

# Joyce M. Klein

Arbitrator & Mediator

## VIA ELECTRONIC MAIL

January 5, 2016

Tara L. Humma, Esq.  
Brown & Connery, LLP  
360 Haddon Avenue  
Westmont, NJ 08108

Cosmas P. Diamantis, Esq.  
Zeller & Wieliczko, LLP  
120 Haddontowne Court  
Cherry Hill, NJ 08034

Re: In the Matter of the Tenure Hearing of Chet Churchill, State Operated  
School District of the City of Camden, Camden County  
Agency Dkt. No. 340-11/15

Ms. Humma and Mr. Diamantis:

This letter responds to Respondent Chet Churchill's (Respondent's) Motion for Summary Decision and the arguments raised in response by the State Operated School District of the City of Camden (District).

Respondent Chet Churchill is a tenured biological life science education teacher in the District. Respondent received summative ratings of partially effective for the 2013-2014 and 2014-2015 school years. His summative evaluation for the 2014-2015 school year took place on May 26, 2015. By letter dated June 8, 2015, Respondent was assigned by the District to teach at Camden High School for the 2015-2016 school year. On August 31, 2015, Churchill received an email from the District and a letter rescinding his teaching assignment for the 2015-2016 school year. That letter provided in pertinent part:

In or around mid-July 2015, you may have received a letter advising you of your proposed location and assignment as a teaching staff member with the Camden City School District for the 2015-2016 school year. The Superintendent has advised that letter was sent to you in error and is hereby rescinded. To the extent your 2015-2016 placement, which was made in error, appears on a Superintendent's Report, it will be corrected at a future Board meeting. Also, consistent with the Superintendent's decision, any communication you received stating that you should show up to work or professional development for the 2015-2016 school year was also in error.

PO Box 186, Ocean Grove, New Jersey 07756  
Tel. (732) 775-5677 ● Fax (732) 775-8551 ● Email: JoyceMKlein@gmail.com  
4371 28th Street South, Arlington, VA 22206

This letter is also to advise you that effective *immediately*, the Superintendent is placing you on administrative leave with pay due to issues including, but not limited to, your evaluation scores. Thus, you are **not to report** to any Camden City School District location on or after September 1, 2015. When the matter surrounding your administrative leave is resolved, you will receive more specific instructions. [emphasis in original].

On or about October 14, 2015, the District served a Notice of Inefficiency on Respondent Chet Churchill (Respondent). With that Notice, Paymon Rouhanifard, State District Superintendent with the Camden City School District, filed notice of charges based on inefficiency pursuant to N.J.S.A. 18A:6-17.3 against Respondent. On October 26, 2015, Respondent filed a Statement of Position and Statement of Evidence in opposition to the tenure charges. On November 2, 2015, State Superintendent Rouhanifard certified tenure charges against Respondent. Those charges were served on the Commissioner of Education and Respondent on November 3, 2015. The charges were received in the Department of Education's Bureau of Controversies and Disputes on November 4, 2015, and on that same date, the Commissioner of Education acknowledged "receipt of certified tenure charges filed with the Commissioner on November 4, 2015." That acknowledgement provided specifically that "Respondent is required to file written response to the charges within 15 days of date filed with Commissioner." The acknowledgement provided the following "IMPORTANT NOTICE" set off in a separate box:

Pursuant to *N.J.A.C. 6A:3-5.3* and *6A:3-5.4*, an individual against whom tenure charges are certified ***shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the charges with the Commissioner.***  
(emphasis in original).

On November 19, 2015, Respondent filed a Motion for Summary Decision with the Commissioner of Education. On November 30, 2015, the tenure charges were referred to me for decision. On that same date, the Department of Education advised the parties:

Please be advised that, following receipt of the Respondent's motion for summary decision on November 19, 2015, the above captioned tenure charges have been reviewed pursuant to *N.J.S.A. 18A:6-17.3c*. Upon review, the Commissioner is unable to determine that the evaluation process has not been followed. The arbitrator's decision with regard to these charges shall be made pursuant to *N.J.S.A. 18A:6-17.2*, subject to determination by the arbitrator of the motion for summary decision. Should the arbitrator deny the motion,

Respondent's answer should be filed directly with the arbitrator. The arbitrator shall review those charges which are not dismissed as the result of a motion under *N.J.S.A. 18A:6-17.2*, subject to the determination by the arbitrator of Respondent's defenses and any motions which may be filed with the arbitrator.

