

#85-08 (OAL Decision not available online)

OAL DKT. NO EDU 2212-07
AGENCY DKT. NO. 69-3/07

IN THE MATTER OF THE TENURE :
HEARING OF GEORGE C. LANGLEY, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY OF : DECISION
BRIDGETON, CUMBERLAND COUNTY. :

The record of this matter, the parties’ proposed “Settlement Agreement, Approved Leave of Absence and Resignation,” and the Initial Decision issued by the Office of Administrative Law (OAL) pursuant to *N.J.A.C.* 1:1-19.1, have been reviewed.

Upon such review, the Commissioner cannot accept the proposed settlement as recommended by the OAL.

Initially, the Commissioner emphasizes that – pursuant to *N.J.A.C.* 6A:3-5.6(a), – once tenure charges have been certified by a board of education, they may be settled only with the Commissioner’s approval, and that any proposed settlement, whether submitted to the Commissioner or to the Administrative Law Judge, must address the standards expressly established for this purpose by the State Board of Education. *In re Cardonick*, 1990 *S.L.D.* 842, 846. Specifically, a proposed settlement must: 1) be accompanied by documentation as to the nature of the charges; 2) include an explanation of the circumstances justifying settlement; 3) evidence the consent of both the charged and the charging parties; 4) indicate that the charged party entered into the agreement with a full understanding of his or her rights; 5) demonstrate that the agreement is in the public interest; and 6) indicate, where the charged party is a teaching staff member, that he or she 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 action against the staff member's certificate.

In the present matter, the Bridgeton Board of Education (Board) has offered no justification for settlement other than its desire to avoid the cost, uncertainty and inconvenience of litigation while still obtaining removal of the respondent from employment with the district – notwithstanding the well-established principle that, having once taken up the burden of tenure charges, a board may not lay it down without spreading forth on the record a reasonably specific explanation of why such charges need no longer be pursued or why it is now in the public interest not to pursue them. *In the Matter of the Tenure Hearing of Kenneth Smith, School District of Orange, Essex County*, decided by the Commissioner March 22, 1982, decision on remand June 16, 1983, *aff'd with modification* by the State Board of Education November 2, 1983, *aff'd* N.J. Superior Court, Appellate Division, January 30, 1986. In the latter regard, the Commissioner stresses that 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, since the Commissioner's concern for the public interest extends beyond the boundaries of the particular district certifying the tenure charges. *In the Matter of the Tenure Hearing of Corey Younger, State-operated School District of the City of Jersey City, Hudson County*, decided September 7, 1999, and *In the Matter of the Tenure Hearing of Elmena Jean, State-operated School District of the City of Newark, Essex County*, decided October 4, 1999.

Furthermore, the record of this matter provides no indication that the respondent understands the Commissioner's duty, pursuant to *Cardonick, supra*, and *N.J.A.C. 6A:9-17.1 et seq.*, to refer this matter to the State Board of Examiners for possible suspension or revocation of

his teaching certificate – an omission that would itself preclude approval of the present settlement under any circumstances.

Finally, with respect to the Board's response to inquiries regarding the respondent's employment with the district (Term #4), the Commissioner reminds the parties that the Board's actions must at a minimum comport with the requirements of New Jersey's Open Public Records Act, *N.J.S.A. 47:1A-1 et seq.*, which states that the following employment information shall be public:

An individual's name, title, position, salary, payroll record, length of service in the instrumentality of government and in the government, date of separation and the reason therefor; and the amount and type of any pension received ***. (emphasis added)
*N.J.S.A. 47:1A-10*¹

Accordingly, the proposed settlement and the Initial Decision of the OAL recommending its approval are hereby rejected, and this matter is remanded to the OAL for further proceedings addressing the concerns set forth above. If the parties are unable to reach agreement under these conditions, the tenure charges shall duly proceed to plenary hearing.²

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: February 19, 2008

Date of Mailing: February 21, 2008

¹ The Commissioner additionally reminds the parties that the tenure charges and related case documents, unless sealed for good cause shown, are also a matter of public record. See *Williams v. the Board of Education of the Atlantic City Public Schools et al.*, 329 *N.J. Super.* 308 (App. Div. 2000); see also *N.J.A.C. 1:1-14.1(a)*.

² In so holding the Commissioner stresses that she does not preclude the possibility of settlement in this matter, but cannot meet her broader obligation to the schools and children of this State without ensuring that proposed tenure settlements are consistent with the standards of *Cardonick, supra*.

³ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*