

# CHAPTER 3

## CONTROVERSIES AND DISPUTES

### Authority

N.J.S.A. 18A:6-9; 18A:6-10; 18A:7-4; 18A:7A-15; 18A:7F-9; 18A:7G-12; 18A:11-3; 18A:12-29; 18A:20-36; 18A:26-10; 18A:28-8; 18A:29-4; 18A:29-14; 18A:33-2; 18A:38-1; 18A:38-13; 18A:39-28; 18A:54-4 and 18A:60-1; and P.L. 2007, c. 260.

### Source and Effective Date

R.2010 d.072, effective April 23, 2010.  
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

### Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 3, Controversies and Disputes, expires on April 23, 2017. See: 43 N.J.R. 1203(a).

### Chapter Historical Note

Chapter 3, Controversies and Disputes, was originally codified in Title 6 as Chapter 24, Controversies and Disputes. Chapter 24 was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 24, Controversies and Disputes, was readopted as R.1986 d.157, effective April 10, 1986. See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Pursuant to Executive Order No. 66(1978), Chapter 24, Controversies and Disputes, was readopted as R.1991 d.57, effective January 11, 1991. See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b). Pursuant to Executive Order No. 22(1994), the expiration date of Chapter 24 was extended from January 11, 1996 to July 11, 1997. See: 26 N.J.R. 3783(a), 26 N.J.R. 3942(a). Pursuant to Executive Order No. 66(1978), Chapter 24 expired on July 11, 1997.

Chapter 24, Controversies and Disputes, was adopted as new rules by R.1997 d.358, effective September 2, 1997. See: 29 N.J.R. 2745(a), 29 N.J.R. 3817(a).

Subchapter 7, Budget Appeal Rules, was repealed by R.1997 d.372, effective September 2, 1997. See: 29 N.J.R. 2591(a), 29 N.J.R. 3806(a).

Pursuant to Executive Order No. 66(1978), Chapter 24, Controversies and Disputes, was readopted as R.2000 d.137, effective April 3, 2000, and Chapter 24 was recodified as N.J.A.C. 6A:3, Subchapter 6, Contested School Elections, was repealed, and Subchapter 6, Termination or Alteration of Sending-Receiving Relationship, Subchapter 7, Appeals from Decisions of the New Jersey State Interscholastic Athletic Association (NJSIAA), Subchapter 8, Appeals from Local District Determinations of Entitlement to Attend School Based Upon Domicile or Residency in District, Subchapter 9, Review of Penalty Determination of the School Ethics Commission, and Subchapter 10, "Abbott" Appeals, were adopted as new rules by R.2000 d.137, effective April 3, 2000. See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Chapter 3, Controversies and Disputes, was readopted as R.2005 d.109, effective March 10, 2005. See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Chapter 3, Controversies and Disputes, was readopted as R.2010 d.072, effective April 23, 2010. As a part of R.2010 d.072, Subchapter 12, Requests for Recording of Judgment, and Subchapter 13, Hearings Prior to Suspension or Revocation of School Bus Driver Endorsement Pursuant to N.J.S.A. 18A:39-28 et seq., were adopted as new rules, effective May 17, 2010. See: Source and Effective Date. See, also, section annotations.

### CHAPTER TABLE OF CONTENTS

#### SUBCHAPTER 1. GENERAL PROVISIONS

- 6A:3-1.1 Purpose and scope
- 6A:3-1.2 Definitions

- 6A:3-1.3 Filing and service of petition of appeal
- 6A:3-1.4 Format of petition of appeal
- 6A:3-1.5 Filing and service of answer
- 6A:3-1.6 Emergent relief or stay
- 6A:3-1.7 Amendment of petition and answer
- 6A:3-1.8 Permission to intervene or participate
- 6A:3-1.9 Appearance and representation
- 6A:3-1.10 Dismissal or transfer of petition
- 6A:3-1.11 Hearing
- 6A:3-1.12 Summary decision
- 6A:3-1.13 Settlement or withdrawal of contested matter
- 6A:3-1.14 Written decision
- 6A:3-1.15 Motion for stay, reconsideration or clarification of Commissioner's decision
- 6A:3-1.16 Relaxing of rules
- 6A:3-1.17 Awarding of interest

#### SUBCHAPTER 2. DECLARATORY RULINGS

- 6A:3-2.1 Petition for declaratory ruling
- 6A:3-2.2 Format of petition for declaratory ruling
- 6A:3-2.3 Dissemination of declaratory ruling

#### SUBCHAPTER 3. ORDER TO SHOW CAUSE

- 6A:3-3.1 Commissioner's order to show cause

#### SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

- 6A:3-4.1 Withholding salary increment

#### SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

- 6A:3-5.1 Filing of written charges and certificate of determination
- 6A:3-5.2 Format of certificate of determination
- 6A:3-5.3 Filing and service of answer to written charges
- 6A:3-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services, Children and Families, Corrections and Education and in the Juvenile Justice Commission
- 6A:3-5.5 Determination of sufficiency and transmittal for hearing
- 6A:3-5.6 Withdrawal, settlement or mooted of tenure charges

#### SUBCHAPTER 6. TERMINATION OR ALTERATION OF SENDING-RECEIVING RELATIONSHIP

- 6A:3-6.1 Application for termination or change in allocation or apportionment

#### SUBCHAPTER 7. APPEALS FROM DECISIONS OF THE NEW JERSEY STATE INTERSCHOLASTIC ATHLETIC ASSOCIATION (NJSIAA)

- 6A:3-7.1 Filing and service of petition
- 6A:3-7.2 Answer; record on appeal
- 6A:3-7.3 Schedule of briefing
- 6A:3-7.4 Applications for emergent relief
- 6A:3-7.5 Standard of review
- 6A:3-7.6 Commissioner's decision

#### SUBCHAPTER 8. APPEALS FROM DISTRICT BOARD OF EDUCATION DETERMINATIONS OF ENTITLEMENT TO ATTEND SCHOOL BASED UPON DOMICILE OR RESIDENCY IN DISTRICT

- 6A:3-8.1 Exceptions to general appeal requirements

#### SUBCHAPTER 9. REVIEW OF PENALTY RECOMMENDATIONS OF THE SCHOOL ETHICS COMMISSION

- 6A:3-9.1 Commissioner review of penalty recommendations

#### SUBCHAPTER 10. "ABBOTT" APPEALS

- 6A:3-10.1 Appeal of Department determinations

## SUBCHAPTER 11. APPLICATIONS FOR ISSUANCE OF FACILITIES BONDS

6A:3-11.1 Application to issue bonds following defeated referenda

## SUBCHAPTER 12. REQUESTS FOR RECORDING OF JUDGMENT

6A:3-12.1 Recording of assessments on judgment docket of Superior Court

## SUBCHAPTER 13. HEARINGS PRIOR TO SUSPENSION OR REVOCATION OF SCHOOL BUS DRIVER ENDORSEMENT PURSUANT TO N.J.S.A. 18A:39-28 ET SEQ.

