

(c) A proposed withdrawal or settlement of tenure charges shall be submitted to the Commissioner prior to transmittal of such charges to the arbitrator; thereafter, it shall be submitted to the arbitrator.

(d) If 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) If 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".
 Amended by R.2013 d.120, effective October 7, 2013.
 See: 45 N.J.R. 1292(a), 45 N.J.R. 2211(a).

Section was "Withdrawal, settlement or mooted of tenure charges". In the introductory paragraph of (a), substituted "they" for "such charges" and "arbitrator" for "ALJ", and deleted "the Commissioner's" preceding "approval"; in (b), (d), and (e), substituted "If" for "Where", and in (c), substituted "arbitrator" for "OAL" and for "ALJ in accordance with applicable rules of the OAL".

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