

IN THE MATTER OF THE TENURE :
HEARING OF MARIA PARISE, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE BOROUGH : DECISION
OF BUTLER, MORRIS COUNTY. :

SYNOPSIS

In April 2003, the Board certified tenure charges of inefficiency, conduct unbecoming, insubordination and other just cause against respondent – a tenured social worker in the district. The tenure charges allege that respondent produced incomplete and/or incorrect work, falsified her timesheets, was unable to communicate with other Child Study Team members, disposed of school property without permission, and refused to follow directions of her superiors and written procedures. The Board suspended respondent without pay for lack of work performance and insubordination, and subsequently eliminated her full time position as part of a reduction in force for the 2003-2004 school year. The matter was put in abeyance at the direction of the Superior Court, which was hearing a related matter.

The ALJ found, *inter alia*, that: there is sufficient credible and legally competent evidence to conclude that respondent engaged in conduct unbecoming a teacher and insubordination, and demonstrated gross ineptness and incompetence in performing the responsibilities of a social worker. In regard to the charge of inefficiency, the ALJ noted that: *N.J.S.A.* 18A:6-11 requires a local board of education to allow at least 90 days in which to correct and overcome the inefficiency; *N.J.A.C.* 6A:3-5.1(c) sets forth specific, stringent guidelines that districts must follow with regard to this 90-day period; and failure to adhere to the regulations constitutes a fatal flaw to tenure charges of inefficiency requiring dismissal. However, the ALJ found that the respondent's overall performance and conduct demonstrated incompetence, and there was no need for the Board to comply with the requirements of *N.J.A.C.* 6A:3-5.1(c) as respondent had resisted all efforts of the District to help her and a remedial plan and 90-day period to correct the inefficiencies would have been an exercise in futility. The ALJ ordered that the respondent be dismissed from her tenured position.

Upon a thorough and independent review of the record, the Commissioner rejected the Initial Decision, finding and concluding that the Board's failure to provide respondent with a modified professional improvement plan and to accord a 90-day remediation period along with the provision of positive assistance during this period compel dismissal of the charges of inefficiency against respondent. The Commissioner rejected the Board's attempt to re-categorize its inefficiency charges as ones of incompetence. Even assuming, *arguendo*, that the Commissioner continues to accept incompetency – as defined in prior case law – as a legitimate stand-alone tenure charge rather than merely a gradient of inefficiency, and further assuming that the Board had certified such a charge against respondent, prior case law makes it fully evident that the Board could not sustain this charge. The Commissioner remanded the matter to the OAL for factual findings and conclusions on each of the remaining charges and a recommended penalty determination.

<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>

August 7, 2008

IN THE MATTER OF THE TENURE :
HEARING OF MARIA PARISE, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE BOROUGH : DECISION
OF BUTLER, MORRIS COUNTY. :
_____ :

The record of this matter and the Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Respondent requested and received two extensions of time within which to file exceptions; the Board requested and received one extension of time for the filing of reply exceptions. These submissions – made in accordance with the adjusted schedules – were fully considered by the Commissioner in reaching her determination herein.

On exception, respondent recounts the specific tenure charges which were filed against her by the Board:

- I. Inefficiency – under this heading respondent is charged with:
 - a. Failure to Complete Required Documents in a Timely Manner
 - b. Failure to Coordinate with Other Members of the Child Study Team
 - c. Failure to Properly Classify
 - d. Failure in Dealing with Parents
 - e. Ignoring Transportation
 - f. Case Management Failure

II. Conduct Unbecoming – here the District alleges:

- a. Failure to Properly Sign and/or Falsifying Sign in Sheets
- b. Signing IDEA Documents Herself in Lieu of Obtaining Parental Signatures
- c. Inappropriate Dealings With Staff Members

III. Insubordination – alleging:

- a. Not Following Directives with Regard to Signing in and out of the District
- b. Ignoring Directives with Regard to Calling the Substitute Service to Report Absences
- c. Ignoring Directives with Regard to the Installation and Use of Computer Equipment

IV. Other Just Cause

Respondent asserts that this charge merely incorporates the prior three charges.

