



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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JOHN D. MEGARIOTIS
Acting Director

June 6, 2025

Sent via email to: [REDACTED]

ZAZZALI, P.C.
Albert J. Leonardo, Esq.

RE: Scott Levy
TPAF #: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Leonardo:

At its meeting on May 1, 2025, the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) considered your appeal of the Board's January 22, 2025 determination that the compensation Scott Levy received for the period covering May 1, 2021 through June 30, 2022 (14 months) as part of the "Settlement Agreement and Release Between Scott Levy and Wyckoff Board of Education," (Agreement) executed on May 10, 2021, was not creditable for pension calculation purposes. Mr. Levy filed a timely appeal of the Board's decision on March 5, 2025.

After careful consideration, the Board affirmed its prior decision, and finding no genuine issue of material fact in dispute, the Board directed the undersigned to draft a Final Administrative Determination, which was reviewed and approved at its meeting of June 5, 2025.

FINDINGS OF FACT

The record before the Board establishes that Mr. Levy was enrolled in the TPAF effective September 1, 1997, as a result of his employment with the Wayne Board of Education as a Teacher. Subsequently, he transferred to various TPAF locations and continued his participation

ZAZZALI, P.C.
Albert J. Leonardo, Esq.
RE: Scott Levy
June 6, 2025
Page 2

in the TPAF. On September 1, 2005, he transferred to the Wyckoff Board of Education (Wyckoff) where he held the position of Language Arts Teacher. He remained in this position and at this location until his resignation on June 30, 2022.

On January 3, 2020, a seventh-grade student reported an altercation between herself and Mr. Levy to the school counselor. An investigation followed, and on January 8, 2020, Mr. Levy was notified that he was suspended with pay pending a full investigation. On January 13, 2020, Wyckoff approved his suspension. Subsequently, two more female students reported that Mr. Levy engaged in inappropriate and sexual physical contact with them. On February 7, 2020, an investigation was completed by an Anti-Bullying Specialist. On April 10, 2020, Mr. Levy was served with Tenure Charges and written evidence in support of the charges.¹

On May 14, 2020, Mr. Levy's attorney responded with a written statement of position opposing the charges. However, on May 18, 2020, Wyckoff voted to certify to the Commissioner of Education the tenure charges of Unbecoming conduct; and Other Sufficient Cause, Use of Corporal Punishment; Liability for Student Welfare; Code of Ethics; Inappropriate Staff Conduct; Harassment, Intimidation, Bullying; and Sexual Harassment. On May 19, 2020, Scott Levy was suspended without pay.

In an Arbitration Decision dated January 28, 2021, the Arbitrator substantiated all four tenure charges. The Arbitrator concluded that Mr. Levy had a pattern of failing to maintain proper boundaries with students. However, the Arbitrator determined that because he could not find Mr. Levy's inappropriate touching to be of a sexual nature, dismissal was not warranted. The Arbitrator imposed a six-month suspension without pay.

¹ On or about May 20, 2020, the tenure charges against Mr. Levy were filed with the New Jersey Commissioner of Education.

ZAZZALI, P.C.
Albert J. Leonardo, Esq.
RE: Scott Levy
June 6, 2025
Page 3

On April 26, 2021, Wyckoff filed a Complaint in Superior Court, seeking to vacate the Arbitration award Wyckoff Board of Education v. Scott Levy. Subsequently, the parties sought to resolve the Complaint and conclude the employment relationship. On May 10, 2021, the parties executed a Settlement Agreement and Release (Agreement). As part of the Agreement, Mr. Levy agreed to (1) submit a request for a personal leave of absence from May 10, 2021 through June 30, 2022, (2) sign an irrevocable letter of resignation effective June 30, 2022, and (3) upon execution of the Agreement and his resignation, he forfeited all tenure rights to any position with the Board. In exchange, Wyckoff agreed to approve his leave of absence and pay him as follows: (1) from May 10, 2021 through June 30, 2021, he would receive his annual prorated salary for \$15,220.57; and (2) from September 1, 2021 through June 30, 2022, he would receive his annual prorated salary of \$91,738. Any accumulated benefits would be absorbed during his leave and no further cash payments would be paid. On May 10, 2021, Mr. Levy submitted his irrevocable letter of resignation and Wyckoff withdrew the complaint.

