined benefit plans in accordance with Internal Revenue Code Sections 401(a) and 414(d), or such other provisions of the Federal Internal Revenue Code as applicable, regulations of the United States Department of the Treasury, and other guidance of the Federal Internal Revenue Service. In order to maintain qualified plan status, Federal law requires that a defined benefit plan pay retirement benefits to a member only when there is a bona fide severance from employment.

On June 18, 2024, the EAU issued its decision letter, finding that Mr. Vainieri's post-retirement employment violated PERS rules and his retirement was not *bona fide* or valid because he pre-arranged employment with his former employer *prior* to his retirement date. By letter dated September 4, 2024, he appealed the EAU's findings. At its meeting of October 16, 2024, the Board affirmed the EAU's determination. You appealed by letter dated January 17, 2025. At its April 23, 2025, the Board considered your oral presentation and all submissions, and finding no genuine issue of material fact in dispute, the Board denied your request for an administrative hearing and directed the undersigned to draft detailed Findings of Fact and Conclusions of Law for review at its January 21, 2026.

CONCLUSIONS OF LAW

The Board made the following conclusions of law:

The Division, part of the Department of Treasury, is responsible for the administration of the various New Jersey public pension systems, including the PERS. N.J.S.A. 52:18A-95. The New Jersey Legislature charged the Division with protecting the tax-qualified status of the State's pension funds. N.J.S.A. 43:3C-18(c). The Division Director is authorized to:

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modify the provisions of the foregoing retirement plans, when a modification is required to maintain the qualified status of the retirement plans under the Internal Revenue Code of 1986, applicable regulations of the U.S. Treasury Department or other guidance of the federal Internal Revenue Service.

Toward that end, the Division promulgated regulations, which control a retiree's eligibility for post-retirement employment. N.J.A.C. 17:1-17.14(a) 2 provides

2. "Bona fide severance from employment" means a complete termination of the employee's employment relationship with the employer for a period of at least 180 days. The following does not constitute a complete termination of the employee's relationship with the employer:

- i. Employment or reemployment in a part-time position;
- ii. Employment or reemployment in a position that is not covered by the Defined Benefit Plan;
- iii. A change in title;
- iv. Employment or reemployment as a contract employee, a leased employee, or an independent contractor; or
- v. Termination of employment with a pre-arranged agreement for reemployment.

The examples provided would not be considered a bona fide separation from employment.

The Board also notes that N.J.A.C. 17:2-6.2 provides that:

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 the retirement, whichever is later.

Thus, Mr. Vainieri is not considered "retired" from the PERS until his retirement becomes "due and payable" and after the employer/employee relationship is severed for the applicable time period. Mr. Vainieri's retirement would have become due and payable as of July 21, 2023.

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As previously stated, as an Elected Official, Mr. Vainieri was subject to the following provision; "Special Provisions For Elected Officials," which states

Elected officials are also subject to the 90- or 180- day bona fide severance of employment as defined under N.J.A.C. 17:1-17.14(a)2. With the repeal of N.J.S.A. 43:15A-47.2 and N.J.S.A. 43:16A-5.1, members of the PERS and PFRS can no longer retire while holding an elected public office and collect a retirement allowance.

By letter dated January 17, 2025, you appealed the PERS Board's determination of October 16, 2024. You argue that the Board's interruption of its regulations and Fact Sheets violates the First Amendment Constitutional rights and cite certain court cases in support of your argument.

The Board's decision here is rooted in precedent. In Mayer v. Bd. of Trs., Pub. Employees' Ret. Sys., 479 N.J. Super. 579 (App. Div. 2024), the Board found that Mayer, a former prosecutor, violated PERS' rules when, during the course of effectuating her retirement, pre-planned her return to State service when she applied for, and ultimately received, a Superior Court Judgeship. Id. at 583. The case turned on the regulation's use of the term "pre-arranged" and whether the prospect of returning to a State position after the effective retirement date deemed the retirement invalid. The Board had found that Mayer's seeking the judgeship, which the court described as a lengthy involved process, amounted to "pre-planning" to return to employment prior to the effectuation of her retirement. Id. at 590. Because obtaining the judgeship was speculative until her appointment and swearing in, the court found that Mayer did not pre-arrange her return to employment and therefore complied with the requirements under N.J.A.C. 17:1-17.14. Id. at 591.

Mr. Vainieri's matter is inapposite to Mayer, as he was not a candidate for an elective office at the time he sought to retire; he had been elected and would receive a salary from the same employer from which he sought to retire, prior to his effective retirement date. In other words, it was not speculation as to whether he would return at some point in the future. Rather he

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had already accepted employment prior to his effective retirement date. Thus, the Board found that Mr. Vainieri's retirement was not bona fide.

Finally, the Board rejected your arguments that the Division's duty to uphold the tax-qualified status of its pension plans by complying with IRS requirements violates Mr. Vainieri's right to run for elected office. The purpose behind the regulation is to prevent a member from pre-arranging a return to employment in contravention of IRS rules. There is no preclusion on Mr. Vainieri's right to run for elective office; in fact, he won, and is currently sitting as a North Bergen Commission. Mr. Vainieri is able to be a candidate for and hold elective office. Conversely, he is not able to collect his pension and continue to receive a salary from his employer without ever having separated from employment simply does not violate any constitutionally protected right.

As noted above, the Board has considered your personal statements on behalf of Mr. Vainieri, as well as Mr. Vainieri's statements, and reviewed the written submissions and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law on the basis of the retirement system's enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

You have the right to appeal this final administrative action 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

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Trenton, NJ 08625
Phone: (609) 292-4822

Sincerely,



Jeff S. Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

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C: S. Fenstermacher (ET); M. Padilla (ET); J. Ehrmann (ET)

Anthony Vainieri (via email)