

New Jersey Commissioner of Education**Decision**

Antoine Gayles,

Petitioner,

v.

Board of Education of the Township of
Hillside, Union County,

Respondent.

Synopsis

Petitioner began working as Superintendent of Schools in July 2016 under a four-year contract expiring in June 2020. Following an election in 2018, which significantly altered the composition of the Board of Education, the “lame duck” board rescinded petitioner’s original contract and approved a successor contract that increased petitioner’s salary and expired in June 2023. When the newly-elected Board took office in January 2019, petitioner was suspended with pay pending the resolution of questions regarding the validity of the successor contract. Petitioner sought reinstatement under the terms of the successor contract, while the Board sought to have the successor contract declared void.

The ALJ found, *inter alia*, that: petitioner still had 18 months left in his term as Superintendent when the “lame duck” board voted on the successor contract; there was no compelling reason to modify the original contract other than what amounted to unilateral action by the outgoing board president; the “lame duck” board failed to comply with the public notice and comment requirements of *N.J.S.A.* 18A:11-11 and *N.J.A.C.* 6A23A-3.1; the Board’s suspension of petitioner was invalid; the petitioner’s suspension was, in essence, a termination; and the Board failed to comply with any of the requirements of *N.J.S.A.* 18A:17-20 and *N.J.A.C.* 6A23A-3.2. The ALJ ordered that petitioner be reinstated to his position as superintendent from the date of the suspension through the expiration of the original contract on June 30, 2020, together with all salary, benefits, and seniority credit for that period of time.

Upon review, the Commissioner concurred with the ALJ that both the successor contract and the rescission of the original contract are void. In so deciding, the Commissioner found, *inter alia*, that the rescission of an existing contract well in advance of its expiration in order to increase the salary and extend the term is exactly the type of situation contemplated in *N.J.S.A.* 18A:11-11. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is entitled to his salary and benefits under the terms of the original contract, through its expiration on June 30, 2020.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

August 3, 2020

157-20

OAL Dkt. No. EDU 06502-19 and EDU 05548-19
Agency Dkt. No. 45-2/19

New Jersey Commissioner of Education
Final Decision

Antoine Gayles,

Petitioner,

v.

Board of Education of the Township of
Hillside, Union County,

Respondent.

Board of Education of the Township of
Hillside, Union County,

Petitioner,

v.

Antoine Gayles,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by Antoine Gayles (Gayles) pursuant to *N.J.A.C.* 1:1-18.4, and the reply thereto by the Hillside Board of Education (Board) have been reviewed.

This matter concerns the validity of two contracts between Gayles and the Board. Gayles began working as the superintendent in Hillside on July 1, 2016, under a four-

year contract expiring June 30, 2020 (original contract). In late 2018, following an election that significantly changed the membership of the district’s board of education, the “lame duck” board rescinded the original contract and approved a new contract (successor contract) that increased Gayles’ salary and expired in June 2023. In January 2019, the newly-elected board of education (Board) suspended Gayles until questions regarding the validity of the successor contract were resolved. The Board stipulated that the suspension was not based on performance, impropriety, or any allegations of wrongdoing.

The ALJ concluded that the successor contract was void and, consequently, the rescission of the original contract – done solely to allow for the parties to enter into the successor contract – was also void. The ALJ reasoned that Gayles still had 18 months left in his term at the time the “lame duck” board voted on the successor contract, and there was no compelling reason to modify it other than what amounted to unilateral action by the outgoing board president. Moreover, the “lame duck” board failed to comply with the public notice and comment requirements of *N.J.S.A.* 18A:11-11 and *N.J.A.C.* 6A:23A-3.1. The ALJ also concluded that the Board’s suspension of Gayles was invalid. The resolution regarding the suspension was not part of the agenda for the meeting in which it occurred, again circumventing the public notice and comment requirements, and Gayles did not receive a *Rice* notice sufficiently in advance of the meeting. The ALJ found that the suspension was, in essence, a termination, and that the Board failed to comply with any of the requirements of *N.J.S.A.* 18A:17-20 and *N.J.A.C.* 6A:23A-3.2. The ALJ ordered that Gayles be reinstated to his position as superintendent from the date of the suspension through the expiration of the original contract on June 30, 2020, together with all salary, benefits, and seniority credit for that time.

In his exceptions, Gayles argues that the successor contract was valid and binding because it was reviewed by the “lame duck” board’s attorney, approved by the Executive County Superintendent (ECS), and voted on by the “lame duck” board during a meeting in which it was placed on the agenda and discussed during the public comment period. Gayles notes that the ECS testified that he was aware that the successor contract was entered into by the “lame duck” board and contends that if the ECS had required a resolution of this issue, he could have requested more information. According to Gayles, *N.J.S.A.* 18A:11-11 gives the “lame duck” board the authority to perform all acts and do all things necessary for the lawful and proper conduct of the schools, including modifying the terms of his contract by entering into the successor contract. Gayles argues that the Board’s reliance on *Wall Twp. Educ. Ass’n v. Bd. of Educ. of Wall Township*, 2019 *N.J. Super. Unpub. LEXIS* 575 (App. Div. Mar. 14, 2019) is misplaced because the decision postdates the acts at issue in this case and does not specifically state that its requirements are retroactive.

In reply, the Board argues that the ALJ appropriately found that the “lame duck” board’s decision to bind the Board to the successor contract violated well-established principles regarding board authority. Moreover, the Board argues that the record demonstrates that the outgoing president acted unilaterally and without the knowledge of the full “lame duck” board. The Board notes that the ECS was not aware of the procedural shortcomings related to the successor contract and that his approval cannot, therefore, render the successor contract enforceable. The Board also argues that the *Wall Twp.* decision does not create new requirements, but rather confirmed existing requirements, and that the holding in that matter should be applied to this case.

Upon review, the Commissioner concurs with the ALJ that both the successor contract and the rescission of the original contract are void. Initially, the Commissioner notes that the Board did not take exception to the ALJ's conclusion that the rescission of the original contract was void, and the Commissioner finds no reason to disturb that conclusion. Accordingly, Gayles is entitled to his salary and benefits under the terms of the original contract, through its expiration on June 30, 2020.