6A:3-13.1 Request for hearing upon notice of impending suspension or revocation

decisions of the Board of Examiners or the School Ethics Commission, or requests for relief arising out of legal decisions of the State Board of Education. In accordance with P.L. 2008, c. 36, such appeals and requests shall be made pursuant to the provisions of N.J.A.C. 6A:4.

New Rule, R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Amended the N.J.A.C. references throughout.

Amended by R.2010 d.072, effective May 17, 2010.

See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

In (b)4, deleted "and" from the end; in (b)5, substituted "; and" for a period at the end; added (b)6; in (c), substituted "This" for "In accordance with N.J.S.A. 18A:7F-5e(3), this" and "In accordance with N.J.S.A. 18A:7F-5e(3), such" for "Such"; and added (d).

## SUBCHAPTER 1. GENERAL PROVISIONS

### 6A:3-1.1 Purpose and scope

(a) This chapter sets forth the rules of procedure established by the Department of Education for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9.

(b) This chapter also establishes special rules of procedure for specific types of controversies in accordance with the requirements of the following statutes:

1. The filing of tenure charges pursuant to N.J.S.A. 18A:6-10 through 18A:6-17;

2. Termination of sending-receiving relationships pursuant to N.J.S.A. 18A:38-13;

3. Appeals from decisions of the New Jersey State Interscholastic Athletic Association pursuant to N.J.S.A. 18A:11-3;

4. Denials of entitlement to attend school pursuant to N.J.S.A. 18A:38-1;

5. Review of penalties recommended by the School Ethics Commission pursuant to N.J.S.A. 18A:12-29; and

6. Hearings prior to suspension or revocation of school bus driver endorsements pursuant to N.J.S.A. 18A:39-28 et seq.

(c) This chapter shall not apply to district boards of education seeking restoration of budget reductions by governing bodies or boards of school estimate. In accordance with N.J.S.A. 18A:7F-5e(3), such restorations shall be sought pursuant to the provisions of N.J.A.C. 6A:23-8.10.

(d) This chapter shall not apply to appeals of decisions of the State Board of Examiners suspending or revoking teaching certificates, decisions of the School Ethics Commission finding violation of the School Ethics Act, interlocutory

### Case Notes

Final investigation decision rendered by the Office of Special Education Programs, pursuant to the Individuals with Disabilities Education Act, cannot be appealed to the Commissioner of Education. Board of Educ. of the Lenape Reg'l High Sch. Dist. v. New Jersey State Dep't of Educ., 399 N.J. Super. 595, 945 A.2d 125, 2008 N.J. Super. LEXIS 87 (App.Div. 2008).

Initial Decision (2008 N.J. AGEN LEXIS 328) adopted, which concluded that the Commissioner of Education had jurisdiction over a residency dispute where parents, who had bought a house in the school district that was not completed yet, signed an affidavit stating that they assumed liability for tuition assessed if their children were not residents of the school district after five weeks; the affidavit did not appear to be a contract as the five-week grace period was a standing general policy of the school board, and even if it were a contract, the Commissioner has clear jurisdiction over claims of violations of the school laws. K.L. & K.L. ex rel. M.L. v. Bd. of Educ. of Kinnelon, OAL Dkt. No. EDU 1191-08 & EDU 1192-08 (Consolidated), Final Decision (July 22, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 328) adopted, which explained that the restriction on the jurisdiction of the Commissioner of Education in contract disputes is limited to disputes that do not arise out of the school laws and is typically only applied to teacher contract disputes. K.L. & K.L. ex rel. M.L. v. Bd. of Educ. of Kinnelon, OAL Dkt. No. EDU 1191-08 & EDU 1192-08 (Consolidated), Final Decision (July 22, 2008).

ALJ appropriately decided teacher's LAD (N.J.S.A. 10:5-1 et seq.) claim within the context of a school law dispute — which teacher himself initiated by choosing to file his appeal with the Commissioner of Education rather than the Division on Civil Rights, as the Board policy on which teacher relied in asserting Commissioner jurisdiction clearly gave him the option to do. The ALJ correctly analyzed petitioner's claim primarily in terms of school law and secondarily in terms of the standard applicable to claims under the LAD, concluding from her review of the law, testimony and evidence that petitioner had no entitlement under the former and had not met his burden of proof under the latter. Varjian v. Bd. of Educ. of Midland Park, OAL Dkt. No. EDU 9917-05, 2007 N.J. AGEN LEXIS 1009, Commissioner's Decision (October 15, 2007), aff'd, SB NO. 30-07, 2008 N.J. AGEN LEXIS 674 (N.J. State Bd. of Educ., May 27, 2008).

Although teacher claimed that his work environment was rendered hostile by the cumulative effect of numerous adverse actions at the hands of the Board and its administration, for which there was no possible explanation other than discrimination toward him as a former cancer patient, reality revealed by the record was that teacher's absence and return to work coincided with the emergence of a new building-level administration which progressively undertook to make systematic

changes in the operation of the high school, a number of which affected teacher's ability to maintain what he perceived as his accustomed position of status and autonomy (namely, teaching only honors and college prep courses). Teacher had no vested entitlement to teach what he wanted to teach and was no more entitled than any other teacher to determine his own schedule of classes. *Varjian v. Bd. of Educ. of Midland Park*, OAL Dkt. No. EDU 9917-05, 2007 N.J. AGEN LEXIS 1009, Commissioner's Decision (October 15, 2007), *aff'd*, SB NO. 30-07, 2008 N.J. AGEN LEXIS 674 (N.J. State Bd. of Educ., May 27, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 329) adopted, which concluded that the Commissioner of Education did not have legal authority to award a parent damages for lost wages and child care expenses incurred while his son was suspended from school; the award of money

damages in cases before the Commissioner occurs only in a limited number of cases authorized by the education statutes. *B.G. ex rel. B.G. v. Bd. of Educ. of East Orange*, OAL Dkt. No. EDU 3036-08, Final Decision (May 20, 2008).

### 6A:3-1.2 Definitions

The words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ALJ" means an administrative law judge assigned by the Director of the Office of Administrative Law to preside over contested cases pursuant to N.J.S.A. 52:14F-1 et seq.

Negative impact of teacher's absenteeism on continuity of instruction to students warranted withholding salary increments for an academic year. *Kochman v. Keansburg Board of Education*, 95 N.J.A.R.2d (EDU) 212.

Withholding of employment and adjustment increments for school psychologist was for good cause and was not beyond managerial prerogative of school board. *Kaska v. Trenton Board of Education*, 95 N.J.A.R.2d (EDU) 55.

Withholding of salary increment for unsatisfactory performance was not arbitrary, capricious or unreasonable. *Simon v. State-Operated School District of Paterson City*, 94 N.J.A.R.2d (EDU) 537.

Withholding increments due to weakness in classroom management was not unreasonable. *Harritty v. Keansburg Board of Education*, 94 N.J.A.R.2d (EDU) 376.

Recoupment of salary and/or adjustment increments; disciplined tenured teacher; subsequent salary freeze. *Cerato v. Newark Board of Education*, 94 N.J.A.R.2d (EDU) 248.

Chronic absenteeism of teacher; basis to withhold salary increments. *Kochman v. Keansburg Borough Board of Education*, 94 N.J.A.R.2d (EDU) 141.

