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TENURE ACQUISITION, DISMISSAL, SENIORITY AND TENURE RIGHTS

NJSBA Legal & Policy Services Department

I. TENURE ACQUISITION - ELIGIBLE PERSONNEL

A. Teaching Staff Members:

1. N.J.S.A. 18A:1-1 Definition - members of professional certificated staff, includes school nurse, swimming instructor (N.J.S.A. 18A:26-2.3), athletic director (N.J.S.A. 18A:26-2.1) and school athletic trainer (N.J.S.A. 18A:26-2.4 et seq.)
2. N.J.S.A. 18A:28-5 - includes teachers, principals (other than administrative principals), vice principals, assistant principals, assistant superintendents, school nurses, school athletic trainers, any other position which requires a certificate.

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- a. Three consecutive calendar years unless the board fixes a shorter term, or
 - b. Three consecutive academic years with employment at the beginning of the next academic year, or
 - c. More than three academic years within a period of any four consecutive academic years.
 - d. Picogna v. Bd. of Ed. of Tp. of Cherry Hill, 143 N.J. 391 (1996) 3 calendar years plus 1 day notwithstanding plain language of statute.
 - e. Tenure in any of the enumerated administrative or supervisory positions accrues only by employment in that position and shall not extend to other administrative or supervisory positions. Nelson legislation, L.1996, c. 58.
 - f. Duva, State Board 2002 S.L.D. March 6. Supervisor and director are not separately tenurable positions. Tenure protection under administrative certificate extended to all assignments for which he was qualified; supervisor and director.
3. N.J.S.A. 18A:28-6 - Tenure upon transfer or promotion
- a. Two consecutive calendar years unless the board fixes a shorter term, or
 - Martucci v. Linden Bd. of Ed., 96 N.J.A.R.2d (EDU) 109, rev'd St. Bd. 1996 S.L.D. Dec. 4. Promotional tenure, 2 calendar years and reemployment for 1 day in third year.
 - b. Two consecutive academic years with employment in the new position at the beginning of the next academic year, or
 - c. More than two academic years within a period of any three consecutive academic years.
 - d. Employment in new position "tacks on" to employment in old position for tenure purposes.
 - e. Employee did not gain promotional tenure as a principal where he fell ten days short of having served 2 calendar years in position as principal. Braimah, Commr. 2004: March 1.

4. N.J.S.A. 18A:17-15 et seq.; 18A:17-20.5 et seq.; 18A:17-24.5 – Superintendents, administrative principals, shared superintendents and shared business administrators no longer acquire tenure.

- School districts may subcontract school business administrators to other school districts under Interlocal Services Act (N.J.S.A. 40:8A-1 et seq.) but tenure accrues only in primary (subcontracting) district.

5. Home Instructors -

- Donvito v. Northern Valley Reg. Bd. of Ed., 387 N.J. Super. 216 (App. Div. 2006) – Home instructors, though they possess teacher certification, are not entitled to tenure, as they are acting in the place of the regular classroom teacher. N.J.S.A. 18A:16-1.1

6. Long-term substitutes

- N.J.S.A. 18A:16-1.1 denies tenure accrual during the time served to temporary employees who act in place of another employee who is absent, disabled or disqualified and who is ultimately expected to return to the position. Lustberg, Commr. 2004:April 12, aff'd St. Bd. 2004, Sept. 1. See also Lammers v. Point Pleasant Bd. of Educ., 134 N.J. 264 (N.J. 1993)

B. Secretarial Employees: N.J.S.A. 18A:17-2

1. N.J.S.A. 18A:17-2a. - Any full-time board secretary, assistant secretary, school business administrator, business manager – Three consecutive calendar years. See Cheloc, State Board 2002 S.L.D. July 2. Assistant board secretary who also served as director of administration did not acquire tenure. Not full-time.