As to the successor contract, the Commissioner does not find Gayles' exceptions, which largely reiterate arguments made before the ALJ, to be persuasive. First, the Commissioner agrees with the ALJ that extending Gayles' contract term by two years and increasing his salary exceeds the authority of the "lame duck" board. The position of superintendent was not vacant at the time the "lame duck" board took action, and it would not be vacant for more than 18 months. The "lame duck" board "had no statutory authority to bind its successor Board by issuing individual contracts to [its continuing employees]." *Nowak v. Bd. of Educ. of the Borough of Manville, Somerset Cty.*, 1976 S.L.D. 43. See also *Gonzalez v. Bd. of Educ. of Elizabeth School Dist., Union Cty.*, 325 N.J. Super. 244 (App. Div. 1999) (concluding that "[s]uch an appointment usurps the will and power of a future board to fill a vacancy based on the future board's consideration of prevailing policy, personnel and general welfare concerns.")

Furthermore, the "lame duck" board failed to provide the required public notice prior to voting on the successor contract. "The Legislature's clear mandate in [N.J.S.A. 18A:11-11] was the dual purpose of public notice and a public hearing when a board of education renegotiates, extends, amends, or alters an existing contract with its superintendent." *Wall Twp. Educ. Ass'n v. Bd. Of Educ. of Wall Township, supra*, at 12. The rescission of an existing

contract well in advance of its expiration in order to increase the salary and extend the term is “exactly” the type of situation contemplated by the statute that requires public notice. *Ibid.* The Appellate Division made clear in the *Wall Twp.* decision that it was an interpretation of the statute as written – the same version of the statute that was in effect at the time of the events at issue in this case. Therefore, that decision represents a confirmation of existing statutory requirements, rather than a new requirement being applied retroactively, as Gayles argues, and it is appropriate to apply the *Wall Twp.* holding here. The “lame duck” board’s failure to comply with the notice requirements renders the successor contract void.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner shall be reinstated to his position as superintendent from the date of the suspension through the expiration of the original contract on June 30, 2020, together with all salary and benefits owed for that time.

IT IS SO ORDERED.¹

INTERIM COMMISSIONER OF EDUCATION

Date of Decision: 8/3/2020

Date of Mailing: 8/5/2020

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36 (N.J.S.A 18A:6-9.1)*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

ANTOINE GAYLES,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF HILLSIDE,**

Respondent.

OAL DKT. NO. EDU 06502-19

AGENCY DKT. NO. 45-2/19

**BOARD OF EDUCATION OF THE
TOWNSHIP OF HILLSIDE,**

Petitioner,

v.

ANTOINE GAYLES,

Respondent.

OAL DKT. NO. EDU 05548-19

AGENCY DKT. NO. 45-2/19

William F. Koy, Esq., for petitioner

Allan C. Roth, Esq., for respondent (Ruderman & Roth, attorneys)

Record Closed: December 19, 2019

Decided: June 17, 2020

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE

Petitioner, Antoine Gayles, currently suspended/placed on leave from his position as superintendent of schools in Hillside, New Jersey, with pay, brings an action before this tribunal as a result of a unilateral action by respondent Hillside Board of Education suspending him from his position effective January 24, 2019. Also pending is an application for declaratory relief brought by the Board, seeking to have the new contract which was approved by the “lame duck” Board on November 29, 2018, declared void ab initio, with no further obligation to Dr. Gayles. The dispute between these parties was the subject of two prior emergent applications set forth below in the procedural history. With decisions rendered on both emergent applications, what is left to determine is the Board’s position that with the old contract rescinded, Dr. Gayles’ new contract is void ab initio. Dr. Gayles seeks reinstatement as superintendent under the terms of the new contract, which would allow him to serve through June 2023.

PROCEDURAL HISTORY

Petitioner filed a second motion for emergent relief directly with the undersigned due to its connection to a pending related case, seeking reinstatement of salary and benefits. The matter had been the subject of a prior application for emergent relief before the Hon. Thomas Betancourt on March 6, 2019. Based on certain representations that were made on the record at the time by the Board counsel, and the respective position of the Board itself, Judge Betancourt denied the application by petitioner on the basis that, among other things, the Board was still paying petitioner and continuing to provide benefits, and his determination that he did not believe petitioner could succeed on the merits and meet the other criteria required for this type of application.

Although Judge Betancourt ruled at the time that the rest of petitioner’s case was moot, the Commissioner disagreed and remanded the matter for additional proceedings. Subsequently, Judge Betancourt recused himself from handling the rest of the case, as well as the related declaratory action filed by the Board.

On May 9, 2019, the Board changed its position on the continued payments to petitioner based in part on the recently decided case of Wall Township Education Association v. Wall Township Board of Education, No. A-4885-17 (App. Div. March 14, 2019), <http://njlaw.rutgers.edu/collections/courts/>. The decision to do so, while the case on the merits was still pending before the Office of Administrative Law, was made with only three days' notice to petitioner, with the notice omitting what action was going to be taken against Dr. Gayles.

Having learned that the salary and benefits would now be terminated, petitioner brought a second emergent application on May 23, 2019, to compel the Board to return him to the status quo and continue the payments, at least until both cases on the merits could be heard.

Each party filed briefs, and oral argument was held on June 17, 2019 on the second emergent application. The current superintendent, Dr. Sheard, was notified of her right to file to intervene in this proceeding and be heard but declined to do so.

An Order was issued compelling the District to continue Dr. Gayles' salary and benefits pending the outcome of the full proceeding. The plenary hearing went forward on July 8, 9, and 31, August 12, and October 8, 2019. Briefs were submitted and oral argument was held on December 19, 2019. An extension was granted for the issuance of the Initial Decision, and, shortly thereafter, State offices were closed due to Covid-19. The Governor subsequently issued an Executive Order allowing for additional time for the filing of decisions in pending matters.

TESTIMONY AND DISCUSSION

The Hillside Public School District is located in Union County. The first witness who testified was Darryl Palmieri, the acting Union County superintendent of schools. Mr. Palmieri, a former teacher, had only held the position for a few months when he was presented with a new contract to review between Dr. Gayles and the Hillside Board of Education.

Mr. Palmieri explained that his role is to serve as an extension of the New Jersey Department of Education, essentially to oversee all of the school districts in Union County. His office conducts evaluations of districts every three years, to review and approve administrator contracts and transportation contracts, and do budget reviews.

By law, county superintendents are required to review all superintendent contracts. In late October 2018, during his mid-year budget review of the district, Mr. Palmieri learned that there were discussions concerning changes to Dr. Gayles' contract. In early November 2018, the outcome of the local school Board election drastically changed the makeup of the majority of the Board which would take office on January 3, 2019, thus rendering the current Board into "lame duck" status. The Board president at the time, Ms. Thompson-Epps, was defeated, although she would later be appointed by the County superintendent to serve a one-year vacancy on the incoming Board.

