

IN THE MATTER OF THE TENURE HEARING :
OF JOHN WILSON, SCHOOL DISTRICT : COMMISSIONER OF
EDUCATION :
OF THE TOWNSHIP OF SOUTH BRUNSWICK, : DECISION
MIDDLESEX COUNTY. :
_____:

SYNOPSIS

Board certified tenure charges of unbecoming conduct against custodian for excessive absenteeism.

ALJ found that since the Board acted within 15 days of the date upon which respondent received the tenure charges, the Board violated N.J.A.C. 6:24-5.1. Thus, the ALJ found that the tenure charges were improperly approved and had to be dismissed without prejudice to the Board's right to reconsider them following proper compliance with the applicable statute and regulations. ALJ dismissed the charges and ordered respondent restored to his employment with compensation.

Commissioner adopted in part and reversed in part the conclusions of the ALJ and remanded the matter to OAL for a hearing on the tenure charges. Commissioner will not automatically dismiss tenure charges on procedural grounds and has declined to do so where the defect at issue did not prejudice a respondent's rights or represent an egregious and unwarranted disregard of tenure proceeding law. Under the particular circumstances herein, the Commissioner could not conclude that the procedural defect which occurred was of this type as respondent made no claim that he intended or attempted to answer the tenure charges on January 13, 1997 but was prevented from doing so by action of the Board or other circumstances.

December 22, 1997

OAL DKT. NO. EDU 2457-97
AGENCY DKT. NO. 16-1/97

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Timely exceptions were filed by the Board and by respondent in conformance with *N.J.A.C.* 1:1-18.4.

The Board and petitioner essentially recast and reiterate arguments advanced before the Administrative Law Judge (ALJ) and summarized in the initial decision, concerning the interpretation of the procedural requirement set forth at *N.J.S.A.* 18A:6-11, as interpreted through *N.J.A.C.* 6:24-5.1.

Upon careful and independent review, the Commissioner is constrained to adopt in part and reverse in part the conclusions of the ALJ and remand this matter to the OAL for a hearing on the tenure charges. In reaching this determination, the Commissioner initially concurs with the ALJ that respondent's answer was due on January 13, 1997 in that rule *N.J.A.C.* 1:1-1.4 states:

*In computing any period of time fixed by rule or judicial order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday.*** (emphasis added)*

As the ALJ correctly notes, this Uniform Administrative Procedural Rule, which “***addresses how one is to understand the calculation of time periods by which certain actions are to be taken is clearly relevant to the determination of what the applicable 15 day period is***” and is

routinely applied and well recognized by this agency in computing time frames for contested cases. (Initial Decision at p. 5) Thus, the Commissioner concurs that the use of *N.J.A.C. 1:1-1.4* for computation of time in the present matter is wholly proper.¹

Moreover, the Commissioner concurs that *N.J.A.C. 6:24-5.1* supports a finding that a board of education should wait the expiration of 15 days before taking action to certify tenure charges and that failure to do so, in most circumstances, is a fatal defect. See *In the Matter of the Tenure Hearing of Carol Beam, School District of the Township of Mantua*, 93 *N.J.A.R. 2d* (EDU) 320. Regulation provides a respondent with:

***an opportunity to submit to the district board of education a written statement of position and a written statement of evidence both of which shall be executed under oath with respect thereto within 15 days of receipt of the tenure charges. *N.J.A.C. 6:24-5.1(b)3*.

However, it is also well-established that the Commissioner will not automatically dismiss tenure charges on procedural grounds and has declined to do so where the defect at issue did not, under the particular circumstances, prejudice a respondent's rights or represent an egregious and unwarranted disregard of tenure proceeding law. *In the Matter of the Tenure Hearing of James Andrews, School District of the City of Newark, Essex County*, 1991 *S.L.D.* 1297; *In the Matter of the Tenure Hearing of Thomas L. Puryear, School District of the City of Newark, Essex County*, 1977 *S.L.D.* 934; *In the Matter of the Tenure Hearing of Eddie Lee Harrell, School District of the City of Paterson, Passaic County*, decided August 30, 1985.

Under the totality of the circumstances presented herein, the Commissioner cannot conclude that the procedural defect which occurred was of this type. Respondent has made no claim, either heretofore or in these proceedings, that he intended or attempted to answer the tenure charges on January 13, 1997, but was prevented from doing so by action of the Board or other circumstances. Further, the record shows that petitioner was notified of the date that the Board was to consider the charges against him when he was served with the charges via hand-delivery and that no objection to that was raised. Without any such claim or indication, respondent cannot credibly assert that his rights were prejudiced by the Board's having acted at a

¹ Such rule, however, does not support respondent's argument that he had a right to place his statement of position in the U.S. mail on Monday, January 13, 1997, nor does the wording of *N.J.A.C. 6:24-5.1(b)3* which envisions a respondent's submission to be filed *within* 15 days of receipt of the tenure charges.

meeting held on the evening of the day his response was due. Moreover, the Commissioner finds that no good purpose would be served by forcing the Board to initiate *de novo* proceedings, solely to remedy the Board's failure to have waited for an answer until midnight on the 15th day following certification of charges. Rather, this would result in unjustifiable expense and delay to the Board, and could further accord respondent a second opportunity to exercise a right he made no attempt to invoke within the time provided by law.

Accordingly, in view of the specific circumstances herein, the initial decision of the OAL dismissing the tenure charges against respondent is affirmed in part and reversed in part, and the instant matter is remanded for a hearing on the charges as certified.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

December 22, 1997