

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".

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).

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.

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).