On November 21, 2019, Mr. Palmieri received correspondence from the Board counsel at the time, Ms. Gonzalez, concerning a proposed new contract for Dr. Gayles, which included increased salary and benefits, and instead of his term expiring in eighteen months, under his existing contract, the proposed contract would expire in June 2023. He did not know at the time that the full Board was unaware that this proposed contract had been sent to him for review, nor did it go through the usual channels of being considered by the Board's labor or negotiations committees. According to Mr. Palmieri, he received it from the assistant business administrator, Annette Giordano.

Although Mr. Palmieri did not question the substance or term of the new contract, or how a decision was made to offer it, there were some salary credits and other miscellaneous items that needed revisions. Not having dealt with this situation before, Mr. Palmieri consulted with his predecessor, Roger Jenks, who had assumed a position in another part of the state. It was recommended to Mr. Palmieri that he tell the district that in order to implement a new contract, the old one would have to be rescinded first. He said normally a contract termination requires notice and a hearing.

The district inquired if the position had to be posted, and he responded that if the initial contract were rescinded, there was no requirement to post the job. A public hearing on a new contract was required, and the public should have the ability, according to Mr. Palmieri, to review it and comment on it before it was voted upon. When asked whether the original contract was enforceable after it was rescinded, he responded no, but he also viewed the rescission as a predicate to the passing of a successor contract, and that you couldn't have one without the other.

Mr. Palmieri did not question the timing of the new contract, and/or the implications for the incoming Board. He was a steady, credible witness.

The next witness called by the district was assistant business administrator Annette Giordano. Mrs. Giordano has served in this position for seventeen years. She confirmed that she was asked to convey the new contract to Mr. Palmieri by Dr. Gayles and was involved in a meeting with him, as was the Board's interim administrator and Board secretary, Dr. David Eichenholz. She did not recall any discussion about the propriety of entering into such a contract and its potential impact on the incoming Board.

Angela Menza was the next witness who appeared. Mrs. Menza had served on the Board for fourteen years. She explained her understanding of Board policy as it relates to negotiations and new contracts. As a member of the prior and new Board of Education, she indicated that the normal process would be to have such a document reviewed by the negotiations committee. In fact, she knew nothing about a new contract until she received it three days before the meeting to be held on November 29, 2018. Prior to the vote, there were no questions she recalled from the public, but the minutes of the meeting seem to suggest that there were about fifteen comments, some favorable, some unfavorable.

Mrs. Menza objected to the contract, as, in her view, it would be a burden on the new Board. She further stated that at no time did the old Board authorize the submission of the new contract to Mr. Palmieri.

Mrs. Menza, who continued to serve on the Board, then went on to discuss the decision to suspend Dr. Gayles in order to determine the validity of the new contract. She confirmed that the resolution to suspend was not on the agenda for the meeting on January 24, and for some reason it came as a “walk-on” resolution, with little discussion.

She confirmed there was no discussion by the former Board as to whether to offer a new contract and send it for review to the County superintendent. The only discussion she recalled was during the executive session prior to the vote on November 29.

When a question was asked by a fellow Board member of the former president, Ms. Thompson-Epps, for the reasons why Dr. Gayles was being offered a new contract, she responded “why not?” At least one member of the public questioned why the “lame duck” Board was taking such an action. Two other members of the public, Althea Mitchell and Arthur Kobitz, asked the same question. When asked if one Board member can instruct the superintendent to take action, Mrs. Menza indicated that the president can make such a request if the rest of the Board knows about it, and if it’s discussed either in committee or with the Board as a whole.

Mrs. Menza also stated that prior to the vote, she warned the Board, which would be leaving office in a month, that they couldn’t do a new contract in this manner. Towards the end of her testimony, Mrs. Menza indicated that she voted no because she believed it was an illegal contract. She also emphasized that at no time did the Board authorize sending the new contract to Mr. Palmieri, and she did not believe Board policy was properly followed.

Continuing her service with the swearing in of the new Board she confirmed that Dr. Gayles had no prior notice of the pending vote to suspend, and, again, as far as she knew, none of the Board committees were asked to review the action prior to the vote.

At the end of her testimony, the district put a stipulation on the record that the suspension was not performance or discipline related, nor were there any allegations of impropriety on the part of Dr. Gayles. Although she voted for the resolution to suspend,

which was consistent with her vote on the former Board against the contract, she did not vote to approve the appointment of an acting superintendent.

The next witness was Board member Joel Chapman. Mr. Chapman said that at the time of the events surrounding the new contract, he had been a Board member for about a year and a half. More importantly, Mr. Chapman had been the chair of the Board's labor committee in November 2018.

Mr. Chapman first learned about the new contract three days before the November 29 meeting in an email from staff member Marlena Batts. When he reviewed the email, he was surprised to learn that the subject was not about Dr. Gayles' existing contract, but about a new contract. As chair of the labor committee, he indicated that the usual protocol was to have something of this nature be reviewed first. Neither Dr. Gayles nor any other members of the Board discussed this item with Mr. Chapman prior to its introduction on November 29. Even the draft agenda did not include this item, according to Mr. Chapman.

Other Board members he reached out to prior to the meeting had no knowledge of the new contract, so the next day, November 27, he sent an email to Mr. Palmieri to inquire further. In response, Mr. Palmieri simply told Mr. Chapman that the concerns he expressed are up to Board counsel. In a further attempt to find out what was going on, Mr. Chapman wrote to Ms. Betts and asked "how could this be going on with a lame duck Board?"

Mr. Chapman further indicated that he was never asked as a member of the Board for permission to send the contract for review to Mr. Palmieri, and that he learned that the new contract process was initiated by Board president Thompson-Epps.

The method of enacting the new contract, as directed by Mr. Palmieri in conjunction with the former Board counsel, was to rescind the existing contract, and then vote on a new contract. This presumes that the entire Board knew about it and authorized it.

Mr. Chapman also continued his service on the Board into the next year. He confirmed that the resolution to suspend Dr. Gayles was not listed on the agenda for the first full public meeting on January 24. A motion to move the public portion of the meeting to earlier in the evening was approved. As a result, there would be only one part of the agenda for the public to speak, even if other resolutions, such as the motion to suspend Dr. Gayles, would be voted on later in the meeting.

Mr. Chapman further expressed that he voted for the suspension of Dr. Gayles due to a lack of trust, even though the Board was seeking a decision concerning the validity of the contract.

It was again noted during Mr. Chapman's testimony that the Board stipulated that the suspension of Dr. Gayles was not related to performance, impropriety, and there were no allegations of wrongdoing. He indicated that he was satisfied with the decision to suspend, since Dr. Gayles was being asked to "step away" with full pay until the matter was resolved.

