

SUPREME COURT OF NEW JERSEY

Docket No.: 089658

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IN THE MATTER OF THE	:	ON PETITION FOR
CERTIFICATES OF	:	CERTIFICATION FROM THE
NICHOLAS CILENTO,	:	SUPERIOR COURT OF NEW
	:	JERSEY-APPELLATE
	:	DIVISION
NEW JERSEY	:	Docket No.: A-3586-21
DEPARTMENT OF EDUCATION	:	
STATE BOARD OF EXAMINERS	:	Sitting Below:
	:	Hon. Francis J. Vernoia, J.A.D.
	:	Hon. Katie A Gummer, J.A.D.
	:	
	:	On Appeal from the Final
	:	Administrative Decision of the
	:	Commissioner of Education
	:	
	:	Commissioner of Education
	:	Decision No. 131-22
	:	State Bd. of Examiners Dkt. No.
	:	2021-123
	:	Agency Dkt. No. 9-12/21A
	:	
	:	<i>Administrative Action</i>

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**AMICUS CURIAE BRIEF AND APPENDIX
ON BEHALF OF NJPSA AS AMICUS CURIAE
(NJPSAa0001-0132)**

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¹ The Exhibits referenced in this Appendix are referenced in the Proposed Brief and in the accompanying Certification of Counsel with the same numbering.

PRELIMINARY STATEMENT

This appeal concerns the efficacy of a Department of Education (“DOE”) Order to Show Cause (“OTSC”) that violates one of its own statutory mandates.

We make this application to appear as *amicus curiae* pursuant to Rule 1:13-9(e) and seek the reversal of the unpublished Appellate Division decision in IMO the Certificates of Nicholas Cilento, Dkt. No. A-3586-21 (June 26, 2024). There, the Appellate Division, relying exclusively on its published decision in Morison v. Willingboro Board of Education et al., 478 N.J. Super. 229 (App. Div. 2024), held that a State Board of Examiners (“State Board” or “Examiners”) OTSC seeking to suspend or revoke educational certificates based entirely on conduct that was the subject of a “final and binding” statutory tenure arbitration pursuant to N.J.S.A. 18A:6-10 et seq., even if that proceeding resulted in a *reinstatement* to tenured employment, can proceed.

The Appellate Division specifically held that the “statewide teacher certificate revocation process authorized in N.J.S.A. 18A:6-38 and -39 operates separately from the teacher tenure arbitration process under N.J.S.A. 18A:6-17.1” and that the “manifest legislative intent is for the two statutes to be administered independently of one another.” IMO the Certificates of Nicholas Cilento, Dkt. No. A-3586-21, Slip Op. at 2 (June 26, 2024) (quoting Morison, 478 N.J. Super. at 235).

That decision is wrong for one primary reason: it ignores basic tenets of statutory construction. In making that error, the Appellate Division failed to recognize the narrowness of the issue posed—that is, whether the State Board should be constrained from seeking to suspend or revoke educational certificates on the identical record of a tenure arbitration *only* when the tenure arbitration results in a reinstatement to tenured employment.

We believe the only way to harmonize the relevant statutes and the associated implementing regulations is to rule that the State Board should be so constrained.

Reversing the Appellate Division’s decision in IMO Cilento and, derivatively, its recently published decision of Morison, under this reasoning would in no way prevent or undermine the State Board’s authority to seek a greater degree of discipline whenever a tenure arbitration results in dismissal from employment or for any other enumerated reason that the State Board is empowered to seek to suspend or revoke the educational certificates of a teaching staff member.

The question in this matter is straightforward: how can an arbitration process overseen by the Commissioner that results in a decision to reinstate an employee be “final and binding” if, *on the same conduct*, the State Board (also overseen by the Commissioner) can thereafter seek to suspend or revoke that person’s educational certificates when doing so would result in automatic dismissal from tenured employment? As the Legislature has not supplied the answer, the courts must.

We ask this Court to declare that when an underlying tenure arbitration decision results in reinstatement to tenured employment, the Board of Examiners is constrained from pursuing a certificates' OTSC on the same conduct already adjudged to be insufficient for tenured dismissal from local employment. We believe that such a holding is the only way to harmonize Title 18A and its implementing regulations.

