

## CHAPTER 11 INSTRUCTIONAL STAFF

### Authority

N.J.S.A. 18A:1-1, 18A:7B-6 and 9, 18A:60-1 et seq.  
(P.L. 1986, c.158), and 30:1-12.

### Source and Effective Date

R.2005 d.150, effective April 18, 2005.  
See: 36 N.J.R. 3520(a), 37 N.J.R. 1729(a).

### Chapter Expiration Date

Pursuant to Executive Order No. 1(2010), the chapter expiration date is extended from April 18, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

### Chapter Historical Note

Chapter 11, Instructional Staff, was adopted as R.1990 d.25, effective January 16, 1990. See: 21 N.J.R. 2849(b), 22 N.J.R. 215(a).

Pursuant to Executive Order No. 66(1978), Chapter 11, Instructional Staff, was readopted as R.1995 d.86, effective January 13, 1995. See: 26 N.J.R. 4297(a), 27 N.J.R. 499(a).

Pursuant to Executive Order No. 66(1978), Chapter 11, Instructional Staff, was readopted as R.1999 d.445, effective November 29, 1999. See: 31 N.J.R. 2440(a), 31 N.J.R. 4259(b).

Chapter 11, Instructional Staff, was readopted as R.2005 d.150, effective April 18, 2005. See: Source and Effective Date. See, also, section annotations.

## CHAPTER TABLE OF CONTENTS

### SUBCHAPTER 1. TENURE

- 10:11-1.1 Purpose
- 10:11-1.2 Scope
- 10:11-1.3 Definitions
- 10:11-1.4 Scope of tenure
- 10:11-1.5 Eligibility
- 10:11-1.6 Notice of reemployment; non-reemployment
- 10:11-1.7 Performance assessment
- 10:11-1.8 Disciplinary action—tenured staff
- 10:11-1.9 Reduction in force

### SUBCHAPTER 1. TENURE

#### 10:11-1.1 Purpose

This subchapter implements the provisions of N.J.S.A. 18A:60-1 et seq. which grant tenure rights to instructional staff of the Department of Human Services.

Amended by R.2005 d.150, effective May 16, 2005.  
See: 36 N.J.R. 3520(a), 37 N.J.R. 1729(a).

Substituted "et seq." for "and 18A:60-1.1 (P.L. 1986, c.158)."

#### 10:11-1.2 Scope

(a) This subchapter applies to all individuals employed by the Department of Human Services who:

1. Are required to possess appropriate educational certification as a condition of employment; and
2. Are not otherwise included in the New Jersey Department of Personnel career service.

Amended by R.1999 d.445, effective December 20, 1999.  
See: 31 N.J.R. 2440(a), 31 N.J.R. 4259(b).

In (a)1, inserted "appropriate" following "possess".  
Amended by R.2005 d.150, effective May 16, 2005.  
See: 36 N.J.R. 3520(a), 37 N.J.R. 1729(a).

In (a), substituted "career service" for "classified system" in 2.

### 10:11-1.3 Definitions

When used in this subchapter, the following terms shall have the indicated meanings, unless the context clearly indicates otherwise.

"Break in service" means resigning or leaving a tenured position for any purpose including to enter a career service; a non-tenured, unclassified service; or a Senior Executive Service position.

"Instructional staff member" means a member of the professional staff of the Office of Education or any facility in the Department of Human Services, holding position, employment or function of such character that the qualifications require him or her to possess a valid and effective standard certificate issued by the State Board of Examiners, appropriate to his or her assignment, as determined by the Director, Office of Education. Applications of time earned during possession of emergency or provisional certifications are described in N.J.A.C. 10:11-1.5.

"Office of Education" means the Office of Education within the Department of Human Services.

"One year of service" means, for seniority purposes only, 12 months of employment in pay status in a tenure-applicable title in the Department of Human Services. A service period commences on the date of appointment into a tenure-applicable title. Examples of tenure-applicable titles are Teacher I; Teacher II; Supervisor of Educational Programs I and II; Assistant Supervisor of Educational Programs I and II; Instructor, Commission for the Blind and Visually Impaired; School Psychologist; Learning Disabilities Specialist; School Social Worker; and other educational titles that require staff to hold valid and effective standard certificates, issued by the State Board of Examiners appropriate to the assignment as determined by the Director, Office of Education.

Amended by R.1999 d.445, effective December 20, 1999.  
See: 31 N.J.R. 2440(a), 31 N.J.R. 4259(b).

In "Instructional staff member", inserted "the Office of Education or" following "staff of", deleted "office," following "holding", and deleted "instructional" preceding "assignment"; in "One year of service", deleted "Supervising Consultant, Curriculum Services;" following "Worker;"; inserted "other" preceding "educational", and substituted "assignment" for "instructional function" following "appropriate to the"; and deleted "Supervisory or administrative staff".

Amended by R.2005 d.150, effective May 16, 2005.  
See: 36 N.J.R. 3520(a), 37 N.J.R. 1729(a).