Withholding salary increments for unsatisfactory performance was not arbitrary, capricious, or unreasonable. *Brown v. Jersey City School District*, 93 N.J.A.R.2d (EDU) 875.

Payment of salary increments neither mandated nor prohibited upon expiration of collective negotiations agreement. *Neptune Township Board of Education v. Neptune Township Education Association*, 93 N.J.A.R.2d (EDU) 791.

Increments withheld; unsatisfactory ratings and excessive absenteeism. *Facone v. Board of Education of City of Jersey City*, 93 N.J.A.R.2d (EDU) 502.

Withholding teacher's employment and adjustment increment; not arbitrary or capricious. *Kesheneff v. Board of Education of Township of Holmdel*, 93 N.J.A.R.2d (EDU) 312.

Payment of increments following expiration of collectively negotiated salary schedule was governed by Employer-Employee Relations Act. *Board of Education of Township of Neptune v. Neptune Township Education Association*, 93 N.J.A.R.2d (EDU) 178.

Board of education under no obligation to return teacher whose increment was withheld to regular salary guide; New Jersey Employer-Employee Relations Act. *Fieseler v. South River Board of Education*, 93 N.J.A.R.2d (EDU) 136.

Increment withholding proceedings; inadequate record; remand. *Kesheneff v. Board of Education of Township of Holmdel*, 93 N.J.A.R.2d (EDU) 41.

Withholding adjustment increment not arbitrary; alleged procedural deficiencies in evaluation process. *Sturn v. Board of Education of Borough of South Plainfield*, 92 N.J.A.R.2d (EDU) 661.

Classroom management; withholding increment and salary adjustment reasonable. *Gnatt v. Board of Education of Manalapan-Englishtown Regional School District*, 92 N.J.A.R.2d (EDU) 589.

Withholding of teacher's increment; no abuse of discretion. *Brown v. Township of South Brunswick Board of Education*, 92 N.J.A.R.2d (EDU) 560.

Withholding of salary increment sustained; insensitivity and lack of compassion towards students. *Byorek v. Board of Education, Scotch Plains-Fanwood School District*, 92 N.J.A.R.2d (EDU) 511.

Withholding increment and salary increase; performance of teaching duties and alleged insubordination. *Backer v. Township of Roxbury Board of Education*, 92 N.J.A.R.2d (EDU) 441, reversed 96 N.J.A.R.2d (EDU) 349.

Withholding adjustment and employment increments; application of absenteeism policy. *Pollard v. Board of Education of Township of Teaneck*, 92 N.J.A.R.2d (EDU) 279.

Failure to show that decision to withhold increments and to place reprimand in file was unreasonable. *Zarro v. Board of Education of Paramus, Bergen County*, 92 N.J.A.R.2d (EDU) 145.

## SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

### Subchapter Historical Note

Notice of Action on Petition for Rulemaking. See: 38 N.J.R. 2890(a).

### 6A:3-5.1 Filing of written charges and certificate of determination

(a) N.J.A.C. 6A:3-1.3, Filing and service of petition of appeal, shall not apply in a case of charges preferred before the Commissioner against an employee of a district board of education or of a school district under full State intervention pursuant to the Tenure Employees' Hearing Act. In place of the usual petition, the district board of education or the State district superintendent shall file the written charges and the required certificate of determination with the Commissioner together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as charges are filed with the Commissioner.

1. In accordance with N.J.S.A. 34:13A-24, fines and suspensions imposed as minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S.A. 18A:6-10 where the negotiated agreement between a district board of education and the majority representative of the employees in the appropriate collective bargaining unit provides for such discipline. In these cases, tenure charges shall not be filed in order to impose minor discipline on a person serving under tenure.

(b) In all instances of the filing and certification of tenure charges, other than for reasons of inefficiency, the following procedures and timelines shall be observed:

1. Charges shall be stated with specificity as to the action or behavior underlying the charges and shall be filed in writing with the secretary of the district board of education or with the State district superintendent, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

2. Charges along with the required sworn statement of evidence shall be transmitted to the affected tenured employee and the employee's representative, if known, within three working days of the date they were filed with the secretary of the district board of education or the State

district superintendent. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The affected tenured employee shall have an opportunity to submit to the district board of education or the State district superintendent 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.

4. Upon receipt of the tenured employee's written statements of position and evidence under oath, or upon expiration of the allotted 15-day time period, the district board of education shall determine by a majority vote of its full membership, or the State district superintendent shall determine, within 45 days 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.

5. The district board of education or the State district superintendent shall, within three working days, provide written notification of the determination to the employee against whom the charge has been made, in person or by certified mail to the last known address of the employee and the employee's representative, if known.

6. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the board or the State district superintendent shall, within 15 days, file such written charges with the Commissioner. The charges shall be stated with specificity as to the action or behavior underlying the charges and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the board or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

7. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(c) In the event that the tenure charges are charges of inefficiency, except in the case of building principals and vice principals in school districts under full State intervention, where procedures are governed by the provisions of N.J.S.A. 18A:7A-45 and such rules as may be promulgated to implement it, the following procedures and timelines shall be observed:

1. Initial charges of inefficiency shall be stated with specificity as to the nature of the inefficiency alleged and filed by the appropriate administrator with the secretary of the district board of education or the State district superintendent along with a statement of evidence in support thereof executed under oath. In the event the charges are

against the chief school administrator of a district board of education, they shall be filed, along with the required statement of evidence, by a designated board member(s) upon the direction of the district board as ascertained by majority vote of the full board.

2. The district board of education, through its board secretary, or the State district superintendent, upon receipt of the charges of inefficiency and the written statement of evidence in support thereof shall cause a copy of same to be transmitted to the affected employee and the employee's representative, if known, within three working days. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The district board of education, through its board secretary, or the State district superintendent shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90-day period, or any longer period provided by the district board of education or State district superintendent, the district board of education or the State district superintendent intends to certify those charges of inefficiency to the Commissioner pursuant to N.J.S.A. 18A:6-11.

4. Concurrent with notifying the employee of such charges of inefficiency, the district board of education or the State district superintendent shall direct that there be a modification of the individual professional improvement plan mandated by N.J.A.C. 6A:32-4.3 or 4.4, to assure that such plan addresses the specific charges of inefficiency and comports with the timelines established for correction.

5. Upon completion of the minimal 90-day period for improvement, or such longer period as may be provided by the district board of education or the State district superintendent, the administrator(s) responsible for bringing such charges to the attention of the district board of education or the State district superintendent shall notify the district board of education or the State district superintendent in writing of what charges, if any, have not been corrected. In the event the charges are against a chief school administrator of a district board of education, the district board shall determine by majority vote of the full board what charges, if any, have not been corrected.

6. The district board of education or the State district superintendent, upon receipt of the written notification or upon the district board's determination in the case of a chief school administrator, shall notify the affected employee in writing that all of the inefficiencies have been corrected or, in the alternative, which of the inefficiencies have not been corrected. The time from the expiration of the minimal 90-day period, or such longer period as may be provided by the district board of education or the State district superintendent, to the notification of the employee by the district board of education or the State district superintendent shall not exceed 30 calendar days.

