

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION**

In the Matter of the Tenure Hearing of:

**TARA TRONGONE,
SCHOOL DISTRICT OF THE CITY
OF GLOUCESTER CITY,
CAMDEN COUNTY**

Agency Docket No. 173-6/16

Walt De Treux, Esq., Arbitrator

**DECISION ON RESPONDENT'S
MOTION TO DISMISS**

Decision Date: 9/12/16

Introduction and Statement of Relevant Facts

Respondent Tara Trongone is a tenured teacher most recently assigned to the 6th grade at Mary Ethel Costello School in the Gloucester City School District. In early January 2016, a 6th grade parent called Assistant Principal Kristin Little to report that Trongone “gave the class 10-15 answers on their SGO test” and did the same in another class. The next day, Little interviewed the caller’s son, who confirmed that Trongone “walked around and gave us answers individually” and “would give about ten (10) correct answers in a row by reading out the correct letter choices.”

Little and Principal William O’Kane conducted an investigation, interviewing 26 students from Trongone’s classes, 12 of who supported the allegation that Trongone provided answers to the SGO test. On January 22, 2016, the District suspended Trongone with pay pending a discussion of the matter by the Board of Education.

On May 3, 2016, Joseph Rafferty, Superintendent of Schools, notified Trongone by letter that her employment would be discussed at an upcoming Board of Education meeting. Attached to the letter was a five-page document titled "Evidence In Support of Unbecoming Conduct," which included a narrative description of the allegations against her and Supt. Rafferty's recommendation to the Board to certify tenure charges against Trongone. Supt. Rafferty offered Trongone the opportunity to submit a written statement of position and evidence. By letter dated May 16, 2016, Trongone responded through counsel in a "Statement of Position In Opposition to "Tenure Charges." Trongone alleged, *inter alia*, that the "charges, and service of said charges, are not in compliance with New Jersey statutes and regulations that set forth the tenure charge process under the TEACHNJ Act..."

On June 9, 2016, the Board of Education voted to certify tenure charges against Trongone, found the charges were sufficient, if credited, to warrant her dismissal, and suspended her without pay. On June 21, 2016, Supt. Rafferty forwarded the charges to the Commissioner of Education. The charges were served on Respondent on June 23, 2016.

On July 7, 2016, Trongone, through counsel, responded to the charges with a Motion To Dismiss Tenure Charges In Lieu of an Answer. Respondent alleged that the District failed to provide her with adequate notice and due process by certifying and filing tenure charges different than those initially served on her; failed to serve on her sworn statements related to those initial tenure charges; provided an insufficient sworn statement with the second set of charges premised on "rank hearsay" rather than personal knowledge; and violated her due process rights by

failing to comply with the regulations regarding tenure charges and depriving her of the opportunity to respond to the charges. On July 21, 2016, the District filed a letter brief in opposition to the Motion To Dismiss, and Respondent filed a reply letter brief a week later.

On August 8, 2016, the Department appointed the undersigned to hear and decide the tenure matter and forwarded the complete file to the Arbitrator. Accordingly, Respondent's Motion To Dismiss is ripe for decision.

Issue

Should Respondent's Motion To Dismiss Tenure Charges be granted?

Analysis and Decision

An unsigned, unsworn document titled "Evidence in Support of Unbecoming Conduct," outlining in narrative form the allegations against Respondent, was attached to a May 3, 2016 letter from Superintendent Rafferty to Trongone advising her that the Board of Education "will discuss your employment" at an upcoming meeting. The letter requested Trongone's written statement of position and evidence.

On June 9, 2016, Superintendent Rafferty submitted to the Board of Education a document titled "Statement of Tenure Charges," which included 15 numbered paragraphs outlining the allegations against Respondent and certified as true and correct by the Superintendent and Assistant Principal Kristin Little. The Board voted to certify the Tenure Charges to the Commissioner of Education.

