

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 in State-operated school districts, 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".

Case Notes

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).

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. Any papers filed in conjunction with a motion to dismiss shall be submitted in original form with two copies. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner.

(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.

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, 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, 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 Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections, the Director of the Office of Educational Services in 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).