

IN THE MATTER OF THE TENURE HEARING :  
OF PETER ELBERT, JOSEPH ARMENTAL,  
JOSEPH BELL, NOEL GORDON, NICOLE : COMMISSIONER OF EDUCATION  
CARTWRIGHT, VENUS ROSE, LUIS SANCHEZ,  
AND JAMAYLA SCOTT, SCHOOL DISTRICT : DECISION  
OF THE CITY OF ENGLEWOOD, BERGEN  
COUNTY. :

---

SYNOPSIS

In September 2017, the School District of the City of Englewood filed tenure charges against eight teaching staff members, together with a motion for a protective order because of personally identifiable student information contained therein; consequently, the charges and accompanying statement of evidence were temporarily sealed. Subsequently, counsel for the respondents in this matter filed motions to dismiss, arguing that the charges were not sufficient under statute and regulation because petitioner had filed one set of charges against all of the above named individuals.

The Commissioner found, *inter alia*, that: this matter rolls tenure charges against eight individual teaching staff members into a single case, contrary to the entire statutory scheme of *N.J.S.A. 18A:6-10, et seq.*, which speaks in singular terms such as “person” or “individual”; in filing the charges in the present manner, petitioner has usurped the function of the Commissioner or an assigned arbitrator to issue a decision on consolidation; and the charges as filed also deprive respondents of their fundamental due process rights to a clear statement describing the precise nature of the charges against him or her, and a description of the evidence which allegedly supports the charges. The Commissioner concluded that the matter must be dismissed as procedurally defective. Accordingly, the petitioner was directed to reinstate the respondents to their tenured positions with full back pay and benefits. In so doing, the Commissioner noted that dismissals for procedural reasons are considered dismissals without prejudice; if petitioner chooses to re-file tenure charges based upon any of the allegations herein – against any or all of the individuals named in the within matter – it must comply with each of the statutory and regulatory requirements for certifying tenure charges. The Commissioner permanently sealed the present tenure charges and statement of evidence, which had previously been temporarily sealed.

|                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

November 8, 2017

IN THE MATTER OF THE TENURE HEARING :  
OF PETER ELBERT, JOSEPH ARMENTAL,  
JOSEPH BELL, NOEL GORDON, NICOLE : COMMISSIONER OF EDUCATION  
CARTWRIGHT, VENUS ROSE, LUIS SANCHEZ,  
AND JAMAYLA SCOTT, SCHOOL DISTRICT : DECISION  
OF THE CITY OF ENGLEWOOD, BERGEN  
COUNTY. :

---

For the Petitioner: Mark A. Tabakin, Esq.

For Respondents Cartwright, Rose, Sanchez and Scott: Sheldon H. Pincus, Esq.

For Respondents Elbert, Bell, Armental and Gordon: Andrew L. Schwartz, Esq.

This matter commenced on September 20, 2017, when the School District of the City of Englewood (hereinafter petitioner) filed tenure charges against eight teaching staff members, together with a motion for a protective order asserting that such an order was required because of personally identifiable student information; opposition to the motion having been filed by counsel on behalf of each of the individual respondents, the charges and accompanying statement of evidence were temporarily sealed, pending resolution of the motion by an arbitrator to be assigned pursuant to *N.J.S.A.* 18A: 6-17.1

On October 4, 2017 and October 5, 2017, however, counsel for the respondents each filed a motion to dismiss the charges, in lieu of answer, pursuant to *N.J.A.C.* 6A:3-5.3(a)(1). Both motions argued, *inter alia*, that the charges were not sufficient under statute and regulation because petitioner had filed one set of charges against all of the above named individuals, who include two principals, a vice principal, a director of guidance, three guidance counselors, and a social worker functioning as a guidance counselor. Petitioner filed a response to both motions to

dismiss on October 20, 2017, and replies were filed by both counsel for respondents on October 25, 2017.

Having reviewed all of the papers filed in conjunction with the motions to dismiss, the Commissioner concludes that the motions must be granted.

This is a matter of first impression. Every other set of tenure charges filed with the Commissioner, memory of man runneth not to the contrary, has charged a single tenured teaching staff member with inefficiency, incapacity, unbecoming conduct or other just cause in accordance with *N.J.S.A. 18A:6-10, et seq.* The respondents correctly point out that the entire statutory scheme speaks in singular terms, “person”, “individual”, etc., with the sole exception being the final sentence of *N.J.S.A. 18A:6-10*, which advises: “Nothing in this section shall prevent the reduction of the number of any such persons holding such offices, positions or employments under the conditions and with the effect provided by law.” That sentence, however, is not a prescription for the filing of tenure charges, but merely clarification that persons under tenure may nevertheless be subjected to a reduction in force under appropriate circumstances. Furthermore, *N.J.A.C. 6A:3-5.1* also speaks exclusively in the singular voice, e.g. “employee and the employee’s representative,” and although multiple respondents may be named in other contested cases filed with the Commissioner, the first sentence of the tenure regulations specifically states: “*N.J.A.C. 6A:3-1.3*, Filing and service of petition of appeal, shall not apply in a case of tenure charges filed with the Commissioner against an employee of a district board of education or a school district under full State intervention.”

Petitioner argues in response that even if individual charges were required to be filed, the charges as filed nevertheless should be permitted because the charges meet the legal standards for consolidation of cases. Even if that were true, there is no motion for consolidation

pending and there are not eight individual cases such that some or all could be subject to an order of consolidation. In essence, what petitioner has done by filing in the manner it has is to usurp the function of the Commissioner or an assigned arbitrator to issue a decision on consolidation.

Severance is also not an option since the charges as written deprive respondents of their fundamental due process rights to a clear statement describing the precise nature of the charges against him or her, and a description of the evidence which allegedly supports the charges. In this matter as it currently stands, there are 750 paragraphs in thirty-three counts and each count realleges and incorporates the previous counts, such that the allegations against respondent Rose also include the allegations against respondent Cartwright; the allegations against respondent Scott also include the allegations against respondents Rose and Cartwright, etc.; the allegations against respondent Armental therefore include the allegations against all seven of the other respondents. There is simply no way this matter may be determined sufficient to require that answers be filed; consequently, it must be dismissed as procedurally defective. Accordingly, petitioner is directed to reinstate all of the respondents to their tenured positions with full back pay and benefits.

It should be noted that dismissals for procedural reasons are considered dismissals without prejudice. *See, In the Matter of the Tenure Hearing of Sabino Valdes, Union City School District*, OAL Docket No EDU 3620-01, confirmed *Valdes v. City of Union City Board of Education*, Docket No. A-1337-04T32007 *N.J. Super. Unpub. LEXIS 622* (App. Div. 1/22/07), certif. den. 191 N.J. 317, 5/15/07. If petitioner chooses to again file tenure charges based upon any of the allegations in the within matter – against any or all of the individuals named in the within matter – it must comply with each of the statutory and regulatory requirements for certifying tenure charges.

The present tenure charges and statement of evidence, having been previously temporarily sealed, are hereby permanently sealed. They will not be returned to petitioner.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: November 8, 2017

Date of Mailing: November 9, 2017