7. In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within 15 days of the receipt of said notification of inefficiency by filing a statement of evidence under oath in opposition to those charges.

8. Upon receipt of such written statement of evidence under oath or upon expiration of the allotted 15-day time period, the district board of education shall determine by a majority vote of its full membership, or the State district superintendent shall determine, within 45 days, whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal or reduction in salary.

9. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the district board of education or the State district superintendent shall, within 15 days, file such written charges with the Commissioner. The charge shall be stated with specificity as to the nature of the inefficiency alleged, and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

10. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

Amended by R.1986 d.157, effective May 5, 1986.  
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added (b)-(c).

Amended by R.1991 d.57, effective February 4, 1991.  
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Stylistic changes.

Amended by R.2000 d.137, effective April 3, 2000.  
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.  
See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

Petition for Rulemaking  
See: 38 N.J.R. 2216(a).

Amended by R.2006 d.245, effective July 3, 2006.  
See: 38 N.J.R. 1495(a), 38 N.J.R. 2796(b).

In (c)1, added the last sentence; in (c)4, substituted "6A:32-4.3 or 4.4," for "6:3-4.3(f)"; in (c)5, added the last sentence; and in (c)6, inserted "or upon the district board's determination in the case of a chief school administrator".

Amended by R.2010 d.072, effective May 17, 2010.  
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

In the introductory paragraph of (a), substituted "N.J.A.C. 6A:3-1.3, Filing and service of petition of appeal, shall not apply in" for "In", deleted "State-operated" preceding "school district", "N.J.A.C. 6A:3-

1.3, Filing and service of petition, shall not apply" following "Act" and "original and two copies of the" preceding "written" and inserted "under full State intervention"; and in the introductory paragraph of (c), inserted "and vice principals" and "under full State intervention," and deleted "State-operated" preceding "school".

Petition for Rulemaking.

See: 44 N.J.R. 1796(a), 2063(a).

#### Case Notes

State Department of Education properly denied a petition for an amendment to administrative rule N.J.A.C. 6A:3-5.1(a), which recognizes that, in certain circumstances, a State district superintendent may make probable cause determinations in tenure proceedings for school employees, as the regulation is consistent with the statutes that: permit the State to intervene in the operation of local school districts; grant broad power to the State district superintendent to make personnel decisions; and limit the powers of the board of education for the district. The rule was adopted in accordance with the notice requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 through 52:14B-15; and tenured employees are not denied procedural due process when probable cause determinations are made by the State district superintendent rather than by the district board of education. *Gillespie v. Department of Educ.*, 397 N.J. Super. 545, 938 A.2d 184, 2008 N.J. Super. LEXIS 16 (App.Div. 2008).

Tolling of time to determine probable cause for dismissing tenured teacher during response time and for day of service. *Matter of Tenure Hearing of Cowan*, 224 N.J. Super. 737, 541 A.2d 298 (A.D.1988).

Adequate certification of charges against tenured employee where document containing jurat was signed four days before secretary signed certification. *Matter of Tenure Hearing of Cowan*, 224 N.J. Super. 737, 541 A.2d 298 (A.D.1988).

Very generic provision on discipline of employees included in a collective bargaining agreement (CBA) between the Lyndhurst Education Association and the Board of Education of the Township of Lyndhurst did not meet the legal requirements for a schedule and specifics per N.J.A.C. 6A:3-5.1(a)1 allowing minor discipline to be encompassed within the CBA and stand as an exception to the Tenured Employees Hearing Act (Tenure Act), N.J.S.A. 18A:6-10 et seq. Given that finding, the Board lacked legal authority to suspend a school nurse who had tenure without bringing charges under the Tenure Act and the nurse was entitled to a summary decision that the three-day suspension that had been imposed was invalid and ordering the Board to pay her for the three days. *Conte v. Bd. of Educ. of Lyndhurst*, OAL Dkt. No. EDU 11282-12, 2013 N.J. AGEN LEXIS 49, Initial Decision (February 26, 2013).

Board's failure to provide a modified individual professional improvement plan (PIP) and reasonable assistance compelled dismissal of inefficiency tenure charges against school social worker. In re Tenure Hearing of Parise, OAL Dkt. No. EDU 5793-03, 2008 N.J. AGEN LEXIS 1189, Final Decision (August 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 298) adopted, which found that tenure charges were not defective for being predicated on the vice-principal's arrest, indictment, and entry into the Pretrial Intervention Program, because the charges clearly articulated the reasons for arrest, i.e., possession of cocaine and drug paraphernalia, and supported the OAL hearing on the underlying facts. In re Tenure Hearing of Thomas, OAL Dkt. No. EDU 1763-08 (EDU 5908-07 On Remand), Commissioner's Decision (May 23, 2008).

Evidence sustained finding of unbecoming conduct against teacher where he was found to have sent student a birthday card and a gift to a nail salon and to have created a clandestine email account exclusively for himself and the student. Teacher was not dismissed from his tenured employment but was required to forfeit 120 days of salary (Initial Decision adopted except as to penalty, 2008 N.J. AGEN LEXIS 209). In re Tenure Hearing of Dennis, OAL Dkt. No. EDU 5080-07, 2008 N.J. AGEN LEXIS 1249, Commissioner's Decision (May 8, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 808) adopted as to its finding that the petitioner acquired tenure as a clerical employee by virtue of her service as an attendance aide, but rejected as to its implicit conclusion that the petitioner's tenure protection continued when she accepted the separate and nontenurable position of classroom aide. Because no relief could be awarded as a result of the petitioner's one-time tenured status, petition was dismissed. *Colon-Serrano v. Bd. of Educ. of Plainfield*, OAL Dkt. No. EDU 11588-06, 2008 N.J. AGEN LEXIS 252, Commissioner's Decision (January 28, 2008), aff'd, SB NO. 10-08, 2008 N.J. AGEN LEXIS 724 (N.J. State Bd. of Educ., June 28, 2008).

Even assuming *arguendo* that some of the allegations relating to the teacher's performance could be characterized as inefficiency, and thus subject to the 90-day improvement plan requirement of N.J.S.A. 18A:6-11, the Board more than amply demonstrated the teacher's unbecoming conduct, and such charges warranted the teacher's dismissal (aff'd 2007 N.J. AGEN LEXIS 311). In re Tenure Hearing of Hill, OAL Dkt. No. EDU 5979-06; C NO. 176-07; SB No. 14-07, 2007 N.J. AGEN LEXIS 977 (October 17, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 589) adopted, which concluded that infirmities in tenure charges under N.J.S.A. 18A:6-11 were sufficient to preclude them from proceeding to hearing and adjudication; the board failed to provide "a written statement of evidence" under oath, and the charges were so general in nature that respondent was unable to "submit a written statement of position." In re Tenure Hearing of King, OAL Dkt. No. EDU 4489-07, 2007 N.J. AGEN LEXIS 1005, Commissioner's Decision (September 18, 2007).

Notice from school board; termination proceedings. *Jackson v. Englewood Board of Election*, 94 N.J.A.R.2d (EDU) 520.

Evidence established that it was reasonable for board of education to refuse to certify tenure charges. *Bey v. Board of Education of City of Newark*, 93 N.J.A.R.2d (EDU) 288.