Added "Break in service" and "Office of Education"; in "Instructional staff member", substituted "position, employment or function of such character" for "position or employment of such character".

#### 10:11-1.4 Scope of tenure

Once tenure is acquired by an employee, such standing shall apply throughout the Department of Human Services. If, however, the employee experiences a break in service, he or she will forfeit tenure rights.

Amended by R.2005 d.150, effective May 16, 2005.  
See: 36 N.J.R. 3520(a), 37 N.J.R. 1729(a).

Deleted the last sentence.

#### 10:11-1.5 Eligibility

(a) In addition to fulfillment of the requirements set forth in N.J.A.C. 10:11-1.2, and pursuant to N.J.S.A. 18A:60-1 et seq., those individuals who have been continuously employed for at least two academic years in an instructional capacity within the Department of Human Services as of July 1, 1986 and have completed at least two years of educational services with satisfactory evaluations shall acquire tenure upon completion of one additional year of satisfactory service.

(b) Those individuals who do not meet the requirements set forth in (a) above, but were employed on or after July 1, 1986, shall be eligible for tenure:

1. After continuous employment for three consecutive years; or
2. After employment for the equivalent of more than three years within a period of four consecutive academic years.

(c) Employment experience obtained under emergency or provisional certification, in accordance with N.J.A.C. 6A:9, may be applied towards tenure eligibility, provided an instructional staff person, following his or her employment under an emergency certificate, is issued a permanent certificate in the same educational services endorsement area as the emergency certificate. However, tenure may be acquired only when standard certification is issued.

Amended by R.1995 d.86, effective February 6, 1995.  
See: 26 N.J.R. 4297(a), 27 N.J.R. 499(a).

Amended by R.1999 d.445, effective December 20, 1999.  
See: 31 N.J.R. 2440(a), 31 N.J.R. 4259(b).

In (a), substituted a reference to educational services for a reference to instructional services.

Amended by R.2005 d.150, effective May 16, 2005.  
See: 36 N.J.R. 3520(a), 37 N.J.R. 1729(a).

Rewrote (c).

#### 10:11-1.6 Notice of reemployment; non-reemployment

(a) All notices under this section, including the recommendation for reemployment or the 60-day notice of nonre-employment, shall be made by the appointing authority and

the Director, Office of Education, or his or her qualified designee for all instructional staff.

1. By the appointing authority, in conjunction with an educationally certified supervisor or educationally certified administrator, for non-supervisory or non-administrative instructional staff;

2. By the appointing authority, in conjunction with the Director, Office of Education, or his or her qualified designee, for all supervisory or administrative staff.

(b) A written notice of non-reemployment shall be provided to an individual not to be granted tenure at least 60 days prior to such individual's date of tenure eligibility pursuant to N.J.A.C. 10:11-1.5.

(c) All non-tenured instructional staff not recommended for tenure shall be dismissed prior to the otherwise effective date of tenure.

(d) Any instructional staff member who receives a notice of non-reemployment, as noted in (b) above, may, within 15 days of receipt of the notice, request, in writing, a statement of the reasons for such action from the appointing authority (N.J.S.A. 18A:27-3.2), which statement of reasons shall be given to the instructional staff member in writing within 30 days after the receipt of such request.

Amended by R.1999 d.445, effective December 20, 1999.  
See: 31 N.J.R. 2440(a), 31 N.J.R. 4259(b).

Rewrote (a).

Amended by R.2005 d.150, effective May 16, 2005.  
See: 36 N.J.R. 3520(a), 37 N.J.R. 1729(a).

In (a), rewrote 1 and 2.

#### 10:11-1.7 Performance assessment

(a) The supervision and evaluation of instructional staff shall be conducted by educationally certified supervisors employed in an educational capacity within the Department of Human Services or by the Director, Office of Education, or his or her appropriately qualified designee, in conjunction with the appointing authority.

(b) For purposes of evaluation of non-tenured instructional staff, the following provisions shall apply.

1. An educationally certified supervisor, an educationally certified administrator or the Director, Office of Education, as appropriate, shall conduct the annual Performance Assessment.

2. The annual Performance Assessment shall consist of a minimum of three observations, three written evaluations, and three conferences.

3. Each of the three observations required pursuant to N.J.S.A. 18A:27-3.1 shall be conducted for a duration appropriate to an individual's duties and responsibilities but for at least one class or lesson period for a teacher or instructor.

(c) For purposes of evaluation of tenured instructional staff, the following provisions shall apply.

1. An educationally certified supervisor, an educationally certified administrator or the Director, Office of Education, as appropriate, shall conduct the annual Performance Assessment.

2. The annual Performance Assessment shall consist of a minimum of two observations, two written evaluations, and two conferences.

(d) A non-tenured or tenured instructional staff member shall be observed through visitation to his or her classroom or work station by an educationally certified supervisor, an educationally certified administrator or the Director, Office of Education, for the purpose of evaluating the staff member's performance of assigned duties and responsibilities.

