



# State of New Jersey

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

TRENTON, NEW JERSEY 08625-0295  
Telephone (609) 292-7524 / Facsimile (609) 777-1779  
TRS 711 (609) 292-6683  
[www.nj.gov/treasury/pensions](http://www.nj.gov/treasury/pensions)

PHILIP D. MURPHY  
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SHEILA Y. OLIVER  
*Lt. Governor*

ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

March 10, 2023

Sent via email to: [REDACTED]

Jeff Simon  
[REDACTED]

RE: TPAF 1-[REDACTED]

Dear Mr. Simon:

## **FINAL ADMINISTRATIVE DETERMINATION**

I am writing in reference to the decision of the Board of Trustees (“Board”) of the Teachers’ Pension and Annuity Fund (“TPAF”) regarding your appeal of the Board’s denial of your request for Deferred Retirement benefits. The Board originally denied your request at its meeting on November 3, 2022. You filed a timely appeal of that determination on December 19, 2022. At its meeting of February 2, 2023, the Board considered your written submissions, and accompanying documentation, along with the the relevant case law governing the TPAF and denied your request for Deferred Retirement benefits. Finding no genuine issue of material fact in dispute, the Board also denied your request for an administrative hearing. The Findings of Fact and Conclusions of Law, as outlined below, were presented to and approved by the TPAF Board at its March 9, 2023, meeting.

## **FINDINGS OF FACT**

The record before the Board establishes that you were enrolled in the TPAF on January 1, 2001, as a result of your employment with the Middletown Township Board of Education as an Assistant Principal. On August 1, 2006, you transferred to the Union Beach Board of Education.

On July 1, 2007, you transferred to the Freehold Regional High School District (“Freehold”) where you held the title of Principal. You remained in this position until your termination.

By way of tenure charges dated February 6, 2012, Freehold charged you with five counts of conduct unbecoming, seven counts of insubordination, and one count of other just cause. Specifically, Freehold alleged that you: 1) improperly received monies for security guard pay; 2) authorized an extra duty assignment and pay for an unapproved position; 3) failed to account for missing play proceeds from the December 2011 High School play; 4) transferred student activity funds from the yearbook account to purchase baseball championship rings; and 5) failed to account for missing proceeds from a football game and subsequently attempted to cover up the missing amounts. Freehold also alleged that you violated district policies regarding the conduct of fire drills by allowing pizza sales to be held during fire drills and allowing secretarial staff to remain in the building during a fire drill. All of the charges were in violation of policies, regulations, and procedures, which endangered students and employees. Accordingly, Freehold sought your dismissal from tenured employment.

Thereafter, the matter was transmitted to the Office of Administrative Law (“OAL”) as a contested matter. In an Initial Decision dated January 22, 2013, the Administrative Law Judge (“ALJ”) found you guilty and concluded that your acts were misguided and inappropriate for an educator in a leadership position, and constituted misconduct. The ALJ further ordered your removal from employment.

Thereafter, in a Decision dated March 7, 2013, the Commissioner of Education concurred with the ALJ’s conclusion that the District had proven you were guilty of conduct unbecoming and that your conduct warranted your dismissal. On September 16, 2016, the State Board of Examiners voted to suspend your Principal Certificate of Eligibility as well as your Principal Certificate for a period of one year. On November 1, 2016, the Board voted to adopt its formal written decision and ordered the suspension of your certificates effective immediately.

On October 15, 2019, you filed an application for Deferred Retirement effective February 1, 2022. At the time of your last pension contribution on February 28, 2013, you were approximately 51 years of age and had 11 years and 9 months of TPAF service credit, so the only benefit for which you could file was a Deferred Retirement.

At its meeting of November 3, 2022, the Board considered your eligibility for Deferred Retirement. The Board found that, because you were removed for conduct unbecoming a teacher or other just cause, you are not eligible for a Deferred Retirement pursuant to N.J.S.A. 18A:66-36. You filed an appeal on December 19, 2022, requesting that the Board reconsider its prior decision and, alternatively, transmit this matter to the OAL for an administrative hearing. At its meeting of February 2, 2023, the Board reaffirmed its previous decision and denied your request for a hearing.

### **CONCLUSIONS OF LAW**

The issue before the Board is whether you are eligible to apply for Deferred Retirement in light of your removal for conduct unbecoming a teacher or other just cause. In making its determination, the Board relied upon N.J.S.A. 18A:66-36, which states in pertinent part:

Should a member of the Teachers' Pension and Annuity Fund, after having completed 10 years of service, be separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for conduct unbecoming a teacher or other just cause under the provisions of N.J.S.18A:28-4 to 18A:28-5 and 18A:28-9 to 18A:28-13 inclusive, such person may elect to receive, in lieu of the payment provided in N.J.S.18A:66-34:

- a. The payments provided for in N.J.S.18A:66-37, if he so qualified under said section; or
- b. A deferred retirement allowance beginning at age 60,

.....

[N.J.S.A. 18A:66-36 (Emphasis added).]

The Board finds that the plain language of N.J.S.A. 18A:66-36 renders you ineligible for Deferred retirement benefits. There is no question that you were removed for multiple instances conduct unbecoming a teacher and other just cause— a determination that was upheld following a full hearing in the OAL and adoption by the Commissioner of Education on March 7, 2013. Generally, pension statutes are “remedial in character” and “should be liberally construed and administered in favor of the persons intended to be benefited thereby.” Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg’l High Sch. Dist., 199 N.J. 14, 34 (2009). However, “eligibility is not to be liberally permitted.” Smith v. State, Dep’t of Treasury, Div. of Pensions & Benefits, 390 N.J. Super. 209, 213 (App. Div. 2007). Rather, “the applicable guidelines must be carefully interpreted so as not to ‘obscure or override considerations of . . . a potential adverse impact on the financial integrity of the [f]und.’” (quoting Chaleff v. Teachers’ Pension & Annuity Fund Trustees, 188 N.J. Super. 194, 197 (App. Div. 1983).

As noted above, the Board has reviewed all relevant documentation and written submissions, critically the Commissioner of Educations and State Board of Examiners determinations provide the necessary factual foundation for the Board’s determination. 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 TPAF.

You are eligible to withdraw your accumulated pension contributions remitted during active membership. You may request an *Application for Withdrawal* by writing to Robin Willever, Supervisor, Loan/Withdrawal Section at the Division, at the address above. **Nonetheless, you are cautioned against filing the *Application for Withdrawal* if you intend to appeal the Board’s determination. Withdrawal terminates all rights and privileges of membership.**

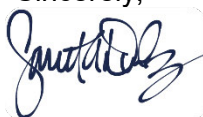
You have the right, if you wish, to appeal this final administrative determination to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in

Jeff Simon  
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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 black ink, appearing to read "Saretta Dudley", enclosed in a thin black rectangular border.

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

G-4/SD

C: J. Ehrmann (ET); R. Willever (ET)