We assert that allowing the Commissioner, by way of the State Board, to seek to suspend or revoke the educational certificates of a staff member on the same conduct of a previously adjudicated tenure arbitration, when that arbitration resulted in a reinstatement to employment, would constitute an “end run” on the arbitrator’s “final and binding” remedial authority under N.J.S.A. 18A:6-17.1(e).

Significantly, in 2012, with the enactment of the “Teacher Effectiveness and Accountability for the Children of New Jersey Act” (“TEACHNJ”), L.2012 c.26, (N.J.S.A. 18A:6-117 et seq.) the Legislature removed the Commissioner’s final decision-making authority over tenure charge matters and delegated that authority to arbitrators appointed by the Commissioner under N.J.S.A. 18A:6-16. Allowing the Commissioner to proceed in the manner it has here allows the DOE to second-guess a decision of one of its appointed arbitrators—something the Legislature sought to remove with TEACHNJ.

For these reasons, and those set forth below, we ask this Court to grant the pending Petition for Certification and our application to appear as *amicus curiae* pursuant to Rule 1:13-9(e), and to reverse the decision in IMO the Certificates of Nicholas Cilento, Dkt. No. A-3586-21 (June 26, 2024).

Issue of Public Importance

This matter implicates critical questions of separation of powers and statutory construction.

The issue is one of correctly implementing the Legislature’s will—an issue that is bound to recur in the absence of clear guidance. That is because tenure charges under N.J.S.A. 18A:6-10 et seq. often present genuine conduct unbecoming but also significant mitigating factors under In re Fulcomer, 93 N.J. Super. 404, 421 (App. Div. 1967), which lead arbitrators to reinstate the subject employee. However, given the language of N.J.A.C. 6A:9B-4.4, such tenure charge determinations invariably will trigger a subsequent certificate suspension or revocation proceeding.

Consequently, this matter concerns the intersection of the “final and binding” statutory arbitration process under N.J.S.A. 18A:6-10 et seq. and the permissive regulatory process under N.J.A.C. 6A:9B-4.4 by which the State Board of Examiners is authorized to seek to suspend or revoke educational certificates. Therefore, it is important to analyze both legal frameworks.

Legal Backdrop

a. Tenure Charge Process Pursuant to N.J.S.A. 18A:6-10 et seq.

In 1967, the Legislature enacted the Tenure Employees Hearing Law (“TEHL”), codified as N.J.S.A. 18A:6-10 et seq. Under the original version of the TEHL, the Commissioner first determined if a charge was ‘sufficient to warrant dismissal or reduction in salary of the person charged,’ and, if so, conducted a hearing. Sanjuan v. Sch. Dist. of W. New York, Hudson Cnty., 256 N.J. 369, 379 (2024).

The Legislature then amended the TEHL in 1998 to allow for the ultimate hearing to go before an Administrative Law Judge (ALJ) if the Commissioner deemed the charges sufficient. Id. However, under both the 1967 and 1998 statutory schemes, the Commissioner was the final decision maker of tenure charge matters pursuant to N.J.S.A. 18A:6-10 et seq. See Pugliese v. State-Operated Sch. Dist. of City of Newark, 440 N.J. Super. 501, 510 (App. Div. 2015).

In 2012, the Legislature further amended the TEHL. The 2012 amendments, known as the TEACHNJ amendments, removed both the Commissioner as the final decision maker as well as the hearing process before an ALJ and, instead, established an arbitration process for such matters. N.J.S.A. 18A:6-16; N.J.S.A. 18A:6-17.1.

Under the arbitration framework, the “arbitrator’s determination shall be *final and binding* and may not be appealable to the [C]ommissioner or the State Board of

Education” and “shall be subject to judicial review and enforcement” pursuant to N.J.S.A. 2A:24-7 through -10. N.J.S.A. 18A:6-17.1(e) (emphasis added).

Notwithstanding the new system of arbitration, the legal question under the TEHL since its passage in 1967 has always been whether the charged individual following a hearing is guilty of “inefficiency, incapacity, unbecoming conduct, or other just cause” such that he or she must be dismissed from tenured employment or reduced in compensation. N.J.S.A. 18A:6-10. As the instant matter only implicates the standard for unbecoming conduct, that is the only standard discussed in this application.