On December 16, 2015, the District filed a brief in Opposition to Respondent's Motion for Summary Decision. On December 23, 2015, Respondent filed a Letter Brief in reply to the District's Brief in Opposition.

Respondent has filed a Motion for Summary Decision in response to the tenure charges filed against him asserting that the charges were not filed "promptly" pursuant to *N.J.S.A. 18A:6-17.3(b)*. Specifically, Respondent asserts that because the tenure charges were not filed until October 14, 2015, approximately 141 days from the summative conference held on May 26, 2015, the tenure charge must be dismissed.

In response to this Motion, the District asserts that it, as well as Respondent's position statement filed on the same date, is improper and untimely pursuant to *N.J.A.C. 6A:5-1(c)(5)* and therefore the tenure charges should be admitted and sustained. The District asserts that Respondent's Motion for Summary Decision is improper because neither his position statement nor his motion were timely filed under *N.J.A.C. 6A:3-5.1*. The District bases its argument on *N.J.A.C. 6A:3-5.1(c)(5)*, which provides that Respondent "shall have ten days to submit to the Commissioner a written response to the charge," as well as *N.J.A.C. 6A:3-5.3*, which sets forth procedures for seeking an extension within ten day period. The District asserts that the tenure charges were served on Mr. Churchill on November 3, 2015 and he had ten days to respond, so Churchill's response was due no later than November 13, 2015. The District points out that Mr. Churchill's position statement and motion were not filed and served until November 19, 2015, almost a week late, in violation of *N.J.A.C. 6A:3-5.1*. Accordingly, the District asserts that pursuant to the regulation, "the charges shall be deemed admitted by the charged employee." As a result, the District asserts that the inefficiency tenure charges in this matter must be deemed admitted and therefore sustained.

Respondent emphasizes the acknowledgement of receipt of the charges from the Department of Education. That acknowledgement provided specifically that "Respondent is required to file written response to the charges within 15 days of date filed with Commissioner." As detailed above, the acknowledgement provided Respondent with fifteen days "from the date such charges are filed with the Commissioner to file a written response."

N.J.A.C. 6A:3-5.1(c)(5) does provide the Respondent with ten days to submit a response to the charges to the Commissioner where the "tenure charges are charges of inefficiency." Subsection (c)(5) provides specifically,

5. Upon receipt of the charge, the Commissioner or his or her designee shall examine the charge. The charge shall again be served upon the employee at the same time it is forwarded to the Commissioner and proof of service shall be included with the filed charges. The individual against whom the charge is filed shall have 10 days to submit to the Commissioner a written response to the charge.

In contrast, N.J.A.C. 6A:3-5.3 provides the Respondent with fifteen (15) days to provide a written response in cases other than inefficiency.

- (a) Except as specified in N.J.A.C. 6A:3-5.1(c)5, an individual against whom tenure charges are certified shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the charges. ...
  1. Consistent with N.J.A.C. 6A:3-1.5(g), nothing in this subsection precludes the filing of a motion to dismiss in lieu of an answer to the charges, provided the motion is filed within the time allotted for the filing of an answer. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner, or by the arbitrator if the motion is to be briefed following transmittal to an arbitrator.
- (b) Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown consistent with the provisions of N.J.S.A. 18A:6-16. Such application shall be received prior to the expiration of the 15-day answer period, or the 10-day answer period specified in N.J.A.C. 6A:3-5.1(c) and a copy shall be served upon the charging district board of education or the State district superintendent. The district board of education or State district superintendent shall promptly notify the Commissioner or any opposition to the request.

The District aptly notes that N.J.A.C. 6A:3-5.1(c)(5) provides ten (10) days rather than fifteen (15) days for a Respondent to submit a response to tenure charges to the Commissioner of Education. Similarly, N.J.S.A. 18A:6-17.3(c)

provides that "the individual against whom the charges are filed shall have 10 days to submit a written response to the Commissioner."