2. N.J.S.A. 18A:17-2b - Secretarial or clerical position:

- a. Three consecutive calendar years or a shorter period fixed by the board, or
- b. Three consecutive academic years together with employment at the beginning of the next academic year.
- c. Promotional tenure – Clerk – secretary – board secretary - Immediately, but see Commissioner decisions regarding reasonable probation period. Ehid, 1983 S.L.D. Aug. 15, aff'd St. Bd. 1984 S.L.D. Jan.4, Hansen, 1989 S.L.D. 2106, aff'd St. Bd. 1990 S.L.D. 1755.

- Secretary and Clerk are separately tenurable positions. Employee must satisfy the requirements of the statute in order to gain tenure. Tacking not permitted. Giardina v. Pequannock Bd. of Ed., No. A-0822-05T5 (App. Div. June 19, 2006)

C. Janitors: N.J.S.A. 18A:17-3

1. Tenure acquired upon employment unless appointed for a fixed term.
1. Janitors appointed for a fixed term may obtain tenure under the provisions of a collective bargaining agreement.

D. Attendance Officers: N.J.S.A. 18A:38-33 - 1 year in city districts

E. Buildings and Grounds Supervisors: N.J.S.A. 18A:17-49 et seq. – Effective 9/1/02, school boards may only employ certified educational facilities managers as buildings and grounds supervisors. “Certified educational facilities manager” means any person who:

1. served five continuous years as a buildings and grounds supervisor in a school district prior to 9/1/02;
 2. was a State licensed code enforcement official and who served as a school buildings and grounds supervisor on 1/10/00; or
 3. has two years experience in buildings and grounds supervision and graduated as a certified educational facilities manager from the New Jersey Educational Facility Management Program at Rutgers or an equivalent accredited program within or outside the State;
- Tenure acquisition – Position does not appear to be tenure eligible as the certificate is not one issued by the State Board of Examiners. However, tenure may be granted by policy.

F. Charter School Teaching Staff Members

1. N.J.S.A. 18A:36A-14e – Charter school employees acquire streamline tenure pursuant to guidelines promulgated by the commissioner of education. Teaching staff members on leave from the public school district to work in a charter school shall not accrue tenure in that school district but shall retain tenure if already acquired.

2. N.J.A.C. 6A:11-6.1 - Streamline tenure acquisition – Teaching staff members, janitors and secretaries acquire tenure after three consecutive academic years with employment at the beginning of the next academic year.

G. Leaves of Absence

- Leave of short duration (two months) for work-related injury counts toward tenure acquisition. Kletzkin v. Spotswood Bd. of Ed., 136 N.J. 275 (1994)

H. Novice teachers

1. N.J.S.A. 18A:26-2a - A board of education may employ a person who holds a valid certificate of eligibility or certificate of eligibility with advanced standing to teach as a novice teacher in the public schools of the district. Upon the employment of a novice teacher, the board of education shall immediately register the employment with the Department of Education and request issuance of a provisional certificate. *When the provisional certificate is issued by the department, its effective date for all purposes shall be the date on which the novice teacher began employment with the board of education.* The board of education shall also enroll the novice teacher in the provisional teacher program and comply with all responsibilities assigned to the district by the department.
2. N.J.S.A. 18A:27-4a - A novice teacher employed by a board of education under a valid certificate of eligibility, certificate of eligibility with advanced standing, or a provisional certificate shall be deemed to be a teaching staff member for all purposes and shall be entitled to all benefits and other emoluments of employment provided by law and regulation to teaching staff members. A novice teacher shall also receive the terms and conditions of employment provided to teaching staff members in the employing district under the collective bargaining agreement including, but not limited to, salary, sick leave, and health insurance benefits.

II. TENURE RIGHTS, TRANSFER, DISMISSAL, SUSPENSIONS

A. Tenure rights

1. N.J.S.A. 18A:6-10 No tenured employee can be dismissed or reduced in compensation except for inefficiency, incapacity, unbecoming conduct or other just cause.