Unbecoming conduct in the tenure charge process—both pre- and post-TEACHNJ—has been held to mean conduct “which has a tendency to destroy public respect for [government] employees and confidence in the operation of [public] services.” In re Young, 202 N.J. 50, 66 (2010) (quoting Karins v. City of Atl. City, 152 N.J. 532, 554 (1998)). See also Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 13 (2017) (reiterating the same standard). Such conduct may include “any conduct which adversely affects the morale or efficiency of the [department.]” In re Young, 202 N.J. at 66. Moreover, the “touchstone of the determination lies in the certificate holder’s ‘fitness to discharge the duties and functions of one’s office or position.’” Id. (quoting In re Grossman, 127 N.J. Super. 13, 29 (App. Div. 1974)).

Notwithstanding that arbitrators now decide matters under N.J.S.A. 18A:6-10 et seq. with “final and binding” authority, the Commissioner still oversees the process by maintaining “a panel of 50 permanent arbitrators”, N.J.S.A. 18A:6-17.1, and by assessing the sufficiency of any tenure charge matter and acting as a gatekeeper to allow it to advance to arbitration. Sanjuan, 256 N.J. at 380. “Although the TEACHNJ amendments to the TEHL changed the entity that makes the final determination in a case, it did not make any changes as to what could or should be the final determination.” Id. at 381.

b. The State Board of Examiner Process

The State Board of Examiners (“State Board” or “Examiners”), pursuant to N.J.S.A. 18A:6-38, “shall issue appropriate certificates to teach or to administer, direct or supervise the teaching, instruction or educational guidance of . . . pupils in public schools operated by boards of education . . . and may revoke the same under the rules and regulations prescribed by the State Board.” Under the State Board’s statutory authority, the Commissioner acts as its final decision maker. N.J.S.A. 18A:6-38.4.

Outside of the failure to report an allegation of child abuse under N.J.S.A. 18A:6-38.5, there is no statutory authority that prescribes any framework for how the State Board is to initiate a proceeding to revoke or suspend the certificates of a teaching staff member. See N.J.S.A. 18A:6-34 et seq. However, the regulations

adopted to implement the State Board's authority do set forth such a framework. See N.J.A.C. 6A:9B-4.1 et seq.

Under N.J.A.C. 6A:9B-4.4(a), the State Board is authorized, *but not required*, to seek to “revoke or suspend the certificate(s) of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher, or other just cause.”

The State Board applies the identical standard for “conduct unbecoming” that is applied in the tenure charge process under N.J.S.A. 18A:6-10 et seq. See e.g., IMO Certificates of Courtney Bullen, Dkt. No. 1920-185 (Order of Suspension March 1, 2024) (attached as Exhibit “2”)¹ (citing the seminal tenure charge matter of Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4 (2017), and noting that the “elastic concept of conduct unbecoming includes conduct which adversely affects the morale or efficiency of the public entity or which has a tendency to destroy public respect for . . . [public] employees and confidence in the operation of [public] services.”) (internal citations and quotations omitted); IMO Certificates of Yakik Rumley, Dkt. No. 1112-112 (Order of Suspension March 1, 2024) (attached as Exhibit “3”) (same); IMO Certificates of Scott Silvis, Dkt. No. 2122-203 (Order of Suspension March 1, 2024) (attached as Exhibit “4”) (same); IMO Certificates of Brett Yavener,

¹ All the referenced Exhibits are attached in the same numerical order set forth in the Certification of Counsel.

Dkt. No. 2122-191 (Order of Suspension March 1, 2024) (attached as Exhibit “5”) (same); IMO Certificates of Richard Brenton, Dkt. No. 2223-114 (Order of Suspension March 1, 2024) (attached as Exhibit “6”) (same).

