

LAW AND PUBLIC SAFETY

JUVENILE JUSTICE COMMISSION

OFFICE OF EDUCATION

Tenure; Teachers and Other Certified Professional Educators

Proposed New Rules: N.J.A.C. 13:102

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable Peter C. Harvey, Attorney General and Chair, Markus Green, Attorney General's Designee.

Authority: N.J.S.A. 52:17B-170e(14) and (22); 52:17B-171a(5); 52:17B-176a(6), (7) and (12); 52:17B-177b(1); 52:17B-178; 18A:1-1; and 18A:60-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirements.

Proposal Number: PRN 2004-172.

Submit written comments by July 2, 2004 to:

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The agency proposal follows:

Summary

In accordance with N.J.S.A. 18A:60-1 et seq., the Juvenile Justice Commission (Commission) is proposing new rules at N.J.A.C. 13:102, Tenure; Teachers and Other Certified Professional Educators. The proposed rules would implement the statutory provisions that confer tenure protection on Commission employees who are certified as

teachers and/or other certified professional educators by the New Jersey Department of Education.

The Commission's Office of Education is responsible for supervising the educational programs in all juvenile facilities operated by the Commission and provides primary, secondary and vocational programs to meet the educational needs of juveniles assigned to the Commission's facilities.

The rules proposed by the Commission at N.J.A.C. 13:102 describe the procedures by which teachers and other certified professional educators attain tenure rights. The rules would also provide a legal basis for decisions regarding the granting or denial of tenure rights to these employees. Specifically, as the statute provides, teachers and other certified professional educators who complete three consecutive years of satisfactory service with the appropriate educational certification would acquire tenure and would then be entitled to tenure rights similar to those otherwise granted by the teacher tenure statutes.

Prior to enactment of P. L. 1986, c. 158, teachers and other certified professional educators in the Department of Human Services and the Department of Corrections in the unclassified service were subject to removal pursuant to that status. In 1990, pursuant to the above-noted statute, the Department of Human Services promulgated rules for its teachers and other certified professional educators (see N.J.A.C. 10:11). In the 14 years that those rules have been in existence, the majority of Department of Human Services' teachers and other certified professional educators have acquired tenure. Tenure status has allowed teachers and other certified professional educators in the Department of Human Services to assert seniority rights over non-tenured

individuals in situations where facilities have had to undergo a reduction in force. Tenure status also has ensured that teachers and other certified professional educators are granted the right to continuation of employment subject to dismissal for cause.

The Juvenile Justice Commission is proposing the new rules at N.J.A.C. 13:102 in order to implement the tenure protection afforded by statute to the teachers and other certified professional educators employed by the Commission. While the rules proposed by the Commission are based on the Department of Human Services' rules at N.J.A.C. 10:11, the proposed rules have been modified in consultation with the Department of Education to meet the needs of the Commission. A description of the proposed new rules follows.

N.J.A.C. 13:102-1.1 describes the purpose of the rules. N.J.A.C. 13:102-1.2 describes the Juvenile Justice Commission's staff affected by the rules. N.J.A.C. 13:102-1.3 contains the definitions used in the chapter. N.J.A.C. 13:102-2.1 discusses the scope of tenure rights. N.J.A.C. 13:102-2.2 sets forth the eligibility criteria for the acquisition of tenure. N.J.A.C. 13:102-2.3 discusses the use and requirements of the performance assessment. N.J.A.C. 13:102-2.4 contains the procedures used in cases where disciplinary action is recommended or implemented as a result of charges made against a tenured staff person. N.J.A.C. 13:102-2.5 allows the Executive Director of the Juvenile Justice Commission to reduce the number of teachers and other certified professional educators under certain circumstances.

The Commission is not proposing a rule relevant to re-employment or non-reemployment for non-tenured teachers and other certified professional educators as contained in N.J.A.C. 10:11-1.6 because teachers and other certified professional

educators employed by the Commission have no annual contractual agreement with the agency. When a teacher or other certified professional educator is employed by the Commission, he or she is hired into a title and remains in that title until such time as he or she is promoted, resigns or is terminated from the Commission.

The proposal is not subject to the calendar requirements of N.J.S.A. 52:14B-3(4) and N.J.A.C. 1:30-3.3(a) because the agency is providing a 60 day comment period.

Social Impact

The proposed new rules will benefit all employees of the Juvenile Justice Commission who are certified by the New Jersey Department of Education as teachers or other professional educators. The proposed rules will provide employees and supervisory personnel with guidelines to follow regarding implementation of tenure rights granted by the Legislature through N.J.S.A. 18A:60-1 et seq. These employees are granted the right to continuation of employment, subject to dismissal for cause.