In this instance, Respondent received written direction from the Department of Education that provided "an individual whom tenure charges are certified *shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the charges with the Commissioner.*" (emphasis in original). Respondent complied with the direction received from the Department of Education and filed his response to the charges together with his Motion for a Summary Decision on November 19, 2015, or on the 15<sup>th</sup> day after the charges were received by the Department of Education.<sup>1</sup>

Under the circumstances present here, where the Respondent complied with the fifteen (15) days for a response as required by Department of Education's acknowledgement of the charges, the Department of Education's acceptance of the Motion and its specific determination to refer it to me for decision, the Respondent should not be penalized for following the direction of the Department of Education. Under these circumstances, I find the Motion and Position Statement can not be deemed admitted and sustained due to untimeliness.

The District also asserts that Respondent's Motion for Summary Decision is improper because N.J.S.A. 18A:6-17.3(c) provides only for submission of a written response to tenure charges for inefficiency that have been certified to the Commissioner and does not provide for the filing of a motion to dismiss or for summary decision in lieu of a written response. The District emphasizes that additional qualifications not included in the statute should not be added and asserts that if the legislature had intended to allow for motions to dismiss or summary decision in lieu of a filing of a written response to tenure charges for inefficiency, it would have done so explicitly. In support, the District cites N.J.S.A. 18A:6-16 which provides in pertinent part:

The individual against whom the charges are certified shall have 15 days to submit a written response to the charges to the commissioner

...

If, following receipt of the written response to the charges, the commissioner ... shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall refer the case to an arbitrator ... for further proceedings, except that when a motion for summary decision has been made prior to that time, the commissioner may retain the matter for purposes of deciding the motion.

---

<sup>1</sup> This period included Election Day.

Respondent emphasizes the direction from the Commissioner that "[t]he arbitrator's decision with regard to those charges shall be made pursuant to N.J.S.A. 18A:6-17.2, subject to determination by the arbitrator of respondent's motion for summary decision." Respondent also cites numerous inefficiency cases arising under TEACHNJ where motions for summary decision or motions to dismiss has been heard and decided by arbitrators exercising their inherent powers and discretion. For example, IMO the Tenure Hearing of Elena Brady, State Operated School District of the City of Newark, Essex County, 9/11/15 (#294-15); IMO the Tenure Hearing of Nancy Mastriana, School District of the Township of Hillsborough, Somerset County, 10/9/15 (#343-15); and IMO Sherlene Thomas, State Operated School District of the City of Newark, Essex County, 11/16/15 (#383-15).

The District's assertion that resolution of Respondent's Motion for Summary Decision is not within my authority because the statute does not expressly provide for the filing of a dispositive motion in lieu of an answer is not persuasive. In several previous arbitration awards addressing inefficiency cases, including those cited above, arbitrators have exercised their discretion to decide dispositive motions such as Respondent's Motion for Summary Decision. Further, in this instance, the Commissioner has expressly delegated that authority to me by providing me with the authority to address these inefficiency charges, "subject to determination by the arbitrator of respondent's motion for summary decision." Accordingly, I find the District's argument that the statute does not expressly provide for the filing of a dispositive motion in lieu of a written response is not cause for denial of the motion.

Turning to the merits of Respondent's Motion for Summary decision, I note that my authority is defined and limited by N.J.S.A. 18A:6-17.2(a)(1)-(4), which provides four factors to be considered by an arbitrator in rendering a decision as to whether the tenure charges warrant dismissal of the educator.

In this instance, Respondent asserts that the amended tenure charge must be dismissed because the District failed to promptly file the written tenure charge pursuant to N.J.S.A. 18A:6-17.3(b). Respondent points out that the requirement that charges of inefficiency be "promptly" filed also is incorporated into the Administrative Code in N.J.A.C. 6A:3-5.1(c)(1), which provides "[w]hen the conditions described in N.J.S.A. 18A:6-17.3.a(1) or (2) have been satisfied, the Superintendent shall promptly file with the Secretary of the District Board of Education a charge of inefficiency."