2. N.J.S.A. 18A:17-1,2 Board secretary, assistant board secretary, school business administrator, business manager, secretary, clerk – “shall not be dismissed or suspended or reduced in compensation, except for neglect, misbehavior, other offenses.”
3. N.J.S.A. 18A:17-3 Janitorial employees – “shall not be dismissed or suspended or reduced in compensation ... except for neglect, misbehavior or other offense.”
4. N.J.S.A. 18A:28-5 Teaching Staff Members – “shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming...”
5. After filing of written charges, hearing must be held by Commissioner prior to dismissal.
6. Exceptions to tenure rights
 - a. Board did not reduce salary in violation of teacher’s tenure rights when it docked him one day’s pay for failure to provide the requested physician’s note for that day’s absence. (04:March 18, Weisberg v. Riverside Bd. of Ed., aff’d St. Bd. 04:August 4)
 - b. Board did not reduce compensation in violation of school business administrator’s tenure rights when it directed that all district owned vehicles be returned to the board premises at night. (04:July 12, Kramer v. East Orange Bd. of Ed.)

B. Transfer: N.J.S.A. 18A:25-1, N.J.S.A. 18A:27-4.1

1. Must be within scope of teaching staff member's tenure. If so, no violation of tenure rights.
2. Disciplinary transfers prohibited (1990 SCOPE legislation).
N.J.S.A. 34A:13A-25.
3. Rotondo legislation. N.J.S.A. 18A:27-4.1 - CSA must recommend employee for appointment, transfer or removal.
4. PERC views transfers as “between buildings.” Mt. Arlington, 23 NJPER 28219.

C. Tenure Dismissal - Filing of Tenure Charges

1. Very technical procedures; must be strictly followed. Failure may result in dismissal. McHarris 00:May 3; Lewis – CSA/Asbury Park 04:June 7 (Attachments 1, 2)

2. When certifying tenure charges two questions should be considered.
 - a. Is there probable cause to believe the evidence supporting the charge?
 - b. Does the charge warrant a dismissal or reduction in salary?
3. Burden of proof will be on the board.
4. All deliberations and actions of the board of education regarding such charges shall take place at a closed meeting. N.J.S.A. 18A:6-11; N.J.A.C. 6A:3-5.1. RICE notice issue. Cirangle v. Maywood, 164 N.J. Super. 595 (Law Div. 1978)
5. Tenure charges filed with the board secretary are public records. Williams v. Bd. of Ed. of Atlantic City, 329 N.J. Super. 308 (App. Div. 2000)
6. Obligation to notify next employer. Sec. 1983 issues. Doe. v. Methacton, 880 F. Supp. 380 (E.D.Pa. 1995)
7. Recent History – Attachment 3
8. Charter school employees “streamline tenure” dismissal. N.J.A.C. 6A:11- 6.2, 6.3 Similar procedures, ends in binding arbitration. Arbitrator selected from a panel of six permanent arbitrators assigned by the Commissioner. Decisions subject to judicial enforcement. N.J.S.A. 2A:24-7 et. seq.
9. Settlements of tenure charges filed with the Commissioner must comply with the Cardonick 1990 S.L.D. 842 standard.
10. Due process – Dismissed tenured teacher was not denied procedural due process as she was suspended with pay and was provided notice that dismissal charges would be brought against her, and was given time to present evidence before board of education. Emri v. Evesham Twp. Bd. of Ed., 327 F. Supp. 2d 463 (D.N.J. 2004)

D. Suspension of Employees

1. N.J.S.A. 18A:25-6 - Prior to Tenure Charges – Teaching Staff Members

Superintendent, with approval of board president. Suspension must be immediately reported to the board. Board takes action for restoration or removal as it deems proper.

2. N.J.S.A. 18A:6-14 - After Filing Tenure Charges

Employee may be suspended with or without pay for 120 days. Payment resumes on 121st day (minus any earnings if employee is otherwise employed during period of suspension). Exception: If delay is due to employee, salary entitlement may not exist. Employee should not benefit from his own efforts to delay. Marano, State Board 2002 S.L.D. May 1.