Superintendent Rafferty forwarded the charges to the Commissioner on June 21, 2016, and they were served on Respondent on June 23, 2016.

Respondent argues that the tenure charges certified by the Board of Education and submitted to the Commissioner of Education were procedurally deficient in that the charges initially served on Respondent were “completely different” than the second set of charges, thereby depriving Trongone of the opportunity to respond to the allegations in the second version of tenure charges. The District maintains that Respondent was provided adequate notice and due process in that the first set of charges were substantively identical to the second set of charges, which only added a minor procedural fact (“that the Board determined, through a majority vote of its full membership and after consideration the submissions of both Superintendent Rafferty and Trongone, that probable cause existed and the charges, if credited, are sufficient to warrant a dismissal or reduction in salary.”)

The District’s assertion that the substantively identical charges provide Trongone with adequate notice and due process clearly ignores the terms of TEACHNJ and undermines the notice and due process requirements of the Act. Respondent was initially served with a 5-page narrative that included unsworn allegations that she provided students with answers on the SGO test. She was asked to respond to those unsworn allegations. The tenure charges reviewed and approved by the Board and certified to the Commissioner were clearly labeled “Statement of Tenure Charges,” with the allegations in numbered paragraph form, certified as true and correct by Superintendent Rafferty and Assistant Principal

Rafferty, and included a signed Statement of Evidence by Superintendent Rafferty. It also included the 5-page narrative initially served on Respondent, with a certification signed by the Superintendent that was not included in the document served on Respondent.

N.J.S.A. 18A:6-11 states in relevant part,

“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 evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto...”

The clear language of the statute anticipates that Respondent will have the opportunity to respond to the same charges filed with the Board when it requires the Board to provide the employee with a copy of *the* charge, i.e., the same charge filed with the Board secretary. It is not “adequate” to provide Respondent with charges that approximate the content and format of the charges filed and considered by the Board. The District should not expect Respondent, the Commissioner, or an arbitrator to parse through charges served on Respondent and the actual charges filed with the Board to determine whether they are similar or dissimilar. Notice and due process requires that the charges served on Respondent be the same charges in content and form as the charges filed with the Board. Respondent was not given an opportunity to respond to the exact charges that were filed with the Board. Moreover, and on a very practical level, Respondent can more

effectively answer a sworn charge set out in numbered paragraphs than an unsworn narrative. See *N.J.A.C. 6A:3-5.3(a), (b)*.¹

The mere fact that Respondent was served with charges that differed in format, content (to a small degree), and sworn certifications from the charged reviewed and certified by the Board of Education and filed with the Commissioner of Education provide a basis for granting Respondent's Motion To Dismiss. It is a fundamental violation of TEACHNJ's notice and due process requirements to serve one set of charges on Respondent and a modified version (no matter how minor) of charges to the Board of Education and the Commissioner. By the very terms of the Act, Respondent must be given the opportunity to submit a written statement of position and a written statement of evidence to the charges that are filed with the Board. Respondent is entitled to *clear and unambiguous* notice of all the charges or potential charges that may arise at hearing. See *In re Tenure Hearing of Gilbert Alvarez, School District of the Township of Lakewood, Ocean County (Comm'r Decision)*, Agency Docket No. 36-2/09, OAL Docket No. EDU 10067-09, 2009 WL 5624392 (N.J. Admin June 3, 2010). Respondent in this case was not given clear and unambiguous notice of all the charges or potential charges because she was not served with the same version of charges filed with the Board.

Moreover, the charges filed with Board included a "Certification," signed by Superintendent Rafferty and Assistant Principal Little, that the Statement of Tenure

¹ "(a) The answer shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegations of the petitions. (b) Respondent(s) may not generally deny all the allegations, but shall make specific denials which meet the substance of designated allegations or paragraphs of the petition."