Acknowledging that the word "promptly" is not defined with TEACHNJ or its rules, Respondent points to numerous definitions of the word "promptly" including Black's Law Dictionary 1093 (5<sup>th</sup> Ed.) which defines promptly as "ready and quick to act as occasion demands ... [t]o do something "promptly" is to do it without delay and with reasonable speed."

Additionally, Respondent would rely upon case law in interpreting the use of "prompt" within the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-14, which provides that minutes kept by public bodies "shall be promptly available to the public ..." Respondent cites several cases providing that statutory words should be given their "ordinary and understood meaning" unless there is an indication that a special meaning is intended. See Matter of schedule of rates for Barnert Memorial Hospital, 92 NJ 31, 40 (1983); Levin v. Parsippany-Troy Hills Township, 82 NJ 174, 182 (1980).

The Respondent relies on Matawan Regional Teachers Association v. Matawan Regional Board of Education, 212 NJ Super 328, 333 (Law Div. 1986) which found that a thirty (30) day delay in releasing meeting minutes where the Board of Education met every two weeks violated the OPMA because under the circumstances, meeting minutes were not "promptly" made available. The Court in Matawan considered five factors, including 1) the prior experience in publication of board minutes; 2) the subject matter of the minutes and their importance to the Association and others directly affected by Board action; 3) the subject matter of the minutes and their importance to the public in general; 4) the intervals at which regular meetings were scheduled; and 5) whether meetings complained of were regularly scheduled or were, due to an exigency, held so close together that the Board could not reasonably be expected to abide by the Act's requirement.

Respondent would, to the extent applicable, analyze whether tenure charges were filed against Churchill "promptly" using the Matawan factors. Based upon this analysis, Respondent emphasizes that the District was fully informed of his summative score for the 2014-2015 school year by at least May 26, 2015 when the summative conference occurred and the District had been aware of the possibility that the Respondent might be subject to tenure charges since the end of the 2013-2014 school year when he was rated "partially effective." Respondent points out that the Superintendent had the authority to decide and file tenure charges against Churchill and was not restrained from acting at regularly scheduled meetings. Under these circumstances, Respondent asserts that a 141 day delay cannot be considered "prompt" under TEACHNJ. Specifically, acknowledging that the District does not have extensive experience in filing inefficiency tenure charges pursuant to TEACHNJ, Respondent asserts that because the District is subject to the OPMA requirements, it should have known that a delay in filing of the tenure charge of at least 141 days would not be "prompt" under TEACHNJ because that length of time has never been "prompt" under the OPMA.

Applying the second Matawan factor, Respondent points out that both the District and Churchill have a strong interest in expediting the tenure process. Respondent asserts that the public also has a strong interest in prompt tenure filings because children suffer if instruction is provided by an alleged inefficient

teacher. Further, the public suffers due to an unnecessary waste of public funds by delaying the filing of tenure charges by 141 days.

Because the School District is under State intervention, there is no board of education and no formal meeting required for the State Superintendent to take action and he may act at any time, thus providing support under the fourth and fifth Matawan factors in favor of prompt tenure charge filings, according to Respondent.

The District asserts that it "promptly" filed tenure charges for inefficiency in accordance with N.J.S.A. 18A:6-17.3(b) and N.J.A.C. 6A:3-5.1(c)(1). Specifically, the District asserts that the promptness requirement of TEACHNJ is not analogous to the requirements of the OPMA. The District asserts that Respondent's efforts to analogize the use of the term "promptly" in TEACHNJ with the OPMA is misguided and there are no cases or administrative decisions that have relied upon the OPMA to interpret the term "promptly" in TEACHNJ.

The District asserts that the requirement for the filing of tenure charges for inefficiency are significantly different from any efforts required to generate meeting minutes under OPMA and they are not analogous. Further, the District asserts that tenure charges for inefficiency were "promptly" filed in accordance with both the statute and regulations. The District emphasizes that when determining whether tenure charges for inefficiency should be filed against a teacher, the school district must evaluate the summative evaluations scores and if they warrant tenure charges for inefficiency under TEACHNJ, the District must then review the evaluation process of the particular teacher and assess and evaluate each document related to the process, including those related to training and professional development. Further, the District must interview all parties involved in coaching, training and observing those teachers within the two year time period and then determine whether tenure charges are warranted. Further, in a case where a teacher was rated partially effective in two years as is the case here, the District must also determine whether there are any exceptional circumstances which might warrant a teacher another year to show that he is able to be an effective teacher. Given the size of the District's staff and its financial pressures, the District was able to review each tenure charge case during the summer months while continuing to prepare for the upcoming academic year and subsequently to file tenure charges against its inefficient teachers in the months of September and October. Under these circumstances and given the complexity of the tenure charge review process, the District maintains that the tenure charges filed in this instance on October 14, 2015 were promptly filed.