3. N.J.S.A. 18A:6-8.3 - Indictment

a. Board may suspend without pay if an employee has been indicted. May also file tenure charges.

b. If criminal charges are upheld, possible outcomes:

- Employee forfeits position if offense is covered by the Criminal Forfeiture Statute - N.J.S.A. 2C:51-2.
- Employee does not forfeit position; board can file tenure charges, if it has not yet done so.

c. If criminal charges are dismissed:

- Board may still wish to file tenure charges if it believes that the employee's actions constitute unbecoming conduct.
- Board should consider filing tenure charges prior to disposition of criminal charges. Tenure charges usually held in abeyance until outcome of criminal charges.

4. Negotiated Discipline – Scope Amendments of 1990 – PERC

III. REDUCTIONS IN FORCE, TENURE ENTITLEMENTS & SENIORITY

A. Reductions in Force (RIF)

1. N.J.S.A. 18A:28-9 Teaching Staff Members

a. Boards may reduce teaching staff members for reasons of economy, reduction in pupils, change in administrative or supervisory organization or other good cause.

b. RIF'd staff placed on preferred eligibility list for recall in order of seniority.
N.J.S.A. 18A:28-12

- c. No CSA recommendation needed – N.J.S.A. 18A:27-4.1, 18A:28-9
However failure to consult with CSA has been deemed arbitrary and capricious.
Primka, 93 N.J.A.R.2d (EDU) 91, aff’d State Board 93 N.J.A.R.2d (EDU) 94,
aff’d App. Div., unpublished opinion, Dkt. #A-2427-92T3 (Jan. 18, 1994)
- d. Notice: no statutory notice provision; negotiable – Old Bridge, 98 N.J. 513 (1985)
- 2. N.J.S.A. 18A:17-4 - Janitorial Employees
 - a. Boards may not reduce staff for reasons of residence, age, sex, race, religion or political affiliation. Tenured or not.
 - b. RIF’d janitors “under tenure” - preferred eligibility list - reemployment in order of years of service.
- 3. Other non-certificated personnel, generally e.g.: Secretaries, Clerks, Cafeteria Workers, Bus Drivers, Teacher Aides, etc. – Collective Bargaining Agreement.
 - Ferronto, Commr. 05:Aug.11, aff’d St. Bd. 06: Feb. 1 – ALJ and Commissioner relied on N.J.S.A. 18A:28-9 for guidance.
- 4. Charter Schools – N.J.S.A. 18A:36A-14
 - a. Public school employees on leave in charter school shall not accrue tenure in public school system.
 - b. Public school employees on leave in charter school shall continue to accrue seniority, if applicable, in the public school system, if they return to their non-charter school when the leave ends.
 - c. Employees of charter school shall acquire streamline tenure. N.J.A.C. 6A:11-6.1 et. seq.

B. Seniority: Teaching Staff Members

- 1. Carpenito v. Bd. of Ed. of Borough of Rumson, 322 N.J.Super. 522 (App. Div. 1999)
Triggering event for a teacher’s preference based on seniority is either a dismissal or a transfer coupled with a loss of a tangible employment benefit. Rights remain inchoate until affected by RIF. (91:1422 Ciarcia) (91:2294 Benson, aff’d St. Bd. 92:May 6) (96 N.J.A.R. 2d (EDU) Kish)
- 2. Determined by number of academic or calendar years of employment, or fraction thereof, in district in specific categories.

3. Leaves of absence, up to 30 days in one calendar/academic year, paid and unpaid leaves of absence granted for study/research shall be credited toward seniority. All other leaves - no seniority.
4. Military Service Credit - Up to four years - N.J.S.A. 18A:28-11.1, 12
5. Categories: N.J.A.C. 6A:32-5.1