Notwithstanding that the State Board applies the identical standard for “conduct unbecoming” as in the tenure charge process, the State Board has long held that “dismissal from a tenured position and revocation of certification serve different purposes” and that as the “decision to revoke or suspend precludes employment as a teacher in any school district in this state,” the State Board is required to “make an independent determination as to whether the individual should be precluded from employment in other districts, whether permanently or temporarily[.]” IMO Certificates of Valencia, OAL Dkt. No. EDE 13241-19, Agency Dkt. No. 1819-194 (Initial Decision, October 28, 2021) (attached as Exhibit “7”); IMO Certificates of Kearney, OAL Dkt. No.: EDE 03866-04, Agency Dkt. No.: 0304-104 (Initial Decision, August 31, 2005) (State Board of Examiners, November 3, 2005) (same) (attached as Exhibit “8”); IMO Certificates of Labib, SBE Dkt. No.: 531-06/99-227, SB Dkt. No.: 49-00 (State Board of Examiners, May 11, 2000) (State Board of Education January 3, 2001) (same) (attached as Exhibit “9”).

LEGAL ARGUMENT

THE STATE BOARD'S OTSC IN *CILENTO* VIOLATES PRINCIPLES OF STATUTORY CONSTRUCTION

One primary function of our courts is to resolve legal questions involving competing or conflicting statutory provisions. American Fire & Cas. Co. v. New Jersey Div. of Tax'n, 189 N.J. 65, 79–80 (2006) (“[W]hen the Court reviews two separate but related statutes, the goal is to harmonize the statutes in light of their purposes.”); St. Peter’s Univ. Hosp. v. Lacy, 185 N.J. 1, 14 (2005) (“When reviewing two separate enactments, the Court has an affirmative duty to reconcile them, so as to give effect to both expressions of the lawmakers’ will.”).

The instant matter presents the question of what is to occur when a *regulation* appears (facially) to authorize an OTSC regarding whether to revoke or suspend a teaching staff member’s educational certificates when the same staff member (on the same conduct) has already been adjudged under a separate “final and binding” *statutory* scheme not to have committed conduct sufficient for (the less severe) tenured employment dismissal. Compare N.J.A.C. 6A:9B-4.4 with N.J.S.A. 18A:6-17.1(e). As the Legislature has not effectively supplied this answer, the courts must.

The interpretive duty is clear: “When interpreting different statutory provisions, [the courts] are obligated to make every effort to harmonize them, even if they are in apparent conflict.” In re Gray-Sadler, 164 N.J. 468, 485 (2000). “Statutes that deal with the same matter or subject should be read in *pari materia*

and construed together as a unitary and harmonious whole.” Saint Peter’s Univ. Hosp., 185 N.J. at 14–15 (internal quotes omitted).

As recently as 2012, the Legislature amended the Tenure Hearing Law to allow for the arbitration of tenure matters in a process that it declared “shall be final and binding and may not be appealable to the [C]ommissioner or the State Board of Education.” N.J.S.A. 18A:6-17.1(e).²

If an arbitrator expressly makes a finding that establishes “demonstrated inefficiency, incapacity, conduct unbecoming a teacher, or other just cause” but otherwise results in reinstatement, how can that arbitration result be final and binding if the State Board can thereafter seek to suspend or revoke that person’s educational certificates on identical conduct when doing so would result in dismissal from tenured employment? See N.J.A.C. 6A:9B-4.4 (authorizing an OTSC on the basis of “demonstrated inefficiency, incapacity, conduct unbecoming . . . or other just cause”); see also N.J.S.A. 18A:26-2 and N.J.S.A. 18A:27-2 (requiring dismissal from employment the instant an employee’s certificates are suspended or revoked).

The answer to this statutory issue is not complicated. The State Board should simply exercise its discretion and not pursue a certificates’ OTSC when an underlying tenure arbitration orders a reinstatement to tenured employment. Nothing

² Notably, the State Board in its Brief, at 11, states that the “final and binding” result is only final and binding between the local district and the employee—and that the State Board is not bound. Critically, however, the relevant statute, N.J.S.A. 18A:6-17.1(e), contains no limitation on the “final and binding” arbitration result.

in the regulation that gives rise to this matter—N.J.A.C. 6A:9B-4.4—appears to require the automatic issuance of a certificates’ OTSC when there is demonstrated inefficiency, incapacity, or conduct unbecoming. Rather, N.J.A.C. 6A:9B-4.4 states only that the State Board “may” seek to revoke or suspend educational certificates on such a showing. Moreover, even when a tenure proceeding results in loss of tenure and employment dismissal, the Board still maintains the discretion (but is not required) to issue a certificates’ OTSC. See N.J.A.C. 6A:9B-4.5(a)(1). Thus, even in such cases, a certificates’ proceeding is not automatic. Id.