### 6A:3-5.2 Format of certificate of determination

(a) The certificate of determination which accompanies the written charges shall contain a certification by the district board of education secretary or the State district superintendent:

1. That the district board of education or the State district superintendent has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date, place and time of the meeting at which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay;

3. That such determination was made by a majority vote of the whole number of members of the district board of education or by the State district superintendent in accordance with N.J.S.A. 18A:7A-39; and

4. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

(b) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

Amended by R.1986 d.157, effective May 5, 1986.  
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substantially amended.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a), inserted references to State district superintendents throughout; and added (d).

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

In (b), substituted ", who are governed by" for "pursuant to" following "charter schools" and amended the N.J.A.C. reference.

Petition for Rulemaking.

See: 44 N.J.R. 1796(a), 2063(a).

### Case Notes

Review of procedure for bringing tenure charges; abstention by court not required. *Wichert v. Walter*, 606 F.Supp. 1516 (D.N.J.1985).

Issue of form over substance in remedying procedural defect. In re: Tenure Hearing of Kizer, 1974 S.L.D. 505.

### 6A:3-5.3 Filing and service of answer to written charges

(a) An individual against whom tenure charges are certified shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the charges. Except as to time for filing, the answer shall conform to the requirements of N.J.A.C. 6A:3-1.5(a) through (d).

1. Consistent with N.J.A.C. 6A:3-1.5(g), nothing in this subsection precludes the filing of a motion to dismiss in lieu of an answer to the charges, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner, or by the ALJ if the motion is to be briefed following transmittal to the OAL.

(b) Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown consistent with the provisions of N.J.S.A. 18A:6-16. Such application shall be received prior to the expiration of the 15-day answer period, and a copy shall be served upon the charging district board of education or the State district superintendent. Such district board of education or State district superintendent shall promptly notify the Commissioner of any opposition to the request.

1. A request for extension which is not filed within the 15-day period allotted for answer to tenure charges will be considered only in the event of demonstrated emergency or other unforeseeable circumstance such that the request could not have been made within the requisite filing period.

(c) Where no answer is filed within the requisite time period and no request for extension is made, or such request is denied by the Commissioner, or where the charged employee submits an answer or other responsive filing indicating that the employee does not contest the charges, the charges shall be deemed admitted by the charged employee.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

Amended by R.2000 d.137, effective April 3, 2000.  
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.  
See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

Amended by R.2010 d.072, effective May 17, 2010.  
See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

In (a)1, deleted the second sentence and inserted “, or by the ALJ if the motion is to be briefed following transmittal to the OAL”.

#### **Case Notes**

Review of procedure for bringing tenure charges; abstention by court not required. *Wichert v. Walter*, 606 F.Supp. 1516 (D.N.J.1985).

**6A:3-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services, Children and Families, Corrections and Education and in the Juvenile Justice Commission**

(a) The process for the filing and service of tenure charges against persons serving under tenure pursuant to N.J.S.A. 18A:60-1 within the Departments of Human Services, Children and Families, Corrections and Education, or within the Juvenile Justice Commission pursuant to N.J.S.A. 52:17B-170, other than for reasons of inefficiency shall comport with the process as described in N.J.A.C. 6A:3-5.1(b) except as set forth in this section. The charges shall be filed with the Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services in the Department of Corrections or the Juvenile Justice Commission, or with an individual within the Department of Education designated by the Commissioner, as appropriate. Any written statement of position submitted by the affected employee in response to said charges shall be filed with those individuals in the respective departments in the manner and time frame prescribed by N.J.A.C. 6A:3-5.1(b).

1. In accordance with N.J.S.A. 34:13A-24, fines and suspensions imposed as minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S.A. 18A:6-10 where the negotiated agreement between an agency and the majority representative of the employees in the appropriate collective bargaining unit provides for such discipline. In these cases, tenure charges shall not be filed in order to impose minor discipline on a person serving under tenure pursuant to N.J.S.A. 18A:60-1.

(b) The Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services in the Department of Corrections or the Juvenile Justice Commission, or the individual designated by the Commissioner of Education, as the case may be, shall, upon receipt of respondent's written statement of evidence under oath or upon expiration of the allotted 15-day time period, determine within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant dismissal or reduction of salary and shall notify the affected employee of the determination in writing in the manner prescribed by N.J.A.C. 6A:3-5.1(b).

(c) In the event that the Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services in the Department of Corrections or the Juvenile Justice Commission, or the individual designated by the Commissioner of Education finds that probable cause exists and that the charges, if credited, warrant dismissal or reduction in salary, then such person

shall file such charges and the required certification with the Commissioner of Education together with the name of the Deputy Attorney General who will be representing the agency and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as charges are filed with the Commissioner.

(d) In the event that the tenure charges are charges of inefficiency, the procedures and timelines to be followed shall be as prescribed by N.J.A.C. 6A:3-5.1(c) except that receipt of all papers, required actions, transmissions, notifications, determinations and certifications prescribed by the aforesaid provision shall be the responsibility of the Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services for charges arising out of the Department of Corrections or the Juvenile Justice Commission; or the individual designated by the Commissioner of Education for charges arising out of the Department of Education.

(e) The certificate of determination which accompanies the written charges shall contain a certification by the Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services in the Department of Corrections or the Juvenile Justice Commission, or the individual designated by the Commissioner of Education:

1. That the director or responsible person has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;
2. Of the date on which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay; and
3. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

(f) An individual against whom tenure charges are certified shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the charges with the Commissioner consistent with the provisions of N.J.A.C. 6A:3-5.3(a).

(g) Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown consistent with the provisions of N.J.S.A. 18A:6-16. Such application shall be received prior to the expiration of the 15-day answer period, and a copy shall be served upon the charging department, which shall promptly notify the Commissioner of its opposition, if any, to the request.

1. A request for extension which is not filed within the 15-day period allotted for answer to tenure charges shall be considered only in the event of demonstrated emergency or other unforeseeable circumstance such that the request could not have been made within the requisite filing period.

(h) Where no answer is filed within the requisite time period and no request for extension is made, or such request is denied by the Commissioner, or where the charged employee submits an answer or other responsive filing indicating that the employee does not contest the charges, the charges shall be deemed admitted by the charged employee.

New Rule, R.1989 d.553, effective November 6, 1989.

See: 21 N.J.R. 1939(b), 21 N.J.R. 3461(a).

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

Amended by R.2010 d.072, effective May 17, 2010.

See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

Section was "Filing and certification of charges against tenured employees in the Departments of Human Services, Corrections and Education and in the Juvenile Justice Commission". Rewrote the introductory paragraph of (a) and rewrote (b), (c), (d) and the introductory paragraph of (e).