When asked why the motion to suspend Dr. Gayles was not reflected on the agenda for January 24, he had no explanation. He also confirmed that prior to the vote to suspend, the meeting was not re-opened to the public for comments on what was being done.

Prior to the meeting, there was also no communication about who would become the acting superintendent, though eventually the Board approved the appointment of the director of curriculum, Debra Sheard, to serve in this capacity. I **FIND** the testimony of Mr. Chapman to be credible.

Juan Allende, who took over as Board president in January 2019, and who also served on both Boards, also testified. He too expressed surprise upon learning shortly before the November 29 meeting about the new contract. He confirmed that neither he, nor Mrs. Menza, nor Mr. Chapman knew about it, and were not consulted on the submission to Mr. Palmieri.

Upon going into executive session prior to the vote, Board president Thompson-Epps confirmed only she had spoken about it with two other members. When questioned about the new contract, Ms. Thompson-Epps simply stated, “well, why not?”

As the new Board president, Mr. Allende indicated that the Board has an ethical responsibility to work as a whole, and that one person, in this case, Ms. Thompson-Epps, can’t speak on behalf of the Board without consensus. He said the Board president does not have the unilateral right to contact the County superintendent about this or any other type of significant matter.

Mr. Allende then confirmed the “walk-on” nature of the resolution to send the Rice notice to Dr. Gayles after the new Board was sworn in. He also confirmed that neither he as the new president nor any other new Board members spoke with Dr. Gayles about their concerns regarding the new contract prior to the adoption of the resolution to suspend him with pay to investigate the validity of the contract. That too was done as a non-agenda “walk-on” resolution, which was not really explained. He too confirmed that Dr. Gayles was not removed for performance reasons. The purpose of the Rice notice, which is required under law, was to inform Dr. Gayles that his contract would be discussed at the next public Board meeting. Despite the law that requires a consensus to send a Rice notice to an employee there was testimony that the minutes of the reorganization meeting are not clear as to whether the Board as a whole discussed it first in executive session, or even what prompted the sending of such a notice. Even more unclear is why, having voted to send the notice to Dr. Gayles on January 3, 2019, the Board took almost three weeks to send the notice out, and it was not received via email until January 22, 2019. Certainly, the possibility exists that had it gone out earlier, the parties could have at least started meaningful communication about why the new Board had concerns about the new contract. For reasons unknown, the Rice notice itself was not turned over in the discovery process before the hearing commenced, although Dr. Gayles did acknowledge that he eventually received it.

Mr. Allende stated that in his new capacity as Board president, he believed there was consensus, and the notice preparation was done in conjunction with Mr. Roth, who

had just been appointed as new counsel to the Board. He was later replaced, although he remained as counsel of record to litigate this case.

Mr. Allende confirmed that after the reorganization meeting, Dr. Gayles asked him what was going on. His response, which seems somewhat incredible, was that he didn't know.

Mr. Allende's testimony then turned to the events surrounding the suspension of Dr. Gayles at the first full public meeting on January 24, 2019. He confirmed that prior to the meeting, Dr. Gayles was not informed by him as Board president that the Board was considering the possibility of a suspension. (Dr. Gayles, in his testimony, said that Mr. Allende told him it was only a rumor.) Again here, the credibility of the testimony of Mr. Allende, who was the presiding officer of the Board, is somewhat suspect.

Ultimately, the motion to suspend, which was not on the agenda for the January 24 meeting, came before the Board as a "walk-on" resolution. Mr. Allende confirmed that the possibility of suspension was not brought before the Board's labor, personnel, or negotiations committees between January 3 and January 24, and also unexplained is why since a Rice notice had been authorized, a resolution was not prepared in advance for review by other Board members and the public prior to the meeting.

Mr. Allende confirmed that midway through the executive session on January 24, Dr. Gayles, who did not even receive the formal Rice notice three days in advance of the meeting, was asked to leave the executive session. Thus, even if he wanted to exercise his rights under Rice to address the Board in public or private, he was apparently denied the opportunity to do so. At best, the transparency of how the Board went about this process of suspending Dr. Gayles is questionable.

In addition to the prior stipulation that the suspension was unrelated to performance or impropriety by Dr. Gayles, the Board also stipulated during Mr. Allende's testimony that there was no discussion about Dr. Sheard's ability or willingness to serve in the position on an interim basis. When asked if the Board could have determined the validity of Dr. Gayles' contract while he was still serving in the

position, he simply said he did not know. Mr. Allende also confirmed that since the Board had moved up the public portion of the meeting, and the resolution to suspend was not on the agenda, the public would not have known about the suspension, nor would it have been possible to comment or ask questions of the Board. Mr. Allende testified that he did not ask for a resolution to re-open the public portion of the meeting before the vote to suspend Dr. Gayles.

Former Board president Hawaiian Thompson-Epps was the next witness who testified. Prior to her taking the stand, there was some back-and-forth colloquy about whether she could testify due to cross ethics complaints between herself and Mr. Allende. After consulting with personal counsel, who accompanied her to the hearing, her testimony went forward.

Ms. Thompson-Epps indicated that she had been elected to an initial three-year term, starting January 2015. In 2018 she became the Board president, which was the year in which the contract that is the subject of the within case was enacted. Although she was defeated in the November 2018 election, she was appointed in January 2019 by the County superintendent to serve a one-year vacancy on the new Board.

During her testimony, she acknowledged that Board presidents cannot act unilaterally, and that in order for a Board to take action, a majority is needed. Usually, according to Ms. Thompson-Epps, matters are discussed in committee before they get to the full Board. However, as Board president, she said she has the right to set the agenda, and she was responsible for Dr. Gayles' evaluations.

Ms. Thompson-Epps said that her motivation, with a year and a half left on Dr. Gayles' contract, was she wanted to lock him in for an extended period, as she felt that under his leadership the district was moving forward. While the testimony of Ms. Thompson-Epps was for the most part credible, just as there were some aspects of Mr. Allende's testimony that were not credible, the same applies to her testimony about the reasons and motivations for moving a matter of such magnitude, specifically, a longer contract on an expedited basis. It was never admitted or stated during the testimony, but it seems clear that at least part of her motivation was that she knew that

the composition and majority of the Board was about to change in early January. At the time Ms. Thompson-Epps moved the new contract, she also knew she was leaving the Board, having been defeated in the recent election.