(Respondent's Exceptions at 2-4)

Respondent first argues that the charge of inefficiency must be dismissed as a consequence of the Board's failure to comply with the dictates of *N.J.S.A. 18A: 6-11*, *N.J.A.C. 6A:3-5.1(c)* and governing case law which require that when initial tenure charges are filed at the District level charging an individual with inefficiency, such individual must at that time be accorded a prospective 90-day remediation period and given a modified professional improvement plan (PIP). The District is further obligated to provide the teaching staff member with assistance to correct the inefficiencies during the 90-day period. (Respondent's Exceptions at 3) While it is conceded that the Board in this matter provided respondent with the requisite 90-day notice, she maintains that it failed to comply with its obligation to modify her PIP or to provide her any assistance during the 90-day remediation period. Furthermore, respondent avers, the record contains absolutely no documentation whatsoever "that anything took place in the

90-days, whether improvement or lack thereof, on the part of Respondent.”¹ Citing to *In the Matter of the Tenure Hearing of Alan S. Tenney, School District of the Borough of Palisades Park, Bergen County*, decided by the Commissioner March 18, 1985; *In the Matter of the Tenure Hearing of Julio Triana, School District of the City of East Orange, Essex County*, decided by the Commissioner July 23, 1987; and *In the Matter of the Tenure Hearing of Peter Loria, School District of the City of Newark, Essex County*, decided by the Commissioner October 21, 1992, respondent urges that it is by now well-established that when a Board fails to comply with the procedural requirements attendant to tenure charges of inefficiency, such charges must be dismissed. (*Id.* 18-19)

The Administrative Law Judge (ALJ) clearly erred, respondent professes, when – in addressing the Board’s abject failure to deal with the procedural requirements of its inefficiency charge – she stated:

¹ As confirmation of the Board’s abdication of its legal responsibility during the 90-day remediation period, respondent offers two interrogatory questions which she propounded on the Board and the Board’s answers to these questions:

Q. 69. Describe with particularity each and every occasion and by whom Petitioner gave assistance to Respondent after giving notice of the charge of inefficiency to Respondent with respect to her work and/or position. Include in your answer each person’s statements and responses, and if any writings were prepared by Petitioner or Respondent, or by any of Petitioner’s agents, members, officers, representatives or employees, attach copies of all writings as well as any written analysis, reports of such assistance given by Petitioner to Respondent, and all actions taken in response to the assistance to Respondent by Petitioner. (Exhibit R-1)

A. Not possible to answer. (Exhibit R-2)

Q. 70. Describe with particularity each conversation that Respondent had with any employees and/or supervisors of Petitioner regarding any improvement plan proposed by Petitioner to assist Respondent in her work and/or position as a result of the charge of inefficiency. Include in your answer each person’s statement and responses, and if any writings were prepared by Petitioner or Respondent, or by any of Petitioner’s agents, members, officers, representatives or employees, attach copies of all writings, as well as any written analysis, reports of any such improvement plan proposed by Petitioner to assist Respondent’s work and/or position, and all action taken in response to the improvement plan proposed by Petitioner. (Exhibit R-1)

A. Not possible to answer. (Exhibit R-2)

(Respondent’s Exceptions at 11-12)

In the present case, I FIND that given the respondent's overall performance and conduct, there was no need for the Board to comply with the requirements of *N.J.A.C. 6A:3-5.1(c)*. The respondent had resisted all efforts from the staff to help her, thus a remedial plan and a 90-day period to correct the inefficiencies would have been an exercise in futility.
(Initial Decision at 15) (Respondent's Exceptions at 23)

Such a contention, respondent avers, is without legal basis. The Board chose to bring a charge of inefficiency against respondent; there is no statute, regulation, or school law case which exempts it from complying with the requisites attendant to this charge because such compliance would be "an exercise in futility." Furthermore, she posits, there is no factual evidence that "respondent had resisted all efforts from the staff to help her," particularly with regard to the specific inefficiency charges against her. (*Id.* at 23-24.)

As to the charges of Conduct Unbecoming and Insubordination, respondent submits that the ALJ failed to make specific findings of fact on each of the allegations as required by *N.J.S.A. 52:14B-10* but, rather, made vague, generalized statements with regard to some of these charges while leaving others wholly unaddressed. Respondent argues that "it is not sufficient that the ALJ adopt the statements of any other individual. The ALJ is required to specifically make [her] own findings." She urges that this matter must, therefore, be remanded for such factual findings on all of the charges. (*Id.* at 26-27)