#### Case Notes

Tenured teacher was properly dismissed after demonstrating a pattern of improper conduct toward students, staff and parents alike: (1) he was verbally abusive to his students, embarrassing them in front of their fellow students by calling them names and, on one occasion, even threatening one student with physical abuse; (2) he was rude and disrespectful to parents attempting to conference with him concerning issues involving their children; (3) he was repeatedly disrespectful and belligerent towards his immediate supervisor and other administrative staff; (4) he engaged in threatening, aggressive behavior towards his colleagues and, at one point, even initiated a physical altercation with one of them. Additionally, despite receiving repeated warnings from the District that his unprofessional and inappropriate behavior was not consistent with the professional conduct that was expected of a teacher, he remained unwilling or unable to conform his conduct to that which was reasonably expected from a teaching staff member and, consequently, it could not be said that his behavior would not be repeated in the future. In re Tenure Hearing of Taylor, OAL Dkt. No. EDU 11914-08, 2009 N.J. AGEN LEXIS 750, Final Decision (September 21, 2009).

Former school principal not entitled to tenure as assistant superintendent. *Gittelman v. Township of Hamilton, Mercer County*, 97 N.J.A.R.2d (EDU) 200.

High school teacher's sexual liaison with student warranted removal of tenure. *Board of Education of the City of Camden v. Hovington*, 97 N.J.A.R.2d (EDU) 168.

Teacher's drunkenness during school hours did not warrant removal of tenure. In the *Matter of the Tenure Hearing of William Koller*, 97 N.J.A.R.2d (EDU) 157.

Minimal evidence of rehabilitation offered by teacher was insufficient to offset seriousness of drug importation conspiracy conviction, and thus disqualification from teaching was warranted. In the *Matter of the Disqualification from School Employment of Palumbo*, 96 N.J.A.R.2d (EDU) 534.

Teacher was detenured and dismissed on grounds that her behavior was unprofessional toward students, hostile toward co-workers, insub-

ordinate toward superiors, and in violation of professional ethics. In the *Matter of the Tenure of Sheth*, 96 N.J.A.R.2d (HED) 9.

Corrective action requiring reduction of tenured janitor's salary could not take effect until end of school year. *Gerity v. Woodbridge Board of Education*, 95 N.J.A.R.2d (EDU) 522.

Inability to work due to severe depression warranted tenured clerk's dismissal for incapacity. *Matter of Tenure Hearing of Stanley*, 95 N.J.A.R.2d (EDU) 495.

Plea of guilty to criminal sexual conduct was not act of employment warranting forfeiture, but was unbecoming conduct warranting termination. *Bergenfield Board of Education v. Efferen*, 95 N.J.A.R.2d (EDU) 457.

Choking and shaking of student was unbecoming a teaching staff member and warranted tenured teacher's dismissal under circumstances. *Matter of Tenure Hearing of Johnston*, 95 N.J.A.R.2d (EDU) 439.

Addressing female staff members in such a matter as to deprive them of their dignity was conduct unbecoming a teaching staff member. *Freehold Regional v. Kotkin*, 95 N.J.A.R.2d (EDU) 431.

Absenteeism was unbecoming conduct warranting tenured teacher's removal. *Matter of Tenure Hearing of Rucker*, 95 N.J.A.R.2d (EDU) 350.

Inappropriate discussions with students regarding sexual matters warranted tenured teacher's dismissal. *Matter of Tenure Hearing of Roberts*, 95 N.J.A.R.2d (EDU) 349.

Costs incurred by tenured teacher in defending against criminal charges not shown to have arisen from performance of his duties were not indemnifiable. *Bower v. East Orange Board of Education*, 95 N.J.A.R.2d (EDU) 345, reversed 287 N.J. Super. 15, 670 A.2d 106.

Conviction on plea of guilty to criminal sexual conduct did not warrant automatic forfeiture of public position without first affording tenured custodian a full hearing in which to reveal mitigating circumstances. *Bergenfield Board of Education v. Efferen*, 95 N.J.A.R.2d (EDU) 304, on remand 95 N.J.A.R.2d (EDU) 457.

Alcoholism which initially led to excessive absenteeism did not warrant tenured teacher's removal once she successfully completed school district's rehabilitation program. *Jersey City School District v. Howard*, 95 N.J.A.R.2d (EDU) 301.

Inappropriate sexual behavior warranted long-term suspension with homebound instruction until end of school. *R.L. and K.L. v. Kingsway Board of Education*, 95 N.J.A.R.2d (EDU) 296.

Excessive absenteeism provided sufficient cause for school board to terminate employee from her position as a tenured secretary. *Matter of Tenure Hearing of Jones*, 95 N.J.A.R.2d (EDU) 285.

Use of illegal amphetamines in breach of drug rehabilitation contract with school board was unbecoming and warranted tenured teacher's dismissal. *Matter of Yanniello Tenure Hearing*, 95 N.J.A.R.2d (EDU) 262.

Comments in class implying eugenic disability of children for superior performance were not protected by free speech and warranted tenured teacher's termination. *Campbell v. Princeton Board of Education*, 95 N.J.A.R.2d (EDU) 211, certification denied 665 A.2d 1111, 142 N.J. 518.

Employment of corporal punishment through use of physical force to lift chin of one student, thereby causing head to strike wall, was unacceptable and warranted forfeiture of six months' salary for tenured teacher. *Matter of Tenure Hearing of Di Pillo*, 95 N.J.A.R.2d (EDU) 206.

Custodians were tenured under resolution of school board and were not required to prove their efficiency to avoid termination. *Zielinski v. East Brunswick Board of Education*, 95 N.J.A.R.2d (EDU) 161, affirmed 96 N.J.A.R.2d (EDU) 3.

Positive cocaine test was sufficiently trustworthy to support tenured custodian's dismissal by school district. *Matter of Tenure Hearing of Caravello*, 95 N.J.A.R.2d (EDU) 160.

Employee terminated from tenured position with school board was entitled to be paid value of vacation time accrued by her at that time. *Lowe v. Orange Board of Education*, 95 N.J.A.R.2d (EDU) 139.

Repetitive conduct that put students at risk justified dismissal of tenured teacher. *Matter of Tenure Hearing of Harrell*, 95 N.J.A.R.2d (EDU) 137.

Charges of inefficiency brought against tenured teacher were dismissed as moot when teacher thereafter retired. *Barshatky v. Freehold Board of Education*, 95 N.J.A.R.2d (EDU) 71.

Allowing classroom situation that was a risk to students' safety warranted dismissal of teacher from tenured position. *City of Paterson v. Rubin*, 95 N.J.A.R.2d (EDU) 13.

Participation in activity violative of public trust warranted two-year suspension of teaching certificates. *Matter of Pedrick Teaching Certificates*, 95 N.J.A.R.2d (EDE) 1.

Termination; insubordination. In the *Matter of the Disciplinary Hearing of McCargo*, 94 N.J.A.R.2d (EDU) 524.

Tenured prison teacher's unauthorized correspondence with prison inmate; termination. In the *Matter of the Tenure Hearing of Jacqueline Holmes-Williams*, 94 N.J.A.R.2d (EDU) 447.

Board failed to prove that teacher engaged in conduct unbecoming a teacher. In the *Matter of the Tenure Hearing of David C. Borrelli*, 94 N.J.A.R.2d (EDU) 424.

Hitting students and making personal remarks to student; dismissal. In the *Matter of the Tenure Hearing of Charles Talley*, 94 N.J.A.R.2d (EDU) 395.