<ol style="list-style-type: none"> a. Superintendent b. Assistant superintendent c. Director d. High school principal e. Adult H.S. principal f. Altern. school principal g. Voc. school principal h. Junior H. S. principal i. Elementary principal 	<ol style="list-style-type: none"> j. Supervisor k. High School V.P. l. Adult High School V.P. m. Alternative School V.P. n. Junior High School V.P. o. Elementary V.P. p. Vocational School V.P. q. Secondary certif. personnel r. Elementary certif. personnel s. Specific educational services endorsements
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6. Categories b, c, j - Each title a separate category - District develops job description for each including qualifications and endorsements. Categories q, s - consider specific endorsements.
7. Simultaneous service in two or more categories - seniority accrued in both. Full-time employee, one year in each.
8. Movement from 1 category to another – tacking.
9. Preferred Eligibility List
 - a. Bodine v. Burlington Bd. of Ed., 1989 S.L.D. 1053, aff'd St. Bd. 1989 S.L.D. 1064. No time limit on preferred eligibility list - 9 years.
 - b. Bublin v. Point Pleasant Bd. of Ed., 1996 S.L.D. 768 - Tenured English teacher retired on disability pension, later found fit by TPAF to return to work. Reemployment rights limited to English teacher position.
10. Tie breaker – board policy – lottery permissible – Mann, 1987 S.L.D. 1506, aff'd St. Bd. 1987 S.L.D. 1522, aff'd App. Div. unpub. op. – Dkt. #A-2695-87T1, June 7, 1990.

C. Tenure Entitlements

1. Seminal Cases

- a. Capodilupo v. West Orange Bd. of Ed., 1985 S.L.D. 554, rev'd St. Bd. 1986 S.L.D. 3010, aff'd 218 N.J. Super. 510 (App. Div. 1987), certif. den. 109 N.J. 514 (1987). RIF'd tenured secondary physical education teacher entitled to reinstatement to elementary physical education position held by nontenured teachers.
- b. Bednar v. Westwood Bd. of Ed., 1985 S.L.D. 627, aff'd St. Bd. 1986 S.L.D. 2993, rev'd and remanded 221 N.J. Super. 239 (App. Div. 1987), certif. den. 110 N.J. 512 (1988). RIF'd tenured elementary art teacher with no experience at secondary level, entitled to secondary art position held by experienced nontenured teacher.
- c. Ellicott v. Frankford Bd. of Ed., 1989 S.L.D. 2244, rev'd St. Bd. 1990 S.L.D. 1714, aff'd 251 N.J. Super. 842 (App. Div. 1991). LDTC and Speech Correctionist not separately tenurable positions. Tenure acquired in "Educational Services". Tenure rights extend to all endorsements held under the certificate. Tenured Speech Correctionist entitled to LDTC position.

2. Scope of Tenure Entitlements

a. Teachers

- (1) Grosso v. New Providence Bd. of Ed., 1989 S.L.D. 1713, rev'd St. Bd. 1990 S.L.D. 1750. RIF'd tenured high school business teacher with elementary endorsement but no elementary seniority entitled to elementary position.
- (2) Adler v. Shamong Bd. of Ed., 2000 S.L.D. July 5. Tenured teacher of music who did not have elementary certification had no entitlement to elementary computer/technology.
- (3) Tomassini v. Trenton Bd. of Ed., 2002 S.L.D. Jan. 10. Tenure acquired under an endorsement on instructional certificate entitles holder to tenure under all other endorsements obtained under the instructional certificate.
- (4) Cooke v. Middlesex County Vo-Tech., 2003 S.L.D. Jan. 15. Tenured auto body repair teacher not entitled to culinary arts or industrial arts position. Seniority only under auto repair endorsement.
- (5) Trionfo, 2004 S.L.D. Aug. 19. RIF'd Special Population Coordinator entitled to teaching position notwithstanding lack of teaching experience. Held appropriate certificates and endorsements (music).

b. Principals

- (1) Mirandi v. West Orange Twp. Bd. of Ed., 1988 S.L.D. 1988, aff'd St. Bd. 1989 S.L.D. 3257. Tenured high school assistant principal entitled to middle school assistant principal position.
- (2) DeCarlo v. South Plainfield Bd. of Ed., 1988 S.L.D. 1796. Entitlement does not extend to certificates under which person has not served - tenured supervisor not entitled to principal position.
- (3) Schienholz, Fuller and Pickering v. Bd. of Ed. of Ewing, 1989 S.L.D. 1860, aff'd St. Bd. 1990 S.L.D. 1809, aff'd App. Div. No. A-2905-89T3 (November 19, 1990), certif. den. March 5, 1991. Three RIF'd tenured elementary school principals entitled to high school principal position. Board may pick from among tenured candidates.
- (4) Taylor v. Hardyston Bd. of Ed., 1998 S.L.D. Feb. 2 – RIF'd principal not entitled to vice principal position; served only as principal.
- (5) Love v. Trenton Bd. of Ed., 2002 S.L.D. July 22 – Tenured RIF'd assistant principal not entitled to vice principal position. Separately tenurable positions.