In reply, the Board urges that respondent's "performance over her final year of work was so inept as to demonstrate incompetence." Citing several decades-old Commissioner decisions, including *In the Matter of the Tenure Hearing of Inez McRae*, 1977 *S.L.D.* 572; *In the Matter of the Tenure Hearing of Edna Booth*, 1985 *S.L.D.* 722; and *School District of East Brunswick v. Renee Sokolow*, 1982 *S.L.D.* 1358, *aff'd* State Board, 1983 *S.L.D.* 1645, the Board contends that on occasion it is recognized that the "job performance of a teaching staff member

is so inept as to render meaningless the statutory directive that a teacher charged with inefficiency be given 90 days to demonstrate improvement. In such instances, charges of inefficiency are more properly categorized as incompetence, rather than inefficiency, and there need not be a demonstration of how the teaching staff member was aided during the 90 days.” (Board’s Reply Exceptions at 7) It asserts that such is the case here, where the Board’s un rebutted evidence and testimony demonstrates no less than “gross incompetence” on the part of respondent, well transcending anything which could be corrected in the 90-day remediation period provided for correction of inefficiencies. (*Ibid.*) Moreover, respondent’s inadequacies extended over a full school year, despite administrative attempts to assist her – which she ignored or defied – indicating that she had no interest in improving her performance. (Board’s Exceptions at 9)

Respondent goes to great length, the Board charges, about the absence of proof as to the level of assistance provided to assist her in correcting her inefficiencies during the 90-day period. The Board takes the position that the testimony of its witnesses establishes that respondent “declined all offers of assistance both before and after these tenure charges were filed. Given that refusal, accepting her argument that the Board failed in its duty to help her correct inefficiencies would mean that a teacher charged with that defect could forestall its proof by non-cooperation.” (*Id.* at 10)

As to respondent’s allegation that the ALJ failed to make factual findings with respect to the charges, the Board points out that due to the fact that respondent did not testify or present any witnesses on her behalf, the facts as presented by the Board were uncontroverted. “Therefore, unless the ALJ, who heard the testimony presented by the Board, had chosen to disbelieve what she heard, and she did not, the facts presented by the Board have been

established and should be accepted by the Commissioner.” (Board’s Exceptions at 2) The Board urges that, despite respondent’s protestations to the contrary, the evidence supports the charges of incompetency, unbecoming conduct, insubordination and other just cause and the ALJ’s sustaining of these charges should be affirmed.

Upon her independent and comprehensive review of the record, which includes transcripts of the hearing conducted at the OAL on April 24 and 25, 2007, the Commissioner determines to reject the recommended Initial Decision of the ALJ.

Initially, the Commissioner concurs with the exception argument of respondent that the Board’s charges of inefficiency must be dismissed for its failure to comply with the procedural requisites attendant to the bringing of such charges as mandated by *N.J.S.A.* 18A:6-11, *N.J.A.C.* 6A:3-5.1(c) and applicable case law. Specifically, when filing charges of inefficiency against a tenured teaching staff member, *N.J.S.A.* 18A:6-11 requires the following procedure:

Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board. The board of education shall forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. After consideration of the charge, statement of position and statements of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probable cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary. The board of education shall forthwith notify the employee against whom the charge has been made of its determination, personally or by certified mail directed to his last known address. In the event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the commissioner for a hearing pursuant

to *N.J.S.A. 18A:6-16*, together with a certificate of such determination. *Provided, however, that if the charge is inefficiency, prior to making its determination as to certification, the board shall provide the employee with written notice of the alleged inefficiency, specifying the nature thereto, and allow at least 90 days in which to correct and overcome the inefficiency.* The consideration and actions of the board as to any charge shall not take place at a public meeting. (Emphasis added)

N.J.A.C. 6A:3-5.1(c) 4. directs:

Concurrent with notifying the employee of such charges of inefficiency, the district board of education or the State district superintendent shall direct that there be *a modification* of the individual professional improvement plan mandated by *N.J.A.C. 6A:32-4.3*, to assure that such plan addresses the specific charges of inefficiency and comports with the timelines established for correction. (Emphasis added)

Finally, case law interpreting *N.J.S.A. 18A:6-11* has consistently held that when a board chooses to file tenure charges of inefficiency against a teaching staff member, “the administration bears the heavy responsibility to render positive assistance to the [individual] in an effort to overcome [her] inefficiencies.” *In the Matter of the Tenure Hearing of Donald Rowley v. Board of Education of Manalapan-Englishtown*, 205 *N.J. Super.* 65, 72 (App. Div. 1985). The rationale underlying all of these procedural requirements collateral to the certification of tenure charges of inefficiency “is that an employee whose effectiveness is called into question after meritorious service in a school district should, in recognition of that contribution, be afforded an opportunity to demonstrate that he or she is still capable of effective performance.” *In the Matter of the Tenure Hearing of Morton*, 96 *N.J.A.R. 2d* (EDU) 440, 441, citing *Rowley, supra*.

