

EDU # 897-00  
C #193-00  
SB # 38-00

IN THE MATTER OF THE TENURE :  
HEARING OF LENORE M. ALLEN, : STATE BOARD OF EDUCATION  
SCHOOL DISTRICT OF THE TOWNSHIP : DECISION  
OF OLD BRIDGE, MIDDLESEX COUNTY. :

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Decided by the Commissioner of Education, June 19, 2000

For the Petitioner-Appellant, Riker, Danzig, Scherer, Hyland & Perretti  
(James S. Rothschild, Jr., Esq., of Counsel)

For the Respondent-Respondent, Bergman & Barrett (Michael T. Barrett,  
Esq., of Counsel)

This matter involves a proposed settlement of tenure charges that had been certified against Lenore Allen (hereinafter "respondent") by the Board of Education of the Township of Old Bridge (hereinafter "Board"). The charges of unbecoming conduct alleged that respondent had engaged in a pattern of threatening and violent behavior toward students during the 1999-2000 school year. The charges also alleged that, despite interventions and counseling efforts, respondent continued to exhibit signs of anger and frustration.

The matter was transmitted to the Office of Administrative Law ("OAL") for hearing. However, before such hearing occurred, the parties agreed to a settlement, which was reviewed by the Administrative Law Judge ("ALJ") pursuant to N.J.A.C. 1:1-19.1. Finding that the parties had voluntarily agreed to the settlement and that the

settlement both disposed of all issues in controversy and was consistent with the law, the ALJ concluded that the settlement met the requirements of N.J.A.C. 1:1-19.1 and should be approved.

The Commissioner rejected the ALJ's recommendation, stating that he was compelled to do so because he was not satisfied that the settlement met the standards set forth in In re Cardonick, decided by the Commissioner of Education, April 7, 1982, aff'd by the State Board of Education, April 6, 1983. The Commissioner remanded the matter to OAL for revision of the settlement, indicating that the matter need not proceed to a hearing on the merits if respondent agreed that she "will not oppose proceedings before the State Board of Examiners to suspend or revoke her certificate(s) pursuant to N.J.A.C. 6:11-3.6." Commissioner's Decision, slip op. at 7 (emphasis in original).

The Board appealed, arguing that there is no authority for the Commissioner to require respondent to relinquish her certificate as part of a settlement of tenure proceedings. The Board further argues that the decision will tax district boards with the responsibility of undertaking the risk and expense of litigating tenure disputes that they believe should be settled in the public interest.

We have reviewed the terms of the settlement proposed in this matter by the parties and find that it meets the standards established in Cardonick, supra. In Cardonick, a teacher filed a petition to the Commissioner challenging the withholding of his increment. In a separate action subsequent to the filing of that petition, the district board certified tenure charges against the teacher. The charges were transmitted to OAL with recommendations for consolidation.

While the matter was pending before OAL, the parties reached an agreement under which the teacher would resign but would receive a lump sum payment. The agreement was approved by the ALJ, and the parties executed it before approval was granted by the Commissioner. Stressing that the Tenure Employees Hearing Act had removed from district boards all power to impose a penalty in cases of tenure charges, the Commissioner found that the agreement in Cardonick was ultra vires because it had been executed without his approval.

The parties jointly appealed to the State Board. In its decision, the State Board observed that it was precluded from specific review of the terms of the settlement because the Commissioner's objections had been set forth in general terms. However, the State Board took the opportunity presented by the appeal to articulate the criteria that it considered important in reviewing tenure settlements. The State Board found that a proposed tenure settlement should be accompanied by supporting documentation as to the nature of the charges, circumstances justifying the settlement, consent by the district board and teacher to the agreement, and the ALJ's findings that the agreement is consistent with the public interest and was entered into by the teacher with a full understanding of his or her rights, including the Commissioner's duty to refer tenure determinations to the State Board of Examiners for possible revocation of certification. Since it was not disclosed whether the teacher had received full salary during the suspension period or had other employment during that period, the State Board concluded that the ALJ should have rejected the proposed agreement and inquired into those matters. The State Board therefore affirmed the Commissioner's determination to remand in that case.

Review of the proposed settlement in the case now before us indicates that the criteria set forth in Cardonick have been met. All the required documentation has been submitted, and the parties have agreed that the lump sum payment made under the agreement will be limited to a sum representing salary for a sixty-day period between approval of the agreement and the effective date of respondent's resignation. This payment is reasonable under the circumstances and the amount is consistent with the public interest.

Most significantly, the proposed agreement provides that respondent acknowledges that she has been advised of the Commissioner's duty to refer the matter to the State Board of Examiners for possible action regarding her certification. In this respect, we recognize that the parties have interpreted the Commissioner's decision to require respondent to agree not to defend herself in proceedings before the Board of Examiners. After carefully reading the Commissioner's decision, we conclude that he did not mean to eliminate due process by barring respondent from defending herself and intended only to require respondent's express agreement not to oppose referral to the State Board of Examiners. Commissioner's Decision, slip op. at 7. To the extent that the Commissioner's decision is ambiguous, we now modify it.

However, we find that it is not necessary for the proposed settlement in this case to include an express agreement by respondent not to oppose referral to the State Board of Examiners. Rather, we conclude that the acknowledgement of the Commissioner's duty to make the referral already included in the proposal is sufficient to insure that, as required by Cardonick, respondent understands that one of the

implications of the settlement is referral to the Board of Examiners and, consequently, the potential for that board to initiate proceedings to revoke or suspend her certification.

We agree with the Commissioner that the public interest extends beyond the boundaries of the particular district certifying tenure charges. Commissioner's Decision, slip op. at 7. We also concur with him that the nature of the charges in this instance is such that the public interest dictates that the matter receive more than a cursory review by the State Board of Examiners. At the same time, we stress that dismissal from a tenured position and revocation of certification serve different purposes and that the responsibilities of the Commissioner under N.J.S.A. 18A:6-10 are distinct from those of the Board of Examiners under N.J.S.A. 18A:6-38. E.g., In the Matter of the Revocation of the Teaching Certificates of John Ahern, rev'd and remanded by the State Board of Education, August 5, 1987 (subsequent history omitted).

N.J.S.A. 18A:6-38 confers original jurisdiction on the State Board of Examiners to act under rules prescribed by the State Board of Education to revoke the certificates that it issues. Consequently, it is the determination by the State Board of Examiners that may preclude a teacher who has been dismissed from tenured employment from future employment in any school district in New Jersey. Accordingly, the pertinent regulations set forth procedures under which cases involving offenses of such nature as to warrant suspension or revocation of certification may be decided by the State Board of Examiners following an appropriate hearing. N.J.A.C. 6:11-3.6. Those procedures include transmittal to the Office of Administrative Law, thereby enabling the State Board of Examiners to resolve cases involving disputes as to the material facts. Id. Such disputes may involve, where appropriate, facts relating to the conduct

underlying the tenure charges. Id. Given the statutory authority possessed by the State Board of Examiners and the regulations we have adopted to implement that authority, we are confident that upon referral of this matter to the State Board of Examiners, that board will insure that the interests of the public are protected.

For the reasons set forth herein, we approve the settlement proposed by the parties in this case and direct that the matter now be transmitted to the State Board of Examiners. In view of our determination, we deny the motions made by the New Jersey School Boards Association and the New Jersey Education Association to appear as amicus curiae.

Roberta Van Anda abstained.

November 1, 2000

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