Award of benefits to tenure eligible teaching staff members retroactively applied. *Trenton Education Association v. Trenton Board of Education*, 94 N.J.A.R.2d (EDU) 328.

Termination of tenured teacher; cocaine. In the *Matter of the Tenure Hearing of Caravello*, 94 N.J.A.R.2d (EDU) 304.

Dismissal; sexually explicit discussions with students. In the *Matter of the Tenure Hearing of Frank Roberts*, 94 N.J.A.R.2d (EDU) 284.

Termination of nontenured custodian; harassing a female student. *Hugg v. Pinelands Regional School District Board of Education*, 94 N.J.A.R.2d (EDU) 279.

Resisting arrest and attempt to injure police officers; dismissal of teaching staff member. In the *Matter of the Tenure Hearing of Henderck*, 94 N.J.A.R.2d (EDU) 268.

Dismissal of tenured clerk; inadequacies which remained uncorrected despite 90 day remediation period. In the *Matter of the Tenure Hearing of Carson*, 94 N.J.A.R.2d (EDU) 250.

Tenured school principal's chronic and excessive absenteeism warranted termination. *Camden School District v. Rucker*, 94 N.J.A.R.2d (EDU) 190.

School counselor failed to establish by a preponderance of evidence that she was terminated on the basis of religion. *Miller v. Holmdel Township Board of Education*, 94 N.J.A.R.2d (CRT) 185.

Dismissal of custodian; drug testing protocols. In the *Matter of the Tenure Hearing of Caravello*, 94 N.J.A.R.2d (EDU) 163.

Abolition of position and demotion was not shown as arbitrary, capricious, unreasonable or otherwise unfair decision. *Nuber v. Jersey City School District*, 94 N.J.A.R.2d (EDU) 25.

Terminated employee was entitled to payment for accrued vacation. *Lowe v. Orange City Board of Education*, 93 N.J.A.R.2d (EDU) 789.

Dismissal of teacher as alcoholic not warranted. In the *Matter of the Tenure Hearing of Howard*, 93 N.J.A.R.2d (EDU) 788.

Dismissal of teacher was warranted for unbecoming conduct. In the *Matter of the Tenure Hearing of Smith*, 93 N.J.A.R.2d (EDU) 729.

Prison vocational teacher did not breach duty by bringing construction materials obtained from inmate's relatives into prison or by supplying keys to another inmate. In the *Matter of the Tenure Hearing of Samano*, 93 N.J.A.R.2d (EDU) 710.

Chronic and excessive absences warranted dismissal of tenured teacher from school district. *Matter of Tenure Hearing of Kacprowicz*, 93 N.J.A.R.2d (EDU) 604, 95 N.J.A.R.2d (EDU) 105.

Gross insensitivity and humiliation of students warranted loss of pay. In *Matter of Tenure Hearing of Feinsod*, 93 N.J.A.R.2d (EDU) 590.

Board of education reasonably accommodated alcoholic teacher; dismissal. *State Operated School District of Jersey City v. Howard*, 93 N.J.A.R.2d (EDU) 556.

Teacher's acquiring, possessing, and using stolen cars, as well as other misconduct, warranted dismissal. *School District of Township of Irvington v. Smith*, 93 N.J.A.R.2d (EDU) 526.

Teacher dismissed; marijuana grown at home. *Board of Education of Willingboro v. Lott*, 93 N.J.A.R.2d (EDU) 516.

Teacher's striking and pushing student warranted loss of pay. In *Matter of Tenure Hearing of Boyd*, 93 N.J.A.R.2d (EDU) 445.

Record established corporal punishment and other charges warranting termination of teacher. In *Matter of Tenure Hearing of Harrell*, 93 N.J.A.R.2d (EDU) 387.

Teacher's conduct and comments to students constituted unbecoming conduct; termination. *School District of Flemington-Raritan Regional v. Gilson*, 93 N.J.A.R.2d (EDU) 378.

Custodian's insubordination, neglect of duty and excessive absenteeism warranted termination. In *Matter of Tenure Hearing of Riddick*, 93 N.J.A.R.2d (EDU) 345.

Love letters sent to students; dismissal of teacher. In *Matter of Tenure Hearing of Mantone*, 93 N.J.A.R.2d (EDU) 322.

Procedural defects warranted dismissal of tenure proceedings. In *Matter of Tenure Hearing of Beam*, 93 N.J.A.R.2d (EDU) 320.

Incapacitating psychological difficulties; dismissal of teacher. In *Matter of Tenure Hearing of McCoy*, 93 N.J.A.R.2d (EDU) 297.

Record established conduct unbecoming superintendent of schools; termination. In *Matter of Tenure Hearing of Horowitz*, 93 N.J.A.R.2d (EDU) 232.

Insensitive utterances, inappropriate physical gestures and intimidation tactics of teacher in dealing with students; dismissal. *Board of Education of Princeton Regional School District v. Campbell*, 93 N.J.A.R.2d (EDU) 196.

Teacher's chronic and excessive absenteeism; removal. In *Matter of Tenure Hearing of Kacprowicz*, 93 N.J.A.R.2d (EDU) 147.

Developmental center teacher's striking of client; dismissal. In *Matter of Tenure Hearing of Wagner*, 93 N.J.A.R.2d (EDU) 143.

Absenteeism, abuse of prescription drugs, and drug test refusal; dismissal of teacher. In *Matter of Tenure Hearing of Pellagatti*, 93 N.J.A.R.2d (EDU) 121.

Record established that superintendent engaged in conduct unbecoming teaching staff member; dismissal. In *Matter of Tenure Hearing of Romanoli*, 93 N.J.A.R.2d (EDU) 82.

Teacher's substantiated screaming, verbal abuse and inappropriate discipline warranted monetary penalty and teacher training; no termination. *Randolph Township Board of Education v. Dipillo*, 93 N.J.A.R.2d (EDU) 13.

Chronic tardiness and excessive absenteeism constituted conduct unbecoming teacher; ongoing nature of conduct warranted dismissal. In *Matter of Tenure Hearing of Meade-Stephens*, 92 N.J.A.R.2d (EDU) 550.

School custodian's dishonesty; termination. In *Matter of Tenure Hearing of Depasquale*, 92 N.J.A.R.2d (EDU) 537.

Corporal punishment; loss of pay. *Board of Education of City of New Brunswick v. Murphy*, 92 N.J.A.R.2d (EDU) 527.

Teacher's erratic behavior and tolerance of sexual talk in class; dismissal. *Morris School District Board of Education v. Brady*, 92 N.J.A.R.2d (EDU) 410.

Punishment and abuse of students; dismissal of teacher. In *Matter of Tenure Hearing of Courtney*, 92 N.J.A.R.2d (EDU) 399.

Discretion to conduct inquiry into board of education election; inquiry warranted. In *Matter Election Inquiry in School District of Township of Pennsauken, Camden County*, 92 N.J.A.R.2d (EDU) 219.

Board of education election void; irregularities. In *Matter of Annual School Election Held in Chesilhurst School District*, 92 N.J.A.R.2d (EDU) 213.

Tenured school custodian; excessive absenteeism. *Passaic Board of Education v. Viani*, 92 N.J.A.R.2d (EDU) 76.