c. Educational Services

- (1) Ellicott v. Frankford Bd. of Ed., 1989 S.L.D. 2244, rev'd St. Bd. 1990 S.L.D. 1714, aff'd 251 N.J. Super. 842 (App. Div. 1991). LDTC and Speech Correctionist not separately tenurable positions. Tenure acquired in "Educational Services". Tenure rights extend to all endorsements held under the certificate. Tenured Speech Correctionist entitled to LDTC position.
- (2) Dennery v. Passaic County Regional #1 Bd. of Ed., 1990 S.L.D. 974, aff'd St. Bd. 1990 S.L.D. 1007, aff'd 251 N.J. Super. 144 (App. Div. 1991), rev'd 131 N.J. 626 (1993). Tenured guidance counselor not entitled to class supervisor position - not tenured as supervisor.
- (3) Viscenzio v. Bedminster Twp. Bd. of Ed., 312 N.J. Super. 243 (App. Div. 1998). Board may not subcontract one CST position. May in good faith eliminate the CST and join with other boards or state agencies for basic CST services. See also Trigani, 2002 S.L.D. December 2, Becton Regional 2004 S.L.D. December 20, aff'd St. Bd. 2005 S.L.D. May 4.

d. Supervisor/Directors

- (1) Herbert v. Middletown Bd. of Ed., 1989 S.L.D. 2148, aff'd St. Bd. 1990 S.L.D. 1759, aff'd App. Div. No. A-318-90T1 (May 22, 1991). RIF'd science supervisor has entitlement to special services supervisor position; no duty to apply.

- (2) Skowronski v. Jackson Twp. Bd. of Ed., 94 N.J.A.R. 2d (EDU) 208. RIF'd supervisor not entitled to assistant principal position, aff'd in part, rev'd in part St. Bd. 95 N.J.A.R. 2d (EDU) 451.
- (3) Brenner v. Middlesex Twp. Bd. of Ed., 96 N.J.A.R. 2d (EDU) 81. RIF'd director not entitled to principal position.
- (4) Galbraith v. Lenape Regional H.S. District, 96 N.J.A.R. 2d (EDU) 396, aff'd St. Bd. 1996 S.L.D. June 5. Supervisor of Curriculum deemed entitled to Supervisor of Social Studies/Art/Music position.
- (5) Nelson v. Old Bridge Bd. of Ed., Dkt. No. 42,266, 95 N.J.A.R. 2d (EDU) 257, rev'd App. Div. Dkt. No. A-6641-94T6 (April 29, 1996), Supreme Court decision March 12, 1997. Tenured dept. chair (industrial arts) deemed not entitled to principal position. Cited P.L. 1996, c. 58.
- (6) Kendrick v. South River Rd. of Ed., 1998 S.L.D. Feb. 2. RIF'd IA Supervisor not entitled to math supervisor position where duties included teaching math and supervisor not certified in math.
- (7) Janik v. Camden Bd. of Ed., 1998 S.L.D. Sept. 4. RIF'd director – no rights to principal position. Tenure rights only to director or supervisor.
- (8) Duva v. State Op. Dist. of Jersey City, 1999 S.L.D. Dec. 3, rev'd State Board 2002 S.L.D. March 6. Director position not separately tenurable from supervisor position. Tenure protection under administrative certificate extended to all assignments for which he was qualified.
- (9) Matarrazo v. Cliffside Park, 2004 S.L.D. Aug. 4, St. Bd. aff'g 2004 S.L.D. March 18 – RIF'd supervisor of instruction entitled to district-wide supervisor position; sufficiently similar.

