

C #52-99  
SB #21-99

IN THE MATTER OF THE TENURE :  
HEARING OF CLAIRE GEVEKE, SCHOOL :  
DISTRICT OF THE CITY OF ORANGE : STATE BOARD OF EDUCATION  
TOWNSHIP, ESSEX COUNTY. : DECISION

---

Decided by the Commissioner of Education, March 3, 1999

For the Petitioner-Respondent, Schwartz, Simon, Edelstein, Celso & Kessler  
(Nicholas Celso, III, Esq., of Counsel)

For the Respondent-Appellant, Ullman, Furhman, Platt & Koy (William F. Koy,  
Esq., of Counsel)

On January 19, 1999, the Board of Education of the City of Orange Township (hereinafter "Board") certified tenure charges of unbecoming conduct, insubordination, inefficiency and/or other just cause against Claire Geveke (hereinafter "respondent"), a tenured teaching staff member. On February 3, 1999, the respondent, through her attorney, mailed her written response to the charges to the Commissioner. That response was received by the Commissioner on February 4.

On March 3, 1999, the Commissioner, concluding that respondent's response had not been submitted within the 15-day period required by N.J.S.A. 18A:6-16, deemed each count of the charges to have been admitted. Upon review of those charges, the Commissioner found that respondent's actions constituted unbecoming conduct, insubordination, inefficiency and/or other just cause, warranting her dismissal

from her tenured position. Accordingly, he granted summary judgment to the Board and ordered that respondent be dismissed from her tenured employment.

Respondent filed the instant appeal to the State Board, contending that her response to the tenure charges had been filed in a timely manner. Respondent argues that N.J.S.A. 18A:6-16 is unclear as to when the 15-day filing period begins to run, alleging that she had filed her response with the Commissioner within 15 days after she had been served with the charges. In addition, the respondent maintains that she had “submitted” her response to the Commissioner in a timely manner within the intendment of the statute by mailing it on the fifteenth day following certification of the charges.

After a careful review of the record, we reverse the determination of the Commissioner and remand this matter to him for further proceedings in accordance with our decision herein. We find that the language of N.J.S.A. 18A:6-16 as amended in 1998 did not provide the respondent with clear notice that a written response to the tenure charges was required to have been received by the Commissioner within 15 days following certification of the charges.

Prior to its amendment in 1998, N.J.S.A. 18A:6-16 did not provide a timeframe for the filing of a response to tenure charges. Rather, responses were governed by the general filing rule set forth in N.J.A.C. 6:24-1.4, which requires that respondents serve an answer upon the petitioner within 20 days after receipt of the petition. See infra.

N.J.S.A. 18A:6-16 was thereupon amended by L.1998, c. 42, § 2, effective June 30, 1998, so as to require, in pertinent part, that:

Upon receipt of such a charge and certification, or of a charge lawfully made to the commissioner, the commissioner or the person appointed to act in the commissioner's behalf in the proceedings shall examine the

charges and certification. The individual against whom the charges are certified shall have 15 days to submit a written response to the charges to the commissioner. Upon a showing of good cause, the commissioner may grant an extension of time. The commissioner shall render a determination on the sufficiency of charges as set forth below within 15 days immediately following the period provided for a written response to the charges.... (Emphasis added.)

In this case, it is undisputed that respondent mailed her response to the charges to the Commissioner on February 3, 1999, 15 days following certification of the charges. Given the use of the word “submit” in the newly-amended statute, which gives no guidance as to whether mailing a response within 15 days would constitute compliance with that provision, we find that it would be inequitable to hold respondent to the knowledge that mailing her response within 15 days after certification of the charges would not be sufficient to satisfy the statutory deadline.

We note in that regard that at the time respondent filed her response there was no corresponding amendment to the education regulations governing the filing of a response to tenure charges. Thus, N.J.A.C. 6:24-5.3 provides that “[t]he filing and service of an answer to written charges pursuant to the Tenure Employees’ Hearing Act shall be performed in accordance with N.J.A.C. 6:24-1.4,” which states, in pertinent part:

(a) The respondent(s) shall serve an answer upon the petitioner within 20 days after receipt of the petition, which shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegation(s) of the petition. Upon written application by a party the Commissioner may extend the time for answer. Such application must be received prior to the expiration of the 20 day period.

....

(e) Failure to answer within the 20 day period from receipt of service shall result in a notice to the respondent directing an answer within 10 days of receipt. Further failure to respond

shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of the receipt of said notice, each count in the petition of appeal shall be deemed admitted and the Commissioner shall render a decision by way of summary judgment.

Moreover, we agree with the respondent that N.J.S.A. 18A:6-16 as amended is unclear as to when the 15-day period for filing a response to tenure charges begins to run, indicating only that a respondent has 15 days to submit a written response. We note, in addition, that the statute permits an extension to the filing deadline upon a showing of good cause.

Accordingly, given the current regulatory framework and the ambiguity of the amended statute, we find that the penalty imposed by the Commissioner – deeming the tenure charges admitted, resulting in respondent's dismissal from her tenured employment – was inequitable and unduly harsh under the circumstances presented.<sup>1</sup>

---

<sup>1</sup> We note that on July 7, 1999, the Commissioner, acknowledging the need to revise the regulations in accordance with statutory changes, proposed a revision to N.J.A.C. 6:24-5.3 [proposed section 6A:3-5.3] which would require, *inter alia*, that “[a]n 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.” Unlike the code currently in effect, the proposed regulations include a definition for “filing” as used in that subchapter: “Filing’ means receipt of an original paper by an appropriate officer of the department.” N.J.A.C. 6A:3-1.2 as proposed by the Commissioner on July 7, 1999. In addition, N.J.A.C. 6A:3-5.1(b)6 as proposed by the Commissioner requires that a district board, following its determination that probable cause exists to credit the evidence in support of the charges, serve the affected staff member with a copy of those charges “at the same time and in the same manner as the filing of charges with the Commissioner.”

In his summary included with the proposed code, the Commissioner elaborates that: “The prior rule has been completely rewritten to effectuate the expedited time frames established by P.L. 1998, c. 87. Answers to tenure charges are now due, in accordance with that law, within 15 days. This period is defined as 15 days from the date of filing of charges with the Commissioner, based upon a presumption of concurrent receipt by the employee and his or her representative as a result of the requirement for simultaneous service....”

We therefore reverse the determination of the Commissioner and remand this matter to him for further proceedings on the merits of those charges.<sup>2</sup>

Attorney exceptions are noted.

October 6, 1999

Date of mailing \_\_\_\_\_

---

<sup>2</sup> In its exceptions, the Board argues that the fine print on the standard form used by the Bureau of Controversies and Disputes to acknowledge receipt of the tenure charges provided the respondent with sufficient notice of the filing requirement, i.e.: "Respondent is required to file written response to the charges within 15 days of date certified...." That form, however, also includes the statutory language—which can be subject to various interpretations—in larger print in a highlighted box headed "IMPORTANT NOTICE." In any event, the fine print on a standard acknowledgement form used by the Department of Education cannot cure the ambiguity in the filing requirement set forth in the statute.