Throughout the period specified in the Agreement, Wyckoff continued to remit contributions on Mr. Levy's behalf through the Report of Contributions. Wyckoff did not send a copy of the Agreement to the Division for review when asked to certify Mr. Levy's service and final salary for his retirement application. N.J.A.C. 17:1-6.3(a)(1).

On June 20, 2022, Mr. Levy applied for Early retirement effective July 1, 2022, under the Maximum Option, having accrued exactly 25 years of service credit. On July 7, 2022, the TPAF Board approved Mr. Levy's application. However, at the time of its approval, the Board was unaware of any administrative charges filed against Mr. Levy nor was it aware of the Agreement.

In late September 2022, the Division became aware that Mr. Levy's teaching certificates had been suspended for one-year.² Thereafter, the Division began to gather the documents necessary for the Board to conduct an honorable service review pursuant to N.J.S.A. 43:1-3. Prior to the matter being considered by the Board, a copy of the Agreement was submitted to the Division's Audit Section for review. On September 13, 2024, the Division determined that the compensation that Mr. Levy received for the period covering May 1, 2021 through June 30, 2022 (14 months) as part of the Agreement was not creditable for pension calculation purposes pursuant to N.J.A.C. 1:3-4.1(a)(1) as it was deemed compensation in the absence of service. The Division's determination letter further noted that Mr. Levy did not provide any service for the period of time he was on leave, nor did Wyckoff intend to return him to work at their location. Instead, Wyckoff intended to keep Mr. Levy on active payroll so that he could obtain exactly 25 years of service credit. As a result of the Division's post-retirement audit, Mr. Levy's service and salary credit was be reduced by 14 months, thus making him ineligible for Early retirement benefits.

The Division's September 13, 2024 determination was held in abeyance until the Board was prepared to consider the circumstances under which Mr. Levy separated from employment and the impact this may have on his Early retirement benefits in accordance with N.J.S.A. 43:1-3.

On September 16, 2024, Mr. Levy appealed the Division's determination to the Board. At its meeting of January 9, 2025, the Board affirmed the Division's September 13, 2024, determination following a post-retirement audit that the compensation Mr. Levy received for the period covering May 1, 2021 through June 30, 2022 (14 months), as part of the Agreement is not

² In the September 20, 2022 Order of Suspension, the New Jersey Board of Examiners affirmed its prior decision to suspend Scott Levy's certificates for one year. He subsequently filed an appeal. However, in a Final Decision, dated September 7, 2023, the New Jersey Commissioner of Education affirmed the New Jersey Board of Examiners' decision.

ZAZZALI, P.C.
Albert J. Leonardo, Esq.
RE: Scott Levy
June 6, 2025
Page 5

creditable for pension calculation purposes. As a result of the Board's action, Mr. Levy's TPAF membership account reflects a total of 23 years and 10 months of service credit. The Board further determined that Mr. Levy was not eligible for Early retirement benefits effective July 1, 2022, as his account lacked the requisite 25 years of service credit and terminated said benefits. Because the Board determined that Mr. Levy was paid Early retirement benefits to which he was not entitled, he Board required Mr. Levy to repay all overpaid retirement benefits paid to date. On January 23, 2025, Mr. Levy filed a request to stay implementation of the Board's decision, but subsequently withdrew this request.

On March 5, 2025, Mr. Levy filed an appeal of the Board's January 22, 2025, determination. The appeal asserted that (1) both Wyckoff and Mr. Levy reasonably relied on and believed that the approved leave of absence would be creditable for pension calculation purposes, (2) that the governing statutes and regulations make it clear that a teacher on an approved paid leave of absence is entitled to pension credit for the duration of the leave of absence, and (3) that the Board's new interpretation of law should not be applied to Mr. Levy. N.J.S.A. 18A:30-7, N.J.S.A. 18A:66-2(d)(1) and N.J.A.C. 17:3-4.2.

At its meeting of May 1, 2025, the Board considered Mr. Levy's appeal of its determination that the compensation Mr. Levy received for the period covering May 1, 2021 through June 30, 2022 (14 months), as part of the Agreement is not creditable for pension calculation purposes. The Board found the Agreement, which allowed Mr. Levy to remain an active employee for the period of May 10, 2021 through June 30, 2022, provided Mr. Levy with future compensation for which no services would be provided, in direct violation of the controlling statute and regulation.