Patient elopement; suspension of psychiatric hospital teacher. *New Jersey Department of Human Services, Greystone Park Psychiatric Hospital v. Pescatore*, 92 N.J.A.R.2d (EDU) 8.

No entitlement to indemnification of costs of criminal defense. *Bower v. Board of Education of City of East Orange, Essex County*, 92 N.J.A.R.2d (EDU) 5.

#### **6A:3-5.5 Determination of sufficiency and transmittal for hearing**

(a) Within 15 days of receipt of the charged party's answer or expiration of the time for its filing, the Commissioner shall determine whether such charge(s) are sufficient, if true, to warrant dismissal or reduction in salary. Where the charges are determined insufficient, they shall be dismissed and the parties shall be notified accordingly. Where the charges are determined sufficient, the matter shall, within 10 days of such determination, be transmitted to the OAL for further proceedings, unless the Commissioner retains the matter pursuant to N.J.A.C. 6A:3-1.11 or 1.12.

1. A notice of transmittal shall be issued to the parties by the Department of Education on the same date as the matter is transmitted to the OAL.

(b) Where a party to a tenure matter so requests, the Commissioner may agree to hold the matter in abeyance at any time prior to transmittal to the OAL. Thereafter, requests to hold the matter in abeyance shall be directed to the OAL Clerk or the ALJ in accordance with the rules of the OAL. Any request for abeyance, whether directed to the Commissioner or the OAL, shall be consistent with the intent of N.J.S.A. 18A:6-16 as amended by P.L. 1998, c.42.

New Rule, R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

In (a), substituted "pursuant to N.J.A.C. 6A:3-1.11 or 1.12" for "for purposes of deciding a motion for summary decision" in the introductory paragraph; rewrote (b).

#### **6A:3-5.6 Withdrawal, settlement or mooted of tenure charges**

(a) Once tenure charges are certified to the Commissioner, such charges may be withdrawn or settled only with the Commissioner's approval. Any proposed withdrawal or settlement, whether submitted to the Commissioner or to the ALJ, shall address the following standards established by the State Board of Education in the matter entitled *In re Cardonick*, State Board decision of April 6, 1983 (1990 *School Law Decisions* (S.L.D.) 842, 846):

1. Accompaniment by documentation as to the nature of the charges;
2. Explication of the circumstances justifying settlement or withdrawal;
3. Consent of both the charged and charging parties;
4. Indication that the charged party entered into the agreement with a full understanding of his or her rights;
5. A showing that the agreement is in the public interest; and
6. Where the charged party is a teaching staff member, a showing that the teaching staff member has been advised of the Commissioner's duty to refer tenure determinations resulting in loss of position to the State Board of Examiners for possible suspension or revocation of certificate.

(b) A settlement agreement shall not propose terms that would restrict access to information or records deemed public by law or result in misrepresentation of the reason for an employee's separation from service. Where tenure charges have been certified to the Commissioner by a district board of education, any proposed settlement shall indicate, by signature of the board attorney or inclusion of a district board of education resolution authorizing settlement, that the district board of education has consented to the terms of the settlement.

(c) A proposed withdrawal or settlement of tenure charges shall be submitted to the Commissioner prior to transmittal of

such charges to the OAL; thereafter, it shall be submitted to the ALJ in accordance with applicable rules of the OAL.

(d) Where tenure proceedings against a teaching staff member are concluded prior to adjudication because the charged party has unilaterally resigned or retired, the Commissioner may refer the matter to the State Board of Examiners for action against the charged party's certificate as it deems appropriate, when such referral is warranted under the provisions governing resignation or retirement prior to conclusion of tenure charges as set forth in N.J.A.C. 6A:9-17.4.

(e) Where a proposed settlement requires the tenured employee to relinquish a certificate issued by the State Board of Examiners, upon approval of the settlement agreement, the Commissioner shall forward the matter to the State Board of Examiners for proceedings in accordance with N.J.A.C. 6A:9-17.11.

New Rule, R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Amended by R.2005 d.109, effective April 4, 2005.

See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

In (a), substituted "the teaching staff member" for "he or she" preceding "has been advised" in 6; rewrote (b); in (d), amended the N.J.A.C. reference; added (e).

Amended by R.2010 d.072, effective May 17, 2010.

See: 41 N.J.R. 3992(b), 42 N.J.R. 929(b).

In (d), inserted "against a teaching staff member".

#### Case Notes

Commissioner could not accept a settlement agreement in a tenure proceeding where the settlement's only identifiable benefit to the Board and public was avoidance of the uncertainty, expense, and disruption that nearly always accompanied tenure proceedings centered on charges of unbecoming conduct involving students, while the teacher retained the unfettered right to represent himself as the holder of a certificate in good standing issued by the State Board of Examiners and potential employers inquiring of the district would have been provided with only minimal information and a "neutral" reference; the settlement agreement

was rejected for failure to follow the Cardonick standards. In re Tenure Hearing of Alvarez, OAL Dkt. No. EDU 736-09, 2009 N.J. AGEN LEXIS 839, Remand Order (September 4, 2009).

Commissioner advised the parties that, should settlement agreement be resubmitted for review, it was approvable where record had been significantly supplemented upon remand, particularly, the record now contained a transcript of a hearing conducted by the ALJ with counsel for the parties dealing specifically with the issue of how and why the parties' proposed settlement agreement was consistent with public policy. In re Tenure Hearing of Winston, OAL Dkt. No. EDU 12531-07 (EDU 3969-07 On Remand), 2008 N.J. AGEN LEXIS 726, Commissioner's Decision (June 26, 2008).

Commissioner found no justification for dismissal of tenure charges which necessarily contemplated teacher's return to the classroom absent an adjudication of the charges where: (1) the charges were of a very serious nature, specifically, two counts of unbecoming conduct alleging "violent physical contact" made upon minor students on two separate occasions; and (2) school district's unequivocal acceptance of third party assertions regarding unavailability of witness, rather than utilizing the subpoena power available to it to secure the attendance of its necessary witness. In re Tenure Hearing of Winston, OAL Dkt. No. 12531-07 (EDU 3969-07 On Remand), 2008 N.J. AGEN LEXIS 726, Commissioner's Decision (June 26, 2008).

Teacher's resignation renders tenure charges against the teacher moot. In re Tenure Hearing of Castel, OAL Dkt. No. EDU 3428-07, 2008 N.J. AGEN LEXIS 256, Commissioner's Decision (March 17, 2008).

Settlement agreement was rejected for failure to follow the *Cardonick* standards, where, *inter alia*, no justification for the settlement was offered other than avoidance of the cost, uncertainty, and inconvenience of litigation while still obtaining removal of the respondent from employment with the district; the mere fact that the terms of a proposed tenure settlement call for the teaching staff member's resignation or retirement does not in and of itself assure that the *Cardonick* standards have been met. In re Tenure Hearing of Langley, OAL Dkt. No. EDU 2212-07, 2008 N.J. AGEN LEXIS 139, Commissioner's Decision (February 19, 2008).

Where a settlement agreement was rejected for failure to follow the *Cardonick* standards, the Commissioner reminded the parties that tenure