In fact, the entire process by which the State Board can seek to revoke or suspend a teaching staff member’s educational certificates is discretionary. Review of the Board’s governing statute—N.J.S.A. 18A:6-34 et seq.—and the implementing regulations—N.J.A.C. 6A:9B-4.1 et seq.—demonstrates that every decision to revoke or suspend a teaching staff member’s educational certificates rests entirely on the State Board’s discretion. See N.J.A.C. 6A:9B-4.1 (giving the Board the discretion to refuse to issue an educational certificate if it determines the candidate is not fit for employment as a teaching staff member); N.J.A.C. 6A:9B-4.2 (giving the Board discretion to refuse to issue an educational certificate based upon a candidate’s criminal history unless it contains a disqualifying event pursuant to N.J.S.A. 18A:6-7.1 et seq.); N.J.A.C. 6A:9B-4.4 (giving the Board discretion to revoke or suspend an education license on the basis of demonstrated inefficiency,

incapacity, or conduct unbecoming); N.J.A.C. 6A:9B-4.5 (giving the Board discretion to revoke or suspend an education license if it determines on its own that certain conduct warrants the revocation or suspension of the certificate(s)).

Additionally, the implementing regulations, as relevant here, only require that the local district notify the State Board when a teaching staff member resigns or is placed on leave following accusations of criminal or unbecoming conduct, is convicted of a crime, or is found to have committed abuse and neglect. N.J.A.C. 6A:9B-4.3(a).

The purpose of these notification requirements reflects State Board’s duty to essentially “police” and oversee the profession. But none of these circumstances requires the Board of Examiners to act against a staff member’s certificates—in each, the Board merely has the discretion to do so.

The only exception to such discretion is when a teaching staff member commits conduct that constitutes a disqualifying event pursuant to N.J.S.A. 18A:6-7.1 et seq. As the disqualification statute is not relevant here, it is not discussed.

Even the courts have recognized that the decision to seek the suspension or revocation of a teaching staff member’s educational certificates following tenure charges resulting in dismissal is not automatic and is discretionary. See N.J.A.C. 6A:3-5.6(a)(6) (noting *only* a duty to refer). As the Hon. Margaret M. Monaco, A.L.J., has noted:

It is recognized that revocation or suspension of a teaching certificate is not automatic following dismissal from employment as a teacher. “Dismissal from a tenured position and revocation of certification serve different purposesThe Board of Examiners’ decision to revoke or suspend precludes employment as a teacher in any school district in this state and thus, . . . is a significant [responsibility]. . . . This responsibility requires that the Board of Examiners make an independent determination as to whether the individual should be precluded from employment in *other* districts, whether permanently or temporarily[.] [IMO Certificates of Valencia, *supra*, 2021 WL 8322396, at 10 (Initial Decision, October 28, 2021) (internal quotes omitted) (emphasis added) (attached as Exhibit “7”)]

While the State Board determined to reject Judge Monaco’s decision to dismiss the OTSC in Valencia, it did not question her above analysis. Her analysis on that point is indeed correct.³ But the responsibility to independently determine whether the individual should be precluded from employment in “other” districts should *only* be undertaken if the individual is dismissed from tenured employment. This point is worth emphasizing as such an inquiry makes no logical sense if the individual is reinstated to employment. Indeed, an inquiry following reinstatement only makes sense if the DOE desires to take a “second bite” of the proverbial apple.

³ The analysis applied by Judge Monaco’s has consistently been applied in State Board matters. See e.g., IMO Certificates of Kearney, *supra*, (attached as Exhibit “8”) (following the withdrawal of tenure charges due to a resignation, the matter was automatically referred to the State Board which, under its independent analysis, determined that neither revocation nor suspension was warranted and dismissed the OTSC); IMO Certificates of Labib, *supra*, (attached as Exhibit “9”) (reversing the State Board of Examiners’ two year suspension of certificates following a tenure dismissal on the basis that the State Board failed to independently determine the appropriate penalty apart from the analysis in the underlying tenure dismissal matter).