(e) Each observation shall be followed within a reasonable period of time by a conference between the instructional staff member and the supervisory or administrative staff member who conducted the observation and prepared the written evaluation. Each party to the conference will sign the Performance Assessment instrument and retain a copy for his or her records.

(f) The instructional staff member shall have the right to submit his or her comments to such an evaluation within 10 days following the conference and such disclaimer shall be attached to each party's copy of the instrument.

Amended by R.1995 d.86, effective February 6, 1995.  
See: 26 N.J.R. 4297(a), 27 N.J.R. 499(a).  
Amended by R.1999 d.445, effective December 20, 1999.  
See: 31 N.J.R. 2440(a), 31 N.J.R. 4259(b).  
Rewrote the section.  
Amended by R.2005 d.150, effective May 16, 2005.  
See: 36 N.J.R. 3520(a), 37 N.J.R. 1729(a).  
Rewrote the section.

### 10:11-1.8 Disciplinary action—tenured staff

(a) In a case where disciplinary action is recommended or implemented, which does not involve dismissal or reduction in salary, as a result of charges made against a tenured employee of the Department of Human Services, the appointing authority and the Director, Office of Education, or his or her qualified designee shall act in accordance with Department of Human Services Administrative Order 4:08, a copy of which may be obtained from the employing facility.

(b) In a case where disciplinary action will result in dismissal or reduction in salary, for reasons other than inefficiency, the charges shall be filed with the Director of Employee Relations. The charges shall be stated with speci-

ficity as to the action or behavior underlying the charges and shall be accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

(c) The charges, along with the required sworn statement of evidence, shall be transmitted to the affected employee and the employee's representative, if known, within three working days of the date they were filed with the Director of Employee Relations. Proof of mailing or in-person delivery shall constitute proof of transmittal.

(d) The affected tenured employee shall have the opportunity to submit to the Director of Employee Relations a written statement of position and a written statement of evidence, both of which shall be executed under oath with respect thereto, within 15 days of receipt of the tenure charges.

(e) Within 45 days of receipt of the affected tenured employee's written statement of evidence under oath or upon expiration of the allotted 15-day time period, the Director of Employee Relations shall determine whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary.

(f) The Director of Employee Relations shall immediately notify in writing the affected employee against whom the charge has been made of the determination, in person or by certified mail to the last known address of the employee and the employee's representative, if known.

(g) If the Director of Employee Relations determines that probable cause exists and that the charges, if credited, warrant dismissal or reduction in salary, he or she shall file such charges and the required certification with the Commissioner of the Department of Education, together with proof of service upon the employee and the employee's representative, if known.

(h) Procedures for tenure charges based on inefficiency and procedures governing processing and hearing provisions subsequent to the filing of charges in (g) above are set forth at N.J.A.C. 6A:3-5.1 through 5.6.

Amended by R.1999 d.445, effective December 20, 1999.  
See: 31 N.J.R. 2440(a), 31 N.J.R. 4259(b).

In (a), substituted "and the Director, Office of Education, or his or her qualified designee" for "(in conjunction with the Supervisor of Education, for all instructional staff)" following "authority".  
Amended by R.2005 d.150, effective May 16, 2005.  
See: 36 N.J.R. 3520(a), 37 N.J.R. 1729(a).  
Rewrote the section.

#### Case Notes

Although harsh, termination was the proper penalty for a single instance of loss of control by a tenured teacher at an institution serving the developmentally disabled who had provided over 41 years of otherwise satisfactory service where the uncontroverted evidence showed that (1) the teacher was seated when a client unexpectedly came up to him and punched him in the chest, in the area of his implanted pacemaker and defibrillator; (2) the teacher did not see the client coming and was unable to shield himself from the blow, although he had raised his arms in a

last-minute attempt to do so; (3) the teacher was shocked by the blow and horrified by its potential consequences to his implant; (4) after the client had turned and begun to walk away from the teacher immediately after punching him, the teacher, who by now was standing with arms still raised, struck the client by smacking him from behind. In Re Tenure Hearing of Gall, OAI. Dkt. No. EDU 2953-07, 2007 N.J. AGEN LEXIS 896, Commissioner's Decision (December 26, 2007).

#### 10:11-1.9 Reduction in force

Nothing contained in N.J.S.A. 18A shall be held to limit the right of the Commissioner of Human Services in the case of any educational program conducted under his or her juris-

diction, supervision or control, to reduce the number of instructional staff in any such educational program or programs when the reduction is due to natural diminution of the number of students participating in the educational program or programs, subject to N.J.A.C. 6:3-5.1.

Amended by R.1995 d.86, effective February 6, 1995.

See: 26 N.J.R. 4297(a), 27 N.J.R. 499(a).

Amended by R.1999 d.445, effective December 20, 1999.

See: 31 N.J.R. 2440(a), 31 N.J.R. 4259(b).

Substituted references to educational programs for references to state institutions throughout, and deleted a reference to pupils.