e. Assistant Superintendent

- Kaprow v. Berkeley Twp. Bd. of Ed., 1989 S.L.D. 2885, aff'd St. Bd. 1991 S.L.D. 2561, aff'd 255 N.J. Super. 76 (App. Div. 1992), aff'd 131 N.J. 572 (1993). RIF'd Asst. Supt. not entitled to teacher, principal, supervisor or superintendent positions. Not tenured in those areas.

f. Miscellaneous

- Francey v. Salem City Bd. of Ed., 92 N.J.A.R. 2d (EDU) 449. After acquired certificate - no entitlement, aff'd St. Bd. 94 N.J.A.R. 2d (EDU) August 3, aff'd 286 N.J. Super. 354 (App. Div. 1996).

D. Obligation to accommodate tenure and seniority rights in RIF

1. Smith, 2004 S.L.D. Sept. 17 – District’s educational justification not sufficient when two teachers reduced to 4/5 positions. Senior teacher should have kept full time position.
2. Harris, 2000 S.L.D. August 18.
3. Polo v. Bergen Vo Tech, 92 NJAR 2d (EDU) 230, aff’d w/mod. St. Bd. 92 NJAR 2d (EDU) 459.
4. Eftychiou, 1990 S.L.D. 1054.
5. Klinger v. Cranbury, 190 N.J. Super. 354 (App. Div. 1982) compelling educational reasons for part-time phys. ed. assignments.

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ATTACHMENT 1

PROCEDURES FOR FILING TENURE CHARGES OTHER THAN FOR REASONS OF INEFFICIENCY

Legal References

N.J.S.A. 18A:6-11 et seq.

N.J.A.C. 6A:3-5.1 et seq.

1. Charges shall be filed in writing with board secretary or with the State district superintendent, accompanied by a statement of evidence, executed under oath (*N.J.S.A. 18A:6-11, N.J.A.C. 6A:3-5.1 (b)(1)*).
2. Board must give employee and employee's representative, if known, copy of charges with supporting evidence within three working days of filing with board secretary (*N.J.A.C. 6A:3-5.1(b)(2)*).
3. Employee has 15 days to submit written response and a written statement of evidence, executed under oath (*N.J.A.C. 6A:3-5.1(b)(3)*).
4. Within 45 days of either the receipt of employee's response, or the expiration of the allotted 15 day time period, if no response is filed, the board must determine by a majority vote of its full membership whether there is probable cause to support the charges and whether charges are sufficient to warrant a dismissal or a reduction in salary. (*N.J.S.A. 18A:6-13 and N.J.A.C. 6A:3-5.1(b)(4)*).
5. Board or State district superintendent must inform employee and the employee's representative, if known, of decision in person or by certified mail within 3 working days. (*N.J.S.A. 18A:6-11 and N.J.A.C. 6A:3-5.1(b)(5)*).
6. If board or State district superintendent decides that the charge is sufficient to warrant a dismissal or reduction in salary, it must submit written charges and the required certificate of determination to the Commissioner together with proof of service upon the employee and the employee's representative, if known, within 15 days of its determination. (*N.J.A.C. 6A:3-5.1(b)(6)*).
7. All deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting. (*N.J.S.A. 18A: 6-11 and N.J.A.C. 6A:3-5.1(b)(7)*)
8. Board may suspend employee with or without pay for 120 days after certification of charges. On 121st day full payment of salary must resume. (*N.J.S.A. 18A:6-14*).

ATTACHMENT 2

PROCEDURES FOR FILING CHARGES FOR REASONS OF INEFFICIENCY

Legal References

N.J.S.A. 18A:6-11 et seq.

N.J.A.C. 6A:3-5.1 et seq.