In fact, other than Board counsel, the only other person Ms. Thompson-Epps consulted with was her liaison with the New Jersey School Boards Association, Ms. Thornton. Both the liaison and the Board attorney at the time, as well as the assistant business administrator, gave her approval in her capacity as Board president to move on the new contract. However, none of these officials were aware that Ms. Thompson-Epps had not consulted with the entire Board. She further testified that she wanted to make the process easier, so she left it to Dr. Gayles, the Board attorney, and the assistant business administrator to prepare the document. Again here, while she may have believed this to be true, her credibility on this issue raises more questions than answers. She also says she was advised by the Board counsel at the time, who was replaced in one of the first acts by the new Board, to have the document sent to the County superintendent. That statement is believable. Also credible and consistent with Mr. Palmieri's testimony is that the district was told by the County superintendent, whether it was correct or not, to rescind the old contract before a new contract could be acted upon.

Responding to questions from Mr. Roth, Ms. Thompson-Epps indicated that the contract wasn't rescinded due to Dr. Gayles' failure to obtain certificates. She said the normal 120-day notice requirement involving a superintendent's contract was waived by the old Board, also on the advice of former counsel. But Ms. Thompson-Epps did admit that she was told by the School Boards Association liaison that all of the members of the Board needed to be informed of her intentions so there were no surprises, which, according to the testimony of others, did not occur. She did say she spoke with two or three other members, even though this was not consistent with the advice she had received.

Turning to the circumstances of the suspension, Ms. Thompson-Epps said she believed such an action was detrimental to the school system. She cited several achievements the district enjoyed under Dr. Gayles' leadership, including but not limited

to the installation of a new football field, a new lab at the high school, a rebuilt gym, the addition of six computer classrooms, more parent involvement, and the development of partnerships with the New Jersey Institute of Technology and Kean University.

In essence, according to Ms. Thompson-Epps, Dr. Gayles exceeded expectations. Rather than risk losing him to another district that might offer Dr. Gayles more money and benefits, she decided that a new contract should be offered, although, as discussed earlier, the timing seemed questionable after the outcome of the election.

Dr. David Eichenholtz, who served as interim business administrator and Board secretary, was the next witness who testified. He confirmed that prior to having a draft contract sent to the County superintendent, the Board as a whole was not informed or asked for approval. His involvement in the new contract process occurred during November 2018 when he was asked by Dr. Gayles to work with Ms. Giordano, the assistant administrator, on answering questions raised by the County superintendent about certain financial terms.

The only other involvement by Dr. Eichenholtz was keeping minutes of public meetings and executive sessions; he said that for both the November 29, 2018, meeting, and the January 24, 2019, meeting, the minutes of the executive sessions were limited. He also confirmed that the procedure involving rescinding the existing contract before enacting the new contract was the advice that was received from Mr. Palmieri.

Dr. Antoine Gayles was the last witness to take the stand. He indicated that he started his position as superintendent of the Hillside Public Schools on July 1, 2016. The initial contract was for a four-year term, ending June 30, 2020. Prior to coming to Hillside, he served as a principal in two districts, worked for the State Department of Education, and received his superintendent certificate in 2000.

At the beginning of Dr. Gayles' testimony, his counsel attempted to elicit testimony that suggested that a local political leader was involved in interfering with Dr. Gayles. That line of questioning was not allowed, as his counsel did not offer any

discovery on this issue to the counsel for the district before the hearing started, and no foundation was laid with other witnesses concerning this subject.

On direct examination, Dr. Gayles stated that the idea about a new contract was initiated by Ms. Thompson-Epps. She texted him that she had allegedly spoken with two other members before asking if he was interested in pursuing an extension.

Dr. Gayles confirmed that without his own counsel, he negotiated the terms of the new contract with the individual who was serving as Board counsel at the time. He also communicated on this issue with Ms. Giordano. Dr. Gayles acknowledged that he didn't believe that any of the Board committees had reviewed the proposed contract before it was sent to the County superintendent, or before it went to a vote by the full Board. On cross-examination, it was not clear why there were some minutes of a meeting by the labor committee on November 14, which turned out to be an evening of heavy snow, and other minutes of a meeting of November 19, prior to the full Board meeting on November 29. Regardless, it did not seem from these documents that the new contract was fully vetted by this committee prior to the meeting of the full Board.

Dr. Gayles expressed surprise that virtually the first development at the Board's reorganization meeting on January 3, 2019, was to fire the Board attorney, as it was not an agenda item. Also, not on the agenda was a resolution to send a Rice notice to Dr. Gayles advising him that his status with the district would be discussed at the Board's first full public meeting on January 24, 2019. Also unexplained is why it took almost three weeks for the new Board counsel to send the formal notice to him. Dr. Gayles testified that in that period, he asked the new Board president, Mr. Allende, about rumors he had heard, and Mr. Allende's response was, "it's just a rumor."

Just as the vote on just suspension was not on the agenda for January 24, he learned of the Board's action after being asked to leave the executive session and the public meeting that night. He was informed of the action by Board counsel and the local newspaper. He felt that the actions of the new Board were of a harassing nature, damaging to his reputation and career, and were not transparent, as neither he nor the

public was given a fair opportunity to speak before or after the vote on the “walk-on” resolution at the meeting on January 24.

Two months into his suspension, which the Board stipulated throughout the proceeding was not performance related, the Board demanded his resignation on short notice. That month, he filed an emergent application seeking reinstatement, which was denied since the Board was still paying him. The Board’s Declaratory Judgment action, filed the same month, was not acted on by the Commissioner, and was transmitted to the OAL for the proceedings addressed herein. The Board sought relief declaring the new contract void ab initio, while also seeking to uphold the rescission of the first contract.

Dr. Gayles said that in early May 2019 he received a second Rice notice without explanation. Were it not for a text message he said he received from a member of the public, he would not have known that the Board decided to renege on its commitment to continue paying him during the suspension. That resulted in a second emergent application, the outcome of which was to order the district to resume full payments and benefits until the underlying matter could be heard.

Dr. Gayles also stated that he felt dehumanized when called to Board headquarters in early May to pick up the rest of his belongings, where he was met by three police officers and denied entry to his office.

Towards the end of his testimony, Dr. Gayles confirmed that the rescission of the old contract and the enactment of the new contract were part of the same resolution on November 29, 2018. He expressed no concern at the time of the vote on the old and new contracts whether, if for some reason the new contract were set aside, his employment status would be jeopardized.

FINDINGS OF FACT

1. Antoine Gayles began his position as superintendent of the Hillside Public Schools under a contract with a term from July 1, 2016, through June 30, 2020.

2. On November 6, 2018, an election for five seats on the District Board of Education was held. Four new members were elected, together with one remaining incumbent member, which significantly changed the majority composition of the Board.

3. On her own initiative, the Board president at the time, Hawaiian Thompson-Epps, started a conversation with Dr. Gayles to determine if he would like to consider a contract extension.