Charges is true and correct. It also included a certification, signed by Superintendent Rafferty, that the information contained in the Statement of Evidence is true and correct. The District explains in its brief that Assistant Principal Little was one of two administrators who conducted the investigation by talking with parents and interviewing students. The other administrator, Principal William O'Kane, did not certify the charges or the Statement of Evidence.

TEACHNJ regulations, *N.J.A.C. 6A:3-5.1(b)(1)*, require in relevant part,

1. Charges shall be stated with specificity as to the action or behavior underlying the charges and shall be filed in writing with the secretary of the district board of education or with the State district superintendent, accompanied by a supporting statement of evidence, both of which will be executed under oath by the person(s) instituting such charges.

In a recent case, *In the Matter of Tenure Hearing of Kevin Karp, Board of Education of the Township of Barnegat, Ocean County*, Agency Docket #102-4/16 (May 26, 2016), Arbitrator Edmund Gerber dismissed tenure charges against the Respondent because the Superintendent swearing to the Statement of Evidence and certifying the tenure charges did not directly participate in the investigation of the allegations, but instead, relied on unsigned documents from school administrators who conducted the investigation and acted without signed statements from complaining students and parents. He rejected the charges because they were "certified on the basis of double hearsay," citing the ALJ decision *In the Matter of the Tenure Hearing of Edwards, East Orange Board of Education*, 1982 S.L.D. (2011).

As in *Edwards* and *Karp*, Superintendent Rafferty did not directly participate in the investigation of Trongone, relied on unsworn information from school administrators O'Kane and Little, and did not have signed statements from the complaining parent(s) or the students subjected to interviews. Superintendent

Rafferty cannot certify the information contained in the Statement of Evidence as “true and correct to the best of [his] knowledge” without any participation in the investigation. At a minimum, he would have to have sworn statements from O’Kane and Little. In the charges filed with the Board, Little certifies that the information contained in the Statement of Tenure Charges is true and correct. However, Little was one of two investigators. Absent an affidavit affirming those facts to which she can attest, it is not clear how Little can certify all the allegations in the tenure charges without any supporting statement from O’Kane.

In short, the sworn Statement of Evidence by Superintendent Rafferty is inadequate as he had no direct knowledge or participation in the investigation. And the certification by Little is inadequate without an accompanying affidavit explaining her role in the investigation and the basis of her knowledge and a similar affidavit and/or sworn certification by Principal O’Kane.

For all these reasons, I find that the tenure charges filed with the Board of Education and the Commissioner of Education are procedurally deficient and must be dismissed.

Respondent argues that the District’s “unlawful pattern of conduct” should preclude any opportunity to amend the tenure charges. Respondent cites the decision in *Edwards*, in which the ALJ found the Board of Education “failed substantially to comply with its statutory obligations” and denied its request to amend the charges. The ALJ emphasized the Legislature and Commissioner’s articulation of the procedure Boards must follow in bringing tenure charges and

found no basis to allow the Board to “fill in these gaping holes by way of amendment.”

The facts in the present matter do not demonstrate an “unlawful pattern of conduct;” but rather, an imprecise and stumbling attempt to properly bring tenure charges without correcting the procedural deficiencies. While the charges do not comply with statutory obligations, it is a stretch to state the non-compliance was a substantial failure, as in *Edwards*, or that there were “gaping holes” in the charges. It should also be noted that Arbitrator Gerber dismissed “without prejudice” the tenure charges in *Karp*, a case similar to the present one as it relates to certification and the sworn statement of evidence.

For these reasons, the tenure charges will be dismissed without prejudice.

Award and Remedy

Respondent's Motion To Dismiss Tenure Charges is granted. The tenure charges are dismissed without prejudice. As remedy, the District is ordered to immediately reinstate Respondent Tara Trongone to her former position with full backpay, benefits, and all emoluments associated therewith, as required by law and consistent with the operative collective bargaining agreement.



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Affirmation

I, Walt De Treux, affirm that I am the individual who executed this Decision and Award.



WALT De TREUX