The District also points out that the claim that the District did not "promptly" file the tenure charges for inefficiency under TEACHNJ is not grounds for dismissal under N.J.S.A. 18A:6-17.2. That statutory provision limits the factors that may be considered by the arbitrator when rendering tenure charges for inefficiency. For



these reasons, the District asserts that Respondent's Motion for Summary Decision must be denied.

N.J.S.A. 18A:6-17.2(a) limits an arbitrator's review of a District's determination to review charges of inefficiency to four factors:

- (1) the employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan;
- (2) there is a mistake of fact in the evaluation;
- (3) the charges would not have been brought but for consideration of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or
- (4) the district's actions were arbitrary and capricious.

If any of those factors apply, then pursuant to N.J.S.A. 18A:6-17.2(b), the arbitrator "shall then determine if that fact materially affected the outcome of the evaluation." Respondent's Motion for Summary Determination seeks dismissal of the tenure charges against him because they were not filed "promptly" as required by N.J.S.A. 18A:6-17.3(a)(1). Respondent acknowledges that the requirement that tenure charges be filed "promptly" is not one of the four factors to consider when determining to revoke a teacher's tenure. However, the failure to file tenure charges "promptly" could lead to undue delay that may be prejudicial to Respondent.

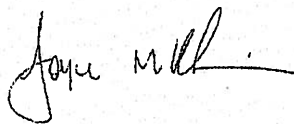
Respondent would apply factors adopted by the court for determination of whether publication of the minutes of public meetings have been published promptly pursuant to the OPMA to define "promptly" in reference to tenure charges filed pursuant to N.J.S.A. 18A:6-17.3. Transcription and publication of the minutes of public meetings is not an apt analogy to the requirements of filing tenure charges. Publication of meeting minutes is a ministerial duty. The determination to file tenure charges requires compilation and substantive review of records, interviews with supervision and determination of whether the proper procedures were followed. In short, publication of meeting minutes and filing of tenure charges are not comparable.

Respondent also points to dictionary definitions of the word "promptly" which include "without delay and with reasonable speed." In this instance, Respondent asserts that the 141 days that elapsed between Respondent's summative conference of May 26, 2015 and October 14, 2015 when he was served with tenure charges is sufficient to establish that the District failed to file tenure charges "promptly" as required by N.J.S.A. 18A:6-17.3. That time lapse by itself

does not establish that the District failed to act promptly. Rather, the time lapse relied upon by the Respondent must be considered in light of the four factors subject to review pursuant to N.J.S.A. 18A:6-17.2(a). Neither this Motion nor the pleadings responsive to the Motion address whether the time lapse here was "without delay and with reasonable speed" or whether it materially supports one or more of the four factors to be considered in determining whether the tenure charges filed against Respondent are sustained.

Accordingly, determination of Respondent's Motion for Summary Decision shall remain pending during the arbitration process. Both parties shall have the opportunity to further address whether the District's failed to file tenure charges against Respondent "promptly" in the context of the factors for review in N.J.S.A. 18A:6-17.2(a).<sup>2</sup> The hearing in this matter remains scheduled for January 14, 2016. Given the brief period between this letter and the scheduled hearing date, Respondent's answer is due filed on Monday, January 11, 2016.is due filed on Monday, January 11, 2016.

Sincerely,



Joyce M. Klein

JMK/glb

- c. Kathleen Duncan, Director  
Bureau of Controversies and Disputes

---

<sup>2</sup> Respondent sought oral argument regarding its Motion for Summary Decision. That request is denied, but Respondent remains free to address this issue on the record at hearing.