While the State Board operates as a safeguard for the profession of public education, it does not involve itself with local employment matters. Of course, a local board of education has, at its maximum, only the power to terminate employment. As a result of this power dynamic, if the conduct is sufficiently egregious, after an employee is removed, terminated, or otherwise evades a local district's jurisdiction, the Examiners must conduct a logical secondary inquiry to determine if the further penalty of certificate suspension or revocation is warranted. Many rules governing the Examiners support this authority. See N.J.A.C. 6A:3-5.6(a)(6) (recognizing the "Commissioner's duty to refer tenure determinations resulting in loss of position to the State Board of Examiners for possible suspension or revocation of certificate"); N.J.A.C. 6A:3-5.6(d) (allowing the Commissioner the discretion to refer a matter for certificate revocation or suspension whenever a staff member resigns prior to the full adjudication of a tenure charge); N.J.A.C. 6A:9B-4.4 (giving the Examiners the power to revoke or suspend on the basis of "demonstrated inefficiency, incapacity, conduct unbecoming a teacher, or other just cause"); N.J.S.A. 18A:28-8 (allowing the Commissioner to suspend certificates for not more than a year whenever a staff member resigns from a school district without providing 60 days notice); N.J.A.C. 6A:9B-4.8 (same); N.J.A.C. 6A:9B-4.3(a)(1) and (2) (giving the Examiners the opportunity to initiate a proceeding against a person's certificates when a tenured or non-tenured staff member resigns or retires

from his or her position following an accusation of a “criminal offense or unbecoming conduct”); N.J.A.C. 6A:9B-4.3(a)(3) (requiring notice to the Examiners any time a teaching staff member fails to maintain mandated educational certificate or license); N.J.A.C. 6A:9B-4.3(a)(4) (requiring notice to the State Board whenever a staff member is “convicted of a crime or criminal offense while in the school district’s employ”); N.J.A.C. 6A:9B-4.3(a)(5) (requiring notice to the Examiners following the receipt of a “report from the Department of Children and Families substantiating allegations of abuse or neglect, or establishing ‘concerns’ regarding a certificated teaching staff member”).

The point of all these requirements is to provide the Examiners with the appropriate authority, when a local district is powerless, to ensure that certificate holders are not a threat to the profession or the students within their charge.

But the system is not designed to allow the Examiners to essentially relitigate matters that have already been decided. If a local district files tenure charges and the Commissioner deems them sufficient to warrant dismissal or reduction in salary, and an appointed arbitrator agrees—the harshest penalty the arbitrator is empowered to issue is employment dismissal. In cases resulting in dismissal, the Commissioner has a “duty” under N.J.A.C. 6A:3-5.6(a)(6) to refer the matter to the Examiners for possible suspension or revocation of the individual’s certificate(s). Thus, the Examiners’ responsibility to independently determine whether the individual should

be precluded from employment in “other” districts, as referenced by Judge Monoco in IMO Valencia, supra, at 10, should be undertaken in such circumstances. But when an arbitrator appointed under the authority of the Commissioner issues a final and binding agency determination that the conduct—while unprofessional, inappropriate or unbecoming⁴—is not sufficient to warrant dismissal from employment, the Examiners should not be permitted a second opportunity to pursue the much harsher penalty of certificate suspension or revocation. This is especially true given that the standard for unbecoming conduct is identical in both tenure proceedings and State Board certificate proceedings.

The legal issue raised by the instant OTSC would be entirely resolved if the Board of Examiners simply exercised its discretion more judiciously in matters involving conduct already determined through the final and binding tenure arbitration process not to warrant employment dismissal. But the Board of Examiners appears to lack appropriate discretion. Therefore, this Court should make a pronouncement to constrain it. That is, the Examiners should be entirely precluded from bringing a certificates’ OTSC arising out of conduct already adjudged in a final and binding arbitration not to warrant dismissal from tenured employment.