Accordingly, the Board affirmed its prior decision, and finding no genuine issue of material fact in dispute, the Board directed the undersigned to draft a Final Administrative Determination, which was reviewed and approved at its meeting of June 5, 2025.

CONCLUSIONS OF LAW

The issue before the Board is whether Mr. Levy is eligible to receive service credit for the compensation he received for the period covering May 1, 2021 through June 30, 2022 (14 months) as part of the Agreement. N.J.S.A. 18A:66-2(d)(1) defines “compensation” as:

the contractual salary, **for services as a teacher** as defined in this article, which is in accordance with established salary policies of the member’s employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member’s retirement or additional remuneration for performing temporary or extracurricular duties beyond the regular school day or the regular school year.

...

[ibid.] (emphasis added).]

In addition, N.J.A.C. 17:3-4.1(a)(1)(xvi), provides additional clarification on creditable compensation:

(a) The compensation of a member subject to pension and group life insurance contributions and creditable for retirement and death benefits in the Fund shall mean the contractual salary, for services as a teacher defined at N.J.S.A. 18A:66-2.d(1)(2), which is in accordance with established salary policies of the member’s employer for all employees in the same position and shall not include extra compensation.

1. Forms of compensation that have been identified as extra compensation include, but are not limited to:

[...]

xvi. Compensation in the absence of services;

[ibid.]

The record reflects that Mr. Levy did not perform any **services as teacher** while on the approved leave of absence for the period of May 10, 2021 through June 30, 2022, nor did he intend to return to work at Wyckoff at the conclusion of the leave. Rather as part of his Agreement

ZAZZALI, P.C.
Albert J. Leonardo, Esq.
RE: Scott Levy
June 6, 2025
Page 7

with Wyckoff, on May 10, 2021, he submitted an irrevocable letter of resignation effective June 30, 2022. Thus, the Agreement, which allowed Mr. Levy to remain an active employee for the period of May 10, 2021 through June 30, 2022, provided Mr. Levy with future compensation for which no services would be provided.

The facts of Mr. Levy's situation are identical to those in Bossart v. Board of Trustees of the Teachers' Pension & Annuity Fund, 2012 N.J. Super. Unpub. LEXIS 50 (App. Div. Jan 11, 2012). In Bossart, the member entered into an agreement with her employer (1) to be placed on leave of absence until the end of her contract term, a period of 17 months and (2) resign, effective the end of her contract term. 2012 N.J. Super. Unpub. LEXIS, at *2-3. The court explained that while "leave of absence is not specifically defined, the phrase should be given its generally accepted meaning. Id. at *12 (citing N.J.S.A. 1:1-1). According to the generally accepted meaning of leave of absence, the fact that the member did not contemplate returning to her position contradicted her status as "leave of absence." Id. at *13. The court affirmed the Board's decision to disqualify the 17 months from creditable service and prospectively reduce her pension benefits. Id. at *1.

Similarly, here, upon signing the Agreement on May 10, 2021, neither Wyckoff nor Mr. Levy contemplated his return as he submitted an irrevocable letter of resignation and forfeited all tenure rights prior to the commencement of his leave of absence. The Board finds these facts contradict his designation of his status as leave of absence. The Board also finds that Mr. Levy was paid but did not perform any services for 14 months preceding his retirement.

Further, the Board finds that both N.J.S.A. 18A:66-2(d)(1) and N.J.A.C. 17:3-4.1(a)(1)(xvi) were in effect at the time of Mr. Levy's retirement, that neither Mr. Levy nor Wyckoff consulted with the Division prior to executing the Agreement, and that it is within the Board's authority to

ZAZZALI, P.C.
Albert J. Leonardo, Esq.
RE: Scott Levy
June 6, 2025
Page 8

deny a member credit for "extra compensation" and require a recalculation of the member's retirement benefits. Bossart, 2012 N.J. Super. Unpub. LEXIS, at *15-16.

As noted above, the Board has considered your written submission 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 TPAF 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 Teachers' Pension and Annuity Fund.

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
Trenton, NJ 08625

Sincerely,



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

G-1/SD

C: M. Kusmierczyk (ET); J. DiDonato (ET);

Scott Levy (sent via email to: [REDACTED])