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May 27, 2025

Honorable Chief Justice and Associate Justices  
Supreme Court of New Jersey  
Richard J. Hughes Justice Complex  
P.O. Box 970  
Trenton, NJ 08625

**Re: In the Matter of the Certificates of Nicholas Cilento,  
New Jersey Department of Education, State Board  
of Examiners  
Supreme Court Dkt. No. 089658  
Petitioner's Reply to Respondent's Supplemental Brief**

Honorable Justices:

We represent Petitioner Nicholas Cilento ("Mr. Cilento"). We have received the May 2, 2025 Supplemental Brief filed by Respondent State of New Jersey, Department of Education, Commissioner of Education (the "DOE"). Pursuant to R. 2:6-2(b), please accept this letter memorandum in lieu of a more formal brief as Mr. Cilento's Reply to that submission.

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### **STATEMENT OF PROCEDURAL HISTORY AND RELEVANT FACTS**

Mr. Cilento relies upon and incorporates by reference herein the Statement of Facts as it appears in his Appellate Brief, at **Db9-Db12**, as well as the Preliminary Statement and Statement of the Matter Involved as set forth in his Petition for Certification (Amended) at **pp. 6-9**. The subsequent Procedural History of the matter before this Court is set forth in the annexed eCourts Docket Sheet. **Sa1**.

**LEGAL ARGUMENT**  
**THE APPELLATE DIVISION’S DECISION SHOULD BE REVERSED**

All of the issues raised in the DOE’s 50-page Supplemental Brief (cited hereinafter as “Sb”) have already been comprehensively addressed by Mr. Cilento in his Petition for Certification and Reply Brief, and by amicus curiae<sup>1</sup> in their respective submissions to the Court. Mr. Cilento relies thereupon, and by way of further Reply, notes as follows.

First, the DOE claims that Mr. Cilento seeks a “sea change” in the law. **Sb2**. Contrarily, it is Mr. Cilento that seeks to maintain longstanding agency respect for final decisions, and the DOE that seeks the seismic disruption of that principle.

Prior to the passage of the TEACHNJ Act, p.l. 2012, c.26, the Commissioner of Education (the “Commissioner”) issued the Final Agency Decision (“FAD”) in teacher tenure cases. Over its 50 supplemental pages, the DOE cites not a single case where the Department of Education, State Board of Examiners (the “Examiners”) suspended or revoked a teaching certificate, following a Commissioner-issued FAD that allowed a teacher to keep their job<sup>2</sup>. Why no such citations? Because, prior to TEACHNJ, that never happened. Rather, the Examiners respected the

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<sup>1</sup> New Jersey Principals and Supervisors Association (“NJPSA”) and New Jersey Education Association (“NJEA”).

<sup>2</sup> The power of the Commissioner to issue such FADs was enacted via p.l. 2008, c. 36. Prior thereto, the State Board of Education issued teacher tenure case FADs. The same principle applies to those earlier FADs as well.

Commissioner’s determinations that a teacher, worthy of maintaining their employment, should not be divested of their employment, *de jure*, by way of delisensure. Now, the DOE rejects—requesting this Court’s countenance—the integrity of the process<sup>3</sup> that our Legislature has deemed appropriate to determine whether a tenured teaching staff member can maintain their employment.

Second, bereft of any such precedent, the DOE argues that tenure case arbitration awards issued pursuant to the statutory mandates of TEACHNJ are simply not FADs. **Sb29-33**. If not, what are they? Once such an Award is issued, the DOE has no further jurisdiction<sup>4</sup>. No further administrative review is available. Only judicial review obtains. The Arbitrator’s Award is the final step in the administrative process. If that is not “Final,” what is? The DOE incorrectly argues that the existence of an “FAD” depends upon the nature of judicial review, and not upon the fact that proceedings conducted under the auspices of the agency have concluded. **See Sb30-31**. The DOE’s citations to *Sanjuan v. Sch. Dist. of W. N.Y., Hudson Cnty.*, 256 N.J. 369 (2024); *Kean Fed’n of Teachers v. Morell*, 233 N.J. 566 (2018); *Morison v.*

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<sup>3</sup> i.e., FADs issued by TEACHNJ Arbitrators pursuant to N.J.S.A. 18A:6-9 and N.J.S.A. 18A:6-17.1.

<sup>4</sup> Notably, before such an Award is issued, the Commissioner retains administrative authority, both the assign arbitrators to hear cases, and to remove arbitrators that do not follow the requirements of the TEACHNJ Act. See N.J.S.A. 18A:6-17.1. While heard by arbitrators, TEACHNJ tenure cases are still conducted pursuant to school law statutes, under the jurisdiction and authority of the DOE.

*Willingboro Bd. of Educ.*, 478 N.J. Super. 229 (App. Div.), *certif. denied*, 258 N.J. 163 (2024); and the TEACHNJ Act's Legislative history in no way support the DOE's argument that TEACHNJ Arbitration Awards are not FADs<sup>5</sup>.

Third, the DOE expounds upon the concept that *res judicata*, collateral estoppel, and preclusive principals cannot prevent the Examiners from prosecuting an Order to Show Cause ("OSC") after a teacher tenure arbitration award issues. See **Sb26-29; 33-47**. The argument is entirely wasted—Petitioner agrees. Petitioner made his agreement very clear in his Appellate Brief (**Db20-22**); his Appellate Reply Brief (**Drb5**); his Petition for Certification (at **pp.14-15**) and his Reply in Further Support of Petition for Certification (at **p.5**). Throughout the 50 pages of their Supplemental Brief, the DOE, incredibly, dodges the issue presented by this Court's Certification—whether the agency as a whole can take inconsistent action based upon a single, identical factual record.

There is neither Legislative nor decisional support for the DOE's attempt to treat TEACHNJ arbitration awards as second-class decisions. This Court should see the DOE's Supplemental Brief for what it is: an attempt, by the DOE, to claw back

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<sup>5</sup> Indeed, as this Court stated in *Sanjuan*: "[a]lthough 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." *Sanjuan*, *supra*, 256 N.J. 369, 309 A.3d at 619. That language is hardly indicative of a fundamental change to the nature of the tenure hearing, itself.

the authority which our Legislature reclaimed and decided to invest in well-trained, highly experienced Arbitrators, fully capable of deciding whether a tenured teacher can be maintained, or must be removed.

### **CONCLUSION**

For all the reasons previously articulated by Mr. Cilento, the Appellate Division's decision should be Reversed.

Respectfully submitted,  
MELLK CRIDGE LLC

*s/ Edward A. Cridge*  
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