⁴ It appears that TEACHNJ arbitrators use the term “unbecoming” in a literal sense rather than as a legal term of art in cases where they find the conduct does not warrant employment dismissal. The Examiners should not issue certificate revocation matters robotically—and without discretion—if the term “unbecoming” is noted to describe the conduct of an employee charged under N.J.S.A. 18A:6-10 et seq. provided that the assigned arbitrator *does not* find that the conduct warrants employment dismissal.

Such a pronouncement is the only way to harmonize the statute. That is because if the process under N.J.S.A. 18A:6-10 et seq. results in employment reinstatement and the Legislature declares that result “final and binding” and “not appealable” to the Commissioner or State Board of Education (see N.J.S.A. 18A:6-17.1(e)), the final and binding nature of that result would be rendered entirely meaningless if the Examiners (professing a separate interest) could simply upend and directly undermine that result given that *any* certificate suspension or revocation would result in automatic dismissal from tenured employment. See N.J.S.A. 18A:26-2 and N.J.S.A. 18A:27-2 (requiring dismissal from employment the instant an employee’s certificates are suspended or revoked). Of course, a basic tenet of statutory construction is that the words of any statute are presumed to be intentional and that statutes must not be interpreted in ways that render words or phrases superfluous. See DiProspero v. Penn, 183 N.J. 477, 492 (2005) (noting that courts should not “rewrite a plainly-written enactment of the Legislature []or presume that the Legislature intended something other than that expressed by way of the plain language.”); Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 587 (2013) (noting that statutes should not be interpreted to render its words or phrases superfluous).

If the determination in a tenure arbitration resulting in reinstatement to a tenured position is to be final and binding and not appealable to the Commissioner

or the State Board of Education, then the Commissioner, through the State Board of Examiners, should not be able to make an “end run” around this statutory requirement and seek to revoke or suspend certificates on conduct already deemed insufficient for dismissal from local tenured employment.

It is also worth noting that the statute requiring boards of education to indemnify employees in certain matters arising out of the scope of employment expressly does not apply when a district itself brings a disciplinary action. See N.J.S.A. 18A:16-6. However, in an administrative action not brought by the local board, such as the instant one brought by the Examiners, for actions or omissions arising out of employment, boards of education are statutorily required to indemnify. Id. But requiring indemnification in a matter like this one is absurd given that it has effectively already been brought and litigated by the local board of education in a process expressly not covered by N.J.S.A. 18A:16-6. As statutes should not be construed to lead to absurd results, this is yet another reason why the subject OTSC—and matters like it—should be rejected and flatly prohibited. See Sun Life Assurance Co. of Canada v. Wells Fargo Bank, N.A., 238 N.J. 157, 174 n.3 (2019) (“Statutes cannot be construed to lead to absurd results.”).

Lastly, this is not a matter where the Commissioner is entitled to any special deference. Although this matter involves an agency regulation, when the implementation of that regulation renders an entire statutory scheme meaningless,

the matter becomes one of statutory interpretation where the courts are required to give meaning and effect to the will of the Legislature. State v. S.B., 230 N.J. 62, 67 (2017) (“Questions related to statutory interpretation are legal ones.”). In other words, the agency should be entitled to no deference when the question is whether it violated one of its own statutory mandates. See Matter of Proposed Construction of Compressor Station, 476 N.J. Super. 556, 565 (App. Div. 2023) (“[N]o deference is required when an agency’s statutory interpretation is contrary to the statutory language, or if the agency’s interpretation undermines the Legislature’s intent.”) (internal quotes and citations omitted).

In this matter, the Court should declare that the DOE’s enforcement of the regulation that authorizes this matter—N.J.A.C. 6A:9B-4.4—cannot render meaningless the statutory mandates of N.J.S.A. 18A:6-17.1(e).

CONCLUSION

For all these reasons, we ask this Court to grant the pending Petition for Certification and our application to appear as *amicus curiae* pursuant to Rule 1:13-9(e), and to reverse the unpublished Appellate Division decision in IMO the Certificates of Nicholas Cilento, Dkt. No. A-3586-21 (June 26, 2024).

Respectfully submitted,
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