4. Without consulting with the full Board, the Board counsel at the time was enlisted to draft a new contract, which was forwarded to the County superintendent by the assistant business administrator. The Board secretary also was involved to the extent that figures and numbers in the new contract had to be revised.

5. Three days prior to the former Board's next-to-last meeting, on November 26, 2018, the full Board, for the first time, received the proposed new contract for its review.

6. At one of its last public meetings prior to the new Board assuming office, on November 29, 2018, the prior Board took action to rescind petitioner's existing contract and replace it with the new contract, which, among other things, extended petitioner's term for three additional years through June 2023 and raised his salary. This was done after review and direction from the County superintendent, who was not aware that the entire Board was not informed of the existence of a new proposed contract. The parties involved were limited to the former Board counsel, the Board secretary, the assistant business administrator, the Board president at the time who was not re-elected, and Dr. Gayles.

7. By a vote of 5-3 with one abstention, the old contract, which was supposed to end June 30, 2020, was rescinded and was replaced with a new contract with a higher salary and a term ending in June 2023.

8. At its first meeting, which took place on January 3, 2019, the new Board, after it was sworn in and a new counsel was hired, authorized sending a Rice Notice to petitioner. No explanation was offered as to why it was only sent to Dr. Gayles via email within thirty-six hours of the next meeting when the Board might act.

9. Three weeks elapsed with no one, including the new Board president, Juan Allende, communicating with Dr. Gayles that his employment status might be in jeopardy. When Dr. Gayles asked Mr. Allende about rumors he had heard, Mr. Allende declined any knowledge about what was being said.

10. At its next meeting on January 24, 2019, the Board suspended petitioner with pay and benefits continuing. No date was memorialized for this change of status to end, and no facts were presented that the superintendent was suspended for cause or any allegations of improper acts. In fact, the Board stipulated during the proceeding that the suspension was not performance related. The Board contended that the suspension was to allow them to “investigate” the legality or illegality of the new contract. Having heard all of the testimony, I **FIND** that whether or not the suspension was the appropriate method for the Board’s inquiry, the suspension was not in any way related to Dr. Gayles’ performance as superintendent of schools.

11. The resolution that the Board voted on to suspend Dr. Gayles did not appear on the agenda for the January 24 meeting. For reasons unknown, it was done as a “walk-on” resolution that night, with no ability for the public to comment, since the Board had previously voted to move the public portion of the meeting to an earlier spot on the agenda. At the time the suspension resolution was considered, the public portion of the meeting was not re-opened.

12. The parties, with counsel, appeared before Judge Betancourt on March 6, 2019, at which time the district, through counsel, represented that the relief requested should be denied because petitioner would still be paid. In fact, it was

represented to Judge Betancourt that would continue to pay Dr. Gayles while it was researching the issues involving the new contract.

13. Two days before the hearing before Judge Betancourt, on March 4, 2019, the district filed its request for a declaratory ruling seeking to have the new contract deemed void ab initio.

14. Both matters were remanded to the OAL, and with Judge Betancourt's recusal, the matters were assigned to the undersigned ALJ.

15. Following a status phone conference, the parties were directed to appear for settlement conferences, one of which was held on April 29, 2019, and the second on May 14, 2019.

16. Five days prior to the second settlement conference, and with Dr. Gayles' request for reinstatement and the declaratory-relief application still pending, the Board on less than three days' notice to petitioner unilaterally took action to stop the payments it had previously agreed to make, resulting in no further payments to petitioner as of May 15, 2019. A second emergent application was then instituted by Dr. Gayles, seeking immediate reinstatement of his salary and benefits while he remained suspended.

17. On the return date of the second request for emergent relief, no testimony was taken, and the parties relied on their submissions and oral argument. Hearing dates were scheduled on the merits of both matters for July 8 and July 9, 2019. Further hearings were conducted on July 31, August 12, and October 8, 2019. The district also filed a motion to strike petitioner's answer and disqualify petitioner's counsel, which was denied. Prior to the start of testimony, counsel for Dr. Gayles withdrew the affidavits, which cured the unintentional impropriety the district complained about.

18. The Board does not dispute, and in fact stipulates, that the suspension was in no way related to Dr. Gayles' performance in the position. I **FIND** that the

suspension was not performance related, nor was it based on any improprieties or acts committed by Dr. Gayles. For reasons unknown, the Board elected to remove Dr. Gayles from his position while it investigated the legality of the new contract. No other options were explored, nor does it appear that the new Board president or members of any of the Board committees attempted to engage in a dialogue with Dr. Gayles prior to suspending him.

LEGAL DISCUSSION AND CONCLUSIONS

The parties agree on most of the applicable law that governs this dispute. Not surprisingly, they disagree on the application and interpretation of the legal principles that determine the outcome.

N.J.S.A. 18A:6-8.3 states: “any employee or officer of a Board of education in this State who is suspended from his employment, office or position, other than by reason of indictment, pending any investigation, hearing or trial or any appeal therefrom, **shall** receive his full pay or salary during such period of suspension except that in the event of charges against such employee or officer brought before the board of education or the Commissioner of Education pursuant to law, such suspension may be with or without pay or salary as provided in chapter 6 of which this section is a supplement.” Emphasis added.

N.J.A.C. 6A:23A-3.1 governs the review of employment contracts for superintendents, and N.J.A.C. 6A:23A-3.2 addresses the required actions for early terminations of such contracts. Among other things, notice is required, and at least thirty days’ notice of a hearing is required before any such action is taken. Simply put, both sides ignored these provisions and circumvented the appropriate legal process for changing a superintendent’s contract.

The following sequence of events lead to the conclusion that the rescission of the first contract is void, as is the rescission of the second contract. The suspension of Dr. Gayles without an acceptable basis such as performance related, or the existence of improprieties was really intended to be a termination, without following any of the

recognized statutory, regulatory or policy procedures for notice, discussion and public input.

It is undisputed that the question of which contract or either contract had not been decided, yet the Board on May 9, 2019, unilaterally voted to stop the payments it had been making to petitioner, which it represented it would do to the ALJ previously assigned to this case. During argument, the district advocated that the provisions of N.J.A.C. 6A:23A do not apply since there was a prior mutual rescission, yet at the same time they also argue that the actions of the prior Board in providing a new and extended-term contract to petitioner were invalid. This argument is not convincing, since if the new contract is void, the act of rescission of the old contract is also void, regardless of whether it was part of the same resolution, or if it had been reflected in a separate resolution. I **CONCLUDE**, that the rescission of the old contract is also void. Based on that conclusion and the applicable law, Dr. Gayles is entitled to reinstatement to the position of superintendent of Hillside Public Schools under the terms of the old contract through June 30, 2020.

