

#126-10

OAL DKT. NO EDU 1007-10  
AGENCY DKT. NO. 350-12/09

IN THE MATTER OF THE TENURE :  
HEARING OF ANDREW J. JACKSON, : COMMISSIONER OF EDUCATION  
SCHOOL DISTRICT OF THE CITY OF : DECISION  
HACKENSACK, BERGEN COUNTY. :

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The record of this matter, the parties' proposed Agreement, and the Initial Decision issued by the Office of Administrative Law (OAL) pursuant to *N.J.A.C. 1:1-19.1*, recommending approval of the parties' settlement, have been reviewed.

Upon such review, the Commissioner cannot accept the proposed settlement, as recommended by the OAL.

It is well established that – once tenure charges are certified – such charges may be settled only with the Commissioner's approval, and any proposed settlement, whether submitted to the Commissioner or to the Administrative Law Judge (ALJ), must address the standards expressly established for this purpose by the State Board of Education. *In re Cardonick*, 1990 S.L.D. 842, 846; *N.J.A.C. 6A:3-5.6(a)*. Specifically, a proposed settlement must: 1) be accompanied by documentation as to the nature of the charges; 2) include an explanation of the circumstances justifying the settlement or withdrawal; 3) evidence the consent of both the charged and the charging parties; 4) indicate that the charged party entered into the agreement with a full understanding of his or her rights; 5) demonstrate that the agreement is in the public interest; and 6) indicate, where the charged party is a teaching staff member, that he or she has been advised of the Commissioner's duty to refer tenure

determinations resulting in loss of position to the State Board of Examiners for possible action against the staff member's certificate.

In the present instance, the record is clear as to the nature of the charges and includes a Board of Education resolution approving settlement; the final criterion does not apply in respondent's case since he is not a teaching staff member. However, neither the parties nor the ALJ have anywhere on the record set forth the circumstances justifying settlement of this matter, notwithstanding the well-established principle that, having once taken up the burden of tenure charges, a board may not lay it down without spreading forth on the record a reasonably specific explanation of why such charges need no longer be pursued or why it is now in the public interest not to pursue them – a principle no less applicable where the charged party is resigning from employment with the charging district. *In the Matter of the Tenure Hearing of Kenneth Smith, School District of Orange, Essex County*, decided by the Commissioner March 22, 1982, decision on remand June 16, 1983, *aff'd with modification* by the State Board of Education November 2, 1983, *aff'd* N.J. Superior Court, Appellate Division, January 30, 1986. The Commissioner finds this deficit particularly troubling where, as here, the alleged behavior underlying the charges is of a type that may be of concern should respondent once again seek employment in a school district, and the parties have agreed – in the event the district is contacted for a reference – to indicate that respondent resigned for “personal reasons”<sup>1</sup> notwithstanding that the filing of tenure charges, tenure charge documents, and any record of or determination related to these, are a matter of public record. *Williams v. Board of Educ. of the*

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<sup>1</sup> The Open Public Records Act states, in pertinent part, that the following employment information shall be public:

An individual's name, title, position, salary, payroll record, length of service in the instrumentality of government and in the government, *date of separation and the reason therefor*; and the amount and type of any pension received \*\*\*(. (emphasis added) N.J.S.A. 47:1A-10

*Atlantic City Public Schools et al.*, 329 N.J. Super. 308 (App. Div. 2000); see also N.J.A.C. 1:1-14.1(a).<sup>2</sup>

In declining to accept the proposed settlement at this time, the Commissioner stresses that he does not preclude the possibility of settlement in this matter; however, he cannot meet his own obligation to the schools and children of this State without the requisite assurance that a proposed settlement is consistent with established standards for the setting aside of tenure charges.

Accordingly, the Initial Decision of the OAL recommending approval of the proposed settlement is hereby rejected, and this matter is remanded to the OAL for expansion of the record or revision of the parties' Agreement consistent with the concerns expressed above. If the parties are unwilling or unable to agree on such expansion or modification, the tenure charges shall proceed to plenary hearing.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: April 23, 2010

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<sup>2</sup> The Commissioner notes that the date of respondent's proposed resignation is not clear, although such resignation was presumably intended to take effect upon or subsequent to approval of the parties' agreement by the Commissioner.

<sup>3</sup> Pursuant to P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1), Commissioner decisions are appealable to the Appellate Division of the Superior Court.