

IN THE MATTER OF THE TENURE :
HEARING OF DANIEL MC HARRIS, :
SCHOOL DISTRICT OF THE : COMMISSIONER OF EDUCATION
TOWNSHIP OF NORTH BRUNSWICK, : DECISION
MIDDLESEX COUNTY. :
_____:

SYNOPSIS

The Board certified a second set of tenure charges of unbecoming conduct, identical to ones previously dismissed on procedural grounds, against respondent teacher. Respondent submitted a motion to dismiss which raised threshold procedural issues that had to be decided before further proceedings could be conducted.

The ALJ found that the Board did not cure the defects noted. The ALJ concluded that the certification of tenure charges was once again not in accord with *N.J.S.A.* 6:18A-11. Thus, the certification of charges was defective and had to be dismissed without prejudice to the Board's further consideration of the charges pursuant to statute. The Board was ordered to pay all back wages and provide any benefits to which respondent would have been entitled had the Board taken no action against him.

The Commissioner determined to set aside the Initial Decision and to dismiss the charges since they were rendered moot by virtue of the State Board's recent decision in *McHarris*, which dealt with the Board's prior certification to the Commissioner of the exact tenure charges at issue herein. With respect to these initial charges, the Commissioner had found that the Board's failure to provide respondent with 15 days, as required by law, to respond to the charges was a fatal defect necessitating dismissal, without prejudice, of the charges. The State Board reversed the Commissioner's decision concluding that, because respondent's initial attorney had invoked his rights pursuant to *Ott*, the Board was restrained from completing certification of its tenure charges against respondent pending disposition of the criminal charges filed against him. Consequently, this matter, dealing with the Board's second attempt to certify the identical tenure charges had to be dismissed as moot.

May 3, 2000

OAL DKT. NO. EDU 00081-00
AGENCY DKT. NO. 343-11/99

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of both the Board and respondent were timely filed pursuant to the directives of *N.J.A.C. 1:1-18.4*.

Upon his independent review, the Commissioner determines to set aside the Initial Decision and to dismiss the within charges since they have been rendered moot by virtue of the State Board's recent decision in *In the Matter of the Tenure Hearing of Daniel McHarris, School District of the Township of North Brunswick, Middlesex County*, State Board Docket No. 45-99, Commissioner's decision No. 332-99L, which deals with the Board's prior certification to the Commissioner of the exact tenure charges at issue herein. In that prior matter, the Commissioner, by letter decision dated October 21, 1999, found the Board's failure to provide respondent with 15 days, as required by law, to respond to the charges was a fatal defect necessitating dismissal, without prejudice, of the charges. On April 5, 2000, the State Board reversed the Commissioner's decision concluding that, because respondent's initial attorney had invoked his rights pursuant to *Ott v. Hamilton Township Board of Education*, 160 *N.J. Super.*

333 (App. Div. 1978), *cert. den.* 78 N.J. 336 (1978), the Board was restrained from completing certification of its tenure charges against respondent pending disposition of the criminal charges filed against him. Consequently, the Board's second attempt to certify the identical tenure charges must be dismissed.¹

Accordingly, the Initial Decision of the OAL is set aside and the instant charges hereby dismissed as moot.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: May 3, 2000

Date of Mailing: May 3, 2000

¹ Letters received from the Board and respondent, dated April 11, 2000 and April 13, 2000, respectively, are noted for the record.

² This decision, as the Commissioner's final determination, 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.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.