Dr. Gayles argues that the former Board had the authority to modify the existing contract under N.J.S.A. 18A:11-1, which allows a Board to do all things necessary for the lawful and proper conduct of its schools. He further cites N.J.S.A. 18A:17-20.1, which is the renewal statute for superintendents providing that at the conclusion of the initial contract or any subsequent contract the superintendent holding the position shall be deemed reappointed for another contract of the same duration, unless the board reappoints him for a different term.

One of the problems with advancing this argument is that under the underlying facts indicate that Dr. Gayles still had more than eighteen months left at the time the new contract was proposed, so this was not a renewal at the end of an expiring term.

Further, there is nothing in the record to suggest that under the lawful-and-proper-conduct standard, there was a compelling reason to essentially tear up his old contract and replace it with a new one that had a longer term with higher salary and

benefits. The Board president's justification for what amounted to unilateral actions, while perhaps well-intentioned, was misguided, and did not follow well-established law.

Dr. Gayles also argues that the enactment of the new contract also had the blessing of the County superintendent and was properly presented to Mr. Palmieri under N.J.S.A. 18A:7-8 and N.J.A.C. 6A:23A et seq., which establish the duties and responsibilities of this official as an agent of the Department of Education, including but not limited to review of superintendents' contracts.

But that presumes that Mr. Palmieri was aware that the Board was asked for a consensus to send the new contract for review, and that Mr. Palmieri knew or should have known that a new Board would be seated in a few short weeks which might not want to be bound by the new agreement. The unilateral actions taken by Ms. Thompson-Epps had the potential to compromise both Boards under the ruling in Cheng v. Rodas, West New York Board of Education, Dkt. No. C58-14, Comm'r (January 20, 2017), <https://www.nj.gov/education/legal/>, a school ethics case wherein the board president initiated private action to negotiate a new employment agreement for a business administrator without including all the other board members.

Once Mr. Palmieri returned the contract after some revisions, the full Board only had forty-eight hours to review the entire contract, and the members of the public had even less time to review it and comment upon it. What seems clear, although it was not specifically stated by the witnesses, is that the Board president at the time, Ms. Thompson-Epps, recognized that the outcome of the election would not be favorable for Dr. Gayles, and so she acted in an expedited and somewhat surreptitious manner to make sure he would have some additional protection with a longer contract term. It is certainly understandable that most individuals offered the same opportunity would agree to accept a new contract. Dr. Gayles, negotiating directly with the Board counsel at the time, may have unintentionally caused himself harm instead of waiting to see if the new Board would concur with the actions of the Board that was about to leave office. See Nowak v. Bd. of Educ. of Manville, 1976 S.L.D. 47, wherein a lame-duck board is not allowed to bind a future board in non-administrative matters; see also Gonzalez v. Bd. of Educ. of Elizabeth Sch. Dist., 325 N.J. Super. 244, 252 (App. Div. 1999), cited by

both sides and setting forth the principle that “[a] board of education is a noncontinuous body whose authority is limited to its own official life and whose actions can bind its successors only in those ways and to the extent expressly provided by statute.” Thus, the rescission of Dr. Gayles’ existing contract and replacement with a new contract when there was no vacancy in the position and no compelling reason to make such a change was significantly more than a ministerial act as described in Nowak.

Moreover, when a board of education is contemplating a significant action such as a superintendent’s contract, reasonable notice to the public is required under N.J.S.A. 18A:11-11 and N.J.A.C. 6A:23A-3.1, which requires thirty days’ notice to the public in advance of taking action, and at least ten days for the public to comment. The forty-eight hours provided here in late November 2018 is woefully short of both requirements.

The pattern of failing to follow well-established statutes, rules, and protocol was exacerbated once the new Board took office. Barely sworn in at its reorganization meeting, the new Board, under leadership from a new president, voted on a “walk-on” resolution pursuant to Rice v. Union County Regional High School Board of Education, 155 N.J. Super. 64 (App. Div. 1977), certif. denied, 76 N.J. 238 (1978), which requires that a formal written notice be sent to school employees at least seventy-two hours in advance of the time a board may take action involving the person’s employment with the district. The rationale behind this provision was to give that individual an opportunity to appear before the board in public or private before any decisions are made. In this case, for reasons unknown, almost three weeks went by after the initial vote before the notice was sent, thereby allowing little or no time for Dr. Gayles to act or respond prior to the suspension.

Even more curious are the circumstances surrounding the ultimate action the new Board took regarding the suspension of Dr. Gayles. Both sides agree that the rules and provisions for public comment at school-board meetings, as well as for other public entities, are governed by the Open Public Meetings Act, which can be found at N.J.S.A. 10:4-6 et seq. This statute, also commonly known as “the Sunshine Law,” encourages boards to conduct most of their business before the public, and to allow a reasonable

period of time for the public to comment, and participate in question-and-answer sessions before the board takes action on matters that will impact the public, the students, and individuals employed by the board. In this case, the new Board took at least two actions that contravene this important standard in a manner that was detrimental to Dr. Gayles and the public.

Prior to its first full public meeting, no resolution appeared on the agenda regarding the suspension of Dr. Gayles. Surely, having previously authorized a Rice notice three weeks earlier, the Board knew or should have known that it might be considering some sort of action against Dr. Gayles that would impact his employment with the district. Not only was Dr. Gayles deprived of the ability to have a meaningful opportunity to address the Board's concerns, but the Board failed to give the public, the taxpayers, and parents whose children were about to be impacted an opportunity to address the Board.

This denial of public comment was further compounded by the Board's decision to confine public comment to a one-time period much earlier in the meeting, prior to the vote on the suspension. Presented in the form of a "walk-on" resolution, there was no thirty-day period for the public or members of the Board to review the resolution, nor was there a ten-day period for public comment.

At least three times during this proceeding, the Board stipulated that the suspension was not performance related, nor was any impropriety involved. The new president Mr. Allende, and Mr. Chapman identified the sole reason for the suspension as an opportunity for the Board to investigate its rights under the new contract. No other justification was offered.

Compounding the deleterious nature of the new Board's actions, after initially agreeing on the record before another administrative law judge to continue Dr. Gayles' salary and benefits, not more than two months later, and while the matter was still active before the Office of Administrative Law, the Board approved a new resolution, brought as a "walk-on" without proper notice to Dr. Gayles and the public, which immediately stripped Dr. Gayles of his salary and benefits. As justification for this arbitrary and

capricious action, the Board cited the recently decided case of Wall Township Education Association v. Wall Township Board of Education, No. A-4885-17 (App. Div. March 14, 2019), <http://njlaw.rutgers.edu/collections/courts/>, wherein the Appellate Division ruled that the requirements of N.J.S.A. 18A:11-11 are still necessary in order for a successor contract to be valid. Thus, the new Board advances the argument that if a board wants to change a superintendent's contract, public notice and a hearing are mandated in accordance with N.J.A.C. 6A:23A-3.1 (thirty and ten days, respectively), and, as such, the new agreement is void.