1. Charge of inefficiency must be filed with the board secretary or the State district superintendent along with a statement of evidence, executed under oath. (*N.J.S.A. 18A:6-11, N.J.A.C. 6A:3-5.1 (c)(1)*)
2. Copy of charges and evidence must be sent to employee and the employee's representative, if known, within three working days of filing with the board secretary. (*N.J.A.C. 6A:3-5.1(c)(2)*)
3. Employee must be notified that unless such inefficiencies are corrected within a minimum period of 90 days, or any longer period provided by the board, charges of inefficiency shall be certified to the Commissioner pursuant to *N.J.S.A. 18A:6-11*. (*N.J.A.C. 6A:3-5.1(c)(3)*)
4. Concurrent with notification to employee, the board must direct modification of the individual's professional improvement plan to address the specific charges of inefficiency and time lines established for correction. (*N.J.A.C. 6A:3-5.1(c)(4)*)
5. At the end of the 90 day correction period, or the longer period established by the board, the administrator(s) responsible for bringing such charges to the attention of the board or the State district superintendent shall notify the board or the State district superintendent in writing of what charges, if any, have not been corrected. (*N.J.A.C. 6A:3-5.1(c)(5)*)
6. No later than 30 days after the expiration of the correction period, the board or the State district superintendent shall notify the affected employee in writing of the inefficiencies that have, or have not, been corrected. (*N.J.A.C. 6A:3-5.1(c)(6)*)
7. Within 15 days of receipt of notification of continued inefficiencies, the employee may file a response by filing a statement of evidence under oath in opposition to the charges. (*N.J.A.C. 6A:3-5.1(c)(7)*)
8. Within 45 days of receipt of employee's response, or the expiration of the allotted 15-day time period if no response is filed, the board, by a majority vote of its full membership, or the State district superintendent must determine whether there is probable cause to support the charges and whether charges are sufficient to warrant a dismissal or a reduction in salary. (*N.J.A.C. 6A:3-5.1(c)(8)*)
9. If the board or the State district superintendent decides that the charges are sufficient, it shall, within 15 days, submit written charges and the required certificate of determination to the Commissioner together with proof of service upon the employee or the employee's representative, if known. (*N.J.A.C. 6A:3-5.1(c)(9)*)
10. All deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting. (*N.J.S.A. 18A: 6-11 and N.J.A.C. 6A:3-5.1(c)(10)*)
11. Board may suspend employee with or without pay for 120 days after certification of charges. On 121st day full payment of salary must resume. (*N.J.S.A. 18A:6-14*)

ATTACHMENT 3

1. 2000

Number of Cases Decided - 54

Results

Settlements – 21

Settlements Rejected – 4

Charges Dismissed - 3

Charges Proven/Reinstate - 3

Charges Proven/Removal – 16

No reply - 5

Forfeiture - 5

Retire/Resign Moot - 3

2. 2001

Number of Cases Decided - 48

Results

Settlements - 22

Settlements Rejected - 4

Charges Dismissed - 0

Charges Proven/Reinstate - 2

Charges Proven/Removal - 16

No reply - 9

Forfeiture - 0

Retire/Resign Moot - 5

3. 2002

Number of Cases Decided - 47

Results

Settlements – 22

Settlements Rejected – 3

Charges Dismissed - 0

Charges Proven/Reinstate - 4

Charges Proven/Removal – 11

No reply - 3

Forfeiture - 0

Retire/Resign Moot - 3

4. 2003

Number of Cases Decided - 24

Results

Settlements - 10

Settlements Rejected - 1

Charges Dismissed - 0

Charges Proven/Reinstate - 1

Charges Proven/Removal - 9

No reply - 2

Forfeiture - 0

Retire/Resign Moot - 3

5. 2004

Number of Cases Decided – 7+

Results

Settlements – ?

Settlements Rejected – ?

Charges Dismissed - 3

Charges Proven/Reinstate - 1

Charges Proven/Removal – 1

No reply - 0

Forfeiture - 0

Retire/Resign Moot - 2

6. 2005

Number of Cases Decided – 8+

Results

Settlements - ?

Settlements Rejected - ?

Charges Dismissed - 1

Charges Proven/Reinstate - 0

Charges Proven/Removal - 7

No reply - 2

Forfeiture - 0

Retire/Resign Moot - 0

