

#196-12LE



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHRISTOPHER D. CERF
Acting Commissioner

May 8, 2012

Andrew Babiak, Esq.
920 West State Street
Trenton, New Jersey 08618

David B. Rubin, Esq.
44 Bridge Street
P.O. Box 4579
Metuchen, New Jersey 08840

Re: Janine Walker Caffrey v. Board of Education of the City of Perth Amboy, Middlesex County. Agency Dkt. No.122-5/12.

Dear Counsel,

I have reviewed the materials filed in connection with the petitioner, Janine Walker Caffrey's (petitioner) motion for emergent relief and request to be immediately reinstated as superintendent of schools. Upon review of the submissions, I find that the Perth Amboy Board of Education's (Board) action placing the petitioner on administrative leave was procedurally faulty, and as such the petitioner shall be immediately reinstated.

In her papers, the petitioner argues that the Board acted beyond the scope of its authority by placing her on administrative leave because such action requires the majority vote of the full membership,¹ and only four members of the nine-member Board voted in favor of the action. In response, the Board points out that four members of the Board were precluded from voting on this matter due to family-related conflicts, and as a result the action was approved by a majority of the voting members.² The Board further argues that there are no statutory provisions that require the majority vote of the full membership of the board under the circumstances in this case.

It is important to recognize that under a litany of statutory provisions, personnel actions taken by a board of education require a majority vote of the full membership of the board, i.e. *N.J.S.A. 18A:6-11* (majority vote of the full membership required to bring tenure

¹ *N.J.S.A. 18A:1-1* defines "full membership" of the board as the number of board members of the board when all of the seats are filled.

² It is undisputed that only four members of the nine-member Board voted to place the petitioner on administrative leave.

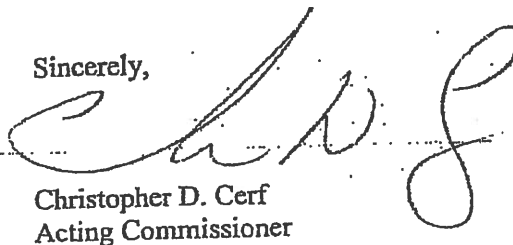
charges against a board of education employee); *N.J.S.A.* 18A:25-1 (majority vote of the full membership required to transfer teaching staff member); *N.J.S.A.* 18A:27-1 (majority vote of the full membership required to appoint teaching staff member); *N.J.S.A.* 18A:25-6 (majority vote of the full membership required to restore or remove an assistant superintendent, principal or teaching staff member following a suspension by the Superintendent); *N.J.S.A.* 18A:17-5 (majority vote of the full membership required to appoint a board secretary); *N.J.S.A.* 18A:17-13 (majority vote of the full membership required to appoint an assistant board secretary); *N.J.S.A.* 18A:17-15 (majority vote of the full membership required to appoint a superintendent of schools); *N.J.S.A.* 18A:17-16 (majority vote of full membership required to appoint an assistant superintendent of schools); and *N.J.S.A.* 18A:17-25 (majority vote of the full membership required to appoint a business manager). Notwithstanding the fact that these statutes do not speak specifically to the circumstances in this case, it cannot be reasonably argued that a personnel decision affecting the chief school administrator in the district could require any less than the same majority vote of the full membership.

Therefore, I find that the majority of the nine-member Board must have voted in favor of the action in order for the Board to appropriately place the petitioner on administrative leave. Please be advised that the briefing schedule in this matter closed on Monday, May 7, 2012 at 12:00 pm. If the Board believes any subsequent action taken alters this result, it will have to make such argument by way of a motion. To that end, the Commissioner will retain jurisdiction prior to the transmittal of this matter to the Office of Administrative Law to allow the parties the opportunity to submit any motions and/or amended petitions, if any.

Accordingly, the petitioner's motion to be immediately reinstated as superintendent of schools is hereby granted. Recognizing the present discord between the parties, I offer the assistance of Michael Osnato to serve as a neutral mediator to help facilitate an amicable resolution in this matter.

IT IS SO ORDERED.³

Sincerely,



Christopher D. Cerf
Acting Commissioner

c: County Superintendent
State Law Library

CDC/MH/JKH

Via Facsimile and Regular Delivery

³ 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).