These rules establish procedures regarding tenure rights of educational staff employed by the Commission as teachers and other certified professional educators, and enable the Juvenile Justice Commission to provide consistent professional educational services to the juveniles within its facilities, by attracting and maintaining a high quality professional staff.

Economic Impact

The Juvenile Justice Commission does not anticipate any economic impact as a result of the proposed new rules. Any increased administrative costs which may occur,

incidental to implementation of these rules, will be absorbed in the Commission's general budget. There will be no economic impact on the current employees of the Juvenile Justice Commission.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not being adopted under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Jobs Impact

The Juvenile Justice Commission does not anticipate that any jobs will be generated or lost if the proposed new rules are adopted.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed new rules will impose no reporting, recordkeeping, or other compliance requirements upon small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules affect teachers and other certified professional educators who are employed by the Juvenile Justice

Commission and certified by the Department of Education. Therefore, a regulatory flexibility analysis is not required.

Smart Growth Impact

The proposed new rules will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

CHAPTER 102

TENURE; TEACHERS AND OTHER CERTIFIED PROFESSIONAL EDUCATORS

SUBCHAPTER 1. GENERAL PROVISIONS

13:102-1.1 Purpose

The purpose of this chapter is to implement the provisions of N.J.S.A. 18A:60-1 et seq., that confer tenure protection on teachers and other certified professional educators of the Juvenile Justice Commission.

13:102-1.2 Scope

(a) This chapter applies to all individuals employed by the Juvenile Justice Commission who:

1. Are required to possess appropriate educational certification issued by the State Board of Examiners as a condition of employment; and
2. Are not otherwise included in the New Jersey Department of Personnel career service.

13:102-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Break in service” means resigning or leaving a tenured position for any purpose

including to enter a career service, unclassified, non-tenured or Senior Executive Service position.

“Commission” means the New Jersey Juvenile Justice Commission.

“Director, Office of Education” means the Director of Educational Services in the New Jersey Juvenile Justice Commission who supervises the educational programs in all juvenile facilities operated by the Commission (see N.J.S.A. 52:17B-178).

“Executive Director” means the Executive Director of the New Jersey Juvenile Justice Commission.

“Office of Education” means the Office of Education within the Juvenile Justice Commission created and established by the provisions of N.J.S.A. 52:17B-178.

“State Board of Examiners” means the body created pursuant to the provisions of N.J.S.A. 18A:6-34 et seq.

"Teacher(s) and/or other certified professional educator(s)" means a member of the professional staff of the Office of Education or any facility under the authority of the Commission, holding a position or employment of such character that the qualifications require the employee to possess a valid and effective standard certificate issued by the State Board of Examiners.

SUBCHAPTER 2. TENURE

13:102-2.1 Scope of tenure

Once tenure is acquired by an employee, such standing shall apply throughout the Commission. Tenure rights extend only to assignments within the scope of the

certificate under which the employee earned tenure. If, however, the employee experiences a break in service, he or she will forfeit tenure rights.

13:102-2.2 Eligibility

(a) Those individuals who meet the requirements set forth at N.J.A.C. 13:102-1.2 shall be eligible for tenure after the expiration of continuous employment for three consecutive years in tenure eligible assignments within the scope of a specific standard certificate.

(b) Service rendered under a provisional certification shall be applied towards tenure eligibility. Tenure may be acquired, however, only when standard certification has been issued by the State Board of Examiners.

(c) Service rendered under an emergency certification may be applied towards tenure eligibility. However, service under an emergency certificate may be counted towards the service needed for tenure only when that service is followed by the teacher or other certified professional educator obtaining a permanent certificate in the same field as the emergency certificate.

13:102-2.3 Performance assessment

(a) Performance assessments for all teachers and other certified professional educators shall be conducted by the Director, Office of Education, or his or her designee, who has acquired a certificate as School Administrator, Principal or Supervisor.

(b) The performance assessment for non-tenured teachers and other non-

tenured certified professional educators shall utilize the State of New Jersey's Performance Evaluation System (PES) form for recording the written evaluation section of the performance assessment. In the case of a teacher or other certified professional educator who at the time of the performance assessment possesses a provisional certificate, the appropriate Department of Education forms created for the sole purpose of reporting progress in gaining the skill(s) necessary to earn the standard certificate shall be completed concurrently with the PES form. For the purposes of evaluation of teachers and other certified professional educators who have not acquired tenure, the annual performance assessment shall consist of a minimum of:

1. Three observations throughout the year with no more than six months between evaluations;
2. Three written evaluations; and
3. Three conferences.