In the instant matter, the record establishes that on December 19, 2002 the Board filed tenure charges of inefficiency, conduct unbecoming, insubordination and other just cause against respondent, a social worker in the district for more than 13 years. A copy of these charges was transmitted to respondent by the Business Administrator/Board Secretary along with

a letter of notification of that same date.² It is not disputed that such communication accorded respondent 90-days, beginning January 2, 2003, to correct the inefficiencies set forth in the charges and further advised her that if such inefficiencies remained uncorrected at the end of this period the Board may certify these charges to the Commissioner. However, the Board does not assert nor has it produced any affidavit, certification or other documentation to establish that it provided respondent with a *modification* of her professional improvement plan (PIP), nor is a modified plan included in the record of this matter. Lastly, with respect to the Board's obligation to provide respondent with reasonable, positive assistance in overcoming her inefficiencies during the remediation period, the record is wholly devoid of testimonial or documentary evidence demonstrating *any* effort in this regard by school administrators other than that contained in the testimony of Kathy Gordon, Director of Student Services – respondent's supervisor – wherein she stated that she told respondent that her door was always open if she wanted to talk. T-4/24/07, p. 131. Consequently, the Commissioner, recognizing that it is by now axiomatic that a board's compliance with its obligation to give a teaching staff member a modified PIP, and to accord a 90-day remediation period along with the provision of positive assistance during this period are absolute prerequisites to its right to certify inefficiency charges against such teaching staff member, finds and concludes that this Board's failure to provide the modified PIP and reasonable assistance compel dismissal of these charges. See *Rowley, supra.*; *In the Matter of the Tenure Hearing of Peter Loria*, decided by the Commissioner October 21, 1992, *aff'd* State Board, February 2, 1993; *East Orange Board of Education v. Julio Triana*, 1987 S.L.D. 1683.

² It is noted that respondent acknowledged receipt of the tenure charges and the statement of evidence in support thereof on January 2, 2003.

The Commissioner expressly rejects the ALJ's attempt to re-categorize these inefficiency charges as ones of incompetency, thereby ostensibly obviating the need for compliance with any procedural requisites. (See Initial Decision at 15) The Commissioner cannot countenance allowing this board, which chose to certify tenure charges of inefficiency – and apparently later recognized its failure to follow the legal prescriptions necessary to allow the prosecution of such charges – to sidestep these requirements by after-the-fact alteration of its charge against respondent to incompetency, one where prior case law appears to allow prosecution without such statutory or regulatory procedural restraints. Additionally, even assuming, *arguendo*, that the Commissioner continues to accept incompetency – as defined in prior case law – as a legitimate stand-alone tenure charge, rather than merely a gradient of inefficiency, and further assuming that the Board had certified such a charge against respondent, prior case law makes it fully evident that the Board could not sustain this charge.³

Turning to the Board's charges of conduct unbecoming and insubordination, given the dismissal of its inefficiency charges here, it is essential that this matter be remanded to the OAL for factual findings and conclusions on *each* of the remaining charges brought by the Board and a consequential penalty recommendation.

Accordingly, the Initial Decision of the OAL is rejected. The charges of inefficiency against respondent are hereby dismissed and this matter is remanded to the OAL for

³ The charges against respondent, a more than 13-year employee of the District, are solely restricted to deficiencies in her job performance for the 2001-2002 school year. In view of respondent's previous service – which on this record is not called into question – there is no demonstration here that she lacked the ability to be an effective employee. See *In the Matter of the Tenure Hearing of Edna Booth*, decided by the Commissioner May 31, 1985, *aff'd* State Board April 1, 1987, *aff'd* Docket #A-3985-86T8 (App. Div. 1987); Also see *Board of Education of the City of Newark v. April Renee Bradley*, 1990 S.L.D. 790, *aff'd* State Board, 1991 S.L.D. 2521.

further fact finding and a recommended penalty determination on the charges of conduct unbecoming and insubordination.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: August 7, 2008

Date of Mailing: August 8, 2008

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.