Conveniently though, Hillside does not argue that the same ruling applies to the rescission of the contract, which occurred at the time the new contract was enacted. They further disingenuously suggest that the undersigned does not have the authority to overturn the rescission, unless a finding is made that the Board actions violated a statute.

Given the actions of both sides, I **CONCLUDE** that each side violated the spirit and intent of the relevant statutes, regulations, and caselaw regarding superintendents' contracts, and I further **CONCLUDE** that the initial "walk-on" resolution suspending Dr. Gayles in January 2019, followed by another "walk-on" resolution to stop his salary and benefits wherein he was directed to pick up his boxed belongings and barred from his office, amounted to a termination, disguised as a suspension, without the right to be properly heard under the involuntary-termination section of N.J.S.A. 18A:17-20 and N.J.A.C. 6A:23A-3.2, which involves notice of charges and evidence to a superintendent, with a right to reply. Thus, the same argument Hillside advances, that the new contract was the result of improper and illegal procedures, also applies to its action of suspending Dr. Gayles, and ultimately in early May 2019 of stripping him of salary and benefits and the use of his office, without formally saying he had been terminated.

In support of its actions and position, the district relies on the recently decided Wall case, as well as its belief that this is a contract case only and argues that since the first contract was mutually rescinded, the Board has the authority to cease payments. For the reasons set forth herein, I **CONCLUDE** that the acts leading to second contract

were inappropriate, making the contract itself void, the same **CONCLUSION** applies as well to the rescission of the contract in existence at the time, as the County superintendent was not aware that the new contract was sent for his review without the consensus of the Board. Moreover, the action could be detrimental to the new Board that would take office within a few weeks that there was no compelling reason to offer Dr. Gayles a new contract with eighteen months left on the contract in effect at the time.

I further **CONCLUDE** that starting with the Rice notice, together with the “walk-on” resolution to suspend, the lack of public input constitutes bad faith on the part of the new Board, which in essence masked an intent to terminate Dr. Gayles under a suspension that had no legitimate basis or rationale.

While I **HAVE CONCLUDED** that the circumstances surrounding the suspension were suspect, the same **CONCLUSION** applies to the circumstances surrounding the preparation of a new contract sent without full Board authority to the County superintendent. The vote on the new contract by a “lame duck” Board seems as if it was done to circumvent the normal process of a full public hearing. The former Board president, Ms. Thompson-Epps, without the knowledge of the full Board, took unilateral actions to expedite the process of enacting a new contract that a new Board was about to take over. There was no consensus to send the proposed contract to the County superintendent. The members of the “lame duck” Board only had forty-eight hours to review the proposed contract. There was insufficient time for members of the public to review the document. I therefore **CONCLUDE** that it was appropriate for Dr. Gayles to receive his full salary and benefits due to the questionable circumstances surrounding his suspension while this matter was pending. The application for declaratory relief is granted in part as to the new contract being deemed void ab initio. I **further CONCLUDE** that the rescission of the contract ending June 30, 2020, is also deemed void ab initio, as it was part of the same act and resolution approving the new contract. I **further CONCLUDE** that the Board’s argument that the new contract should be deemed void, but the rescission of the old contract should be upheld, is misguided, and fails as a matter of fact and law. Therefore, I **CONCLUDE**, under a totality of the facts and circumstances, Dr. Gayles is entitled to all the salary and benefits he collected

during the pendency of the litigation and retroactive to January 1, 2019 through June 30, 2020.

The parties are left to their remedies in other forums concerning any remaining disputes about payments, should they try to pursue them.

ORDER

I hereby **ORDER** that the rescission of the original contract as part of a resolution on November 29, 2018 is hereby deemed **VOID** as is the new contract enacted as part of the same resolution is also deemed **VOID**. Board compensate petitioner for any salary and benefits lost and credit petitioner any seniority credit lost retroactive to January 24, 2019 and is reinstated to the position of superintendent through June 30, 2020. I further **ORDER** that the suspension enacted on January 24, 2019 is deemed **VOID** and **VACATED** and a copy of this initial decision confirming the suspension was not based on performance or inappropriate conduct by Dr. Gayles becomes a permanent part of his personnel file.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 17, 2020
DATE



ANDREW M. BARON, ALJ

Date Received at Agency: _____
June 17, 2020

Date Mailed to Parties: _____
mm

APPENDIX

Witnesses

For Petitioner:

Dr. Antoine Gayles

For Respondent:

Darryl Palmieri

Anette Giordano

Angela Menza

Joel Chapman

Juan Allende

Hawaiian Thompson-Epps

Dr. David Eichenholtz

Exhibits

Joint:

J-1 2016 contract

J-2 2018 new contract

For Petitioner:

P-1 Contract, (also J-1) dated 2016

P-2 Not in Evidence

P-3 Labor draft, dated November 14, 2018

P-4 Letter to Mr. Palmieri, dated November 21, 2018

P-5 Letter to former Board counsel Gutierrez

P-6 Meeting Minutes, dated January 24, 2019

P-7 Detailed statement Dr. Eichenholtz

- P-8 Transmittal to Board Attorney,
- P-9 Minutes, dated November 29, 2018
- P-10 Board Policy 01711 Duties of Officers
- P-11 Labor Committee policy
- P-12 Rice Notice
- P-13 Performance Appraisal
- P-14 Not in Evidence
- P-15 Meeting Minutes, dated January 3, 2019
- P-16 Rice Notice

For Respondent:

- R-1 Meeting Minutes, dated September 20, 2018
- R-2 Agenda, dated October 18, 2018
- R-3 Exec. Session, dated October 18, 2018
- R-4 Minutes, dated November 29, 2018
- R-5 Closed Session Minutes, dated November 29, 2018
- R-6 Meeting Minutes, dated January 24, 2019
- R-7 Exec. Session Minutes, dated January 24, 2019
- R-8 Palmieri/Giordano emails
- R-9 Palmieri to Giordano email
- R-10 Emails
- R-11 Palmieri/Eichenholtz emails
- R-12 Miscellaneous documents
- R-13 Labor Agenda, dated November 27, 2018
- R-14 Labor Committee, dated November 14, 2018
- R-15 and R-16 Eichenholtz tapes referenced, not played