(c) The performance assessment for tenured teachers and other tenured certified professional educators shall utilize the PES form for recording the written evaluation section of the performance assessment. For the purposes of evaluation of tenured teachers and other tenured certified professional educators, the annual performance assessment shall consist of a minimum of:

1. Two observations;
2. Two written evaluations; and
3. Two conferences.

(d) The Director, Office of Education, or his or her designee, shall observe teachers and other certified professional educators while performing their duties through

visitation to the classroom or work station.

(e) Each observation shall be followed by a conference within 10 days. Conference participants shall include the teacher or other certified professional educator and the person conducting the observation. Each conference participant shall sign the performance assessment instrument and retain a copy for his or her records.

(f) Teachers and other certified professional educators shall have the right to submit comments relevant to their evaluation within 10 days following the conference. Such comments shall be attached to each party's copy of the instrument.

13:102-2.4 Disciplinary action--tenured staff

(a) In a case where disciplinary action is recommended or implemented, which does not involve dismissal or reduction in salary, as a result of charges made against a tenured employee of the Commission, the Commission's appointing authority and the Director, Office of Education, or his or her designee, shall act in accordance with the Department of Law and Public Safety's Standard Operating Procedure 4-96, a copy of which may be obtained from the Commission's Office of Labor Relations.

(b) In a case where disciplinary action may result in dismissal or reduction in salary, for reasons other than inefficiency, the charges shall be filed by the tenured employee's supervisor, or higher administrative authority, with the Director, Office of Education. The charges shall be accompanied by a supporting statement of evidence. The charges and supporting statement of evidence shall be executed under oath by the person or persons instituting such charges.

1. The charges, along with the statement of evidence, shall be transmitted to

the affected tenured employee and the employee's representative, if known, within three working days of the date the charges were filed with the Director, Office of Education. The charges, along with the statement of evidence shall be sent via certified mail, return receipt requested or hand delivered in which case a receipt shall be signed by the receiving employee.

2. The affected tenured employee shall have the opportunity to submit to the Director, Office of Education, a written statement of position and a written statement of evidence, both of which shall be executed under oath, within 15 days of receipt of the tenure charges.
3. Within 45 days of receipt of the tenured employee's written statements or expiration of the allotted 15 day time period for submission of these statements, the Director, Office of Education, shall determine whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction in salary.
4. The Director, Office of Education, shall notify in writing the affected employee against whom a charge has been made of his or her determination either in person or by certified mail to the last known address of the employee and the employee's representative, if known. Notification shall be made in person or mailed within three working days of the Director's determination.
5. If the Director, Office of Education, determines that probable cause exists

and that the charges, if credited, are sufficient to warrant dismissal or a reduction in salary, the Director shall, within 15 days, file with the Commissioner of Education, the charges, the required certificate of determination and the proof of service upon the employee and the employee's representative, if known. A complete copy of all correspondence shall be sent to the affected employee and the affected employee's representative if known.

(c) Procedures for tenure charges based on inefficiency and procedures governing processing and hearing provisions for subsequent activity under (b) above may be found at N.J.A.C. 6A:3-5.4 and 5.5.

13:102-2.5 Reduction in force

(a) Nothing contained in N.J.S.A. 18A shall be held to limit the right of the Executive Director in the case of any educational program conducted under his or her jurisdiction, supervision or control, to reduce the number of teachers and other certified professional educators in any such educational program or programs when the reduction is due to natural diminution of the number of students participating in the educational program or programs.

(b) When such teachers and other certified professional educators under tenure are dismissed by reason of a reduction as noted in (a) above, those teachers and other certified professional educators having the least number of years of service shall be dismissed in preference to those having longer terms of service. Seniority shall be calculated as set forth at N.J.A.C. 6:3-5.1.

(c) Should any tenured teacher or other tenured certified professional educator be dismissed as a result of a reduction as noted in (a) above, that person shall remain upon a preferred eligible list in the order of years of service for reemployment, whenever vacancies occur, and shall be reemployed by the Executive Director in such order, when, and if, a vacancy occurs in a position for which that tenured teacher or other tenured certified professional educator shall be qualified. Such reemployment shall give full recognition to previous years of service.

Peter C. Harvey
Attorney General
Chair, Juvenile Justice Commission
Executive Board

By: Markus Green
Attorney General's Designee

Date