

IN THE MATTER OF THE TENURE :
HEARING OF PATRICIA FINN, :
SCHOOL DISTRICT OF : COMMISSIONER OF EDUCATION
BORDENTOWN REGIONAL SCHOOL : DECISION
DISTRICT, BURLINGTON COUNTY. :

SYNOPSIS

Board certified tenure charges of incapacity and other just cause against respondent teacher.

The ALJ determined that charges A1, 2, 3, 4 and B 1, 2, 3, 4 and 5 constitute charges of inefficiency rather than incapacity and thus dismissed these charges without prejudice because of the Board's failure to provide respondent the 90-day remediation period mandated by *N.J.S.A. 18A:6-11*. The ALJ returned without consideration of the merits charges B6 and B7 alleging other just cause for the Commissioner's review pursuant to *N.J.S.A. 18A:6-16*.

The Commissioner concurred with the ALJ that charges A1, 2, 3, 4 and B1, 2, 3, 4, and 5 must be dismissed because the Board failed to accord respondent a 90-day improvement period. (*In the Matter of the Tenure Hearing of April Renee Bradley*, 1990 *S.L.D.* 790, *aff'd as modified* by the State Board of Education, 1991 *S.L.D.* 2521) Upon review of the remaining charges, B6 and B7, the Commissioner found them sufficient, if true, to warrant dismissal or reduction in salary. The matter was remanded to the OAL for further proceedings on tenure charges B6 and B7.

March 10, 2000

OAL DKT. NO. EDU 4205-99
AGENCY DKT. NO. 96-5/99

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions were timely filed pursuant to the requirements of *N.J.A.C. 1:1-18.4*.

Respondent’s exceptions urge the Commissioner’s adoption of the Administrative Law Judge’s (ALJ) determination that charges 1 through 5 should be dismissed, relying on her motion briefs, incorporated by reference, as support for the correctness of the ALJ’s conclusion in this regard. (Respondent’s Exceptions at 1) Respondent further posits that charges 6 and 7 should be dismissed because “[c]onsidering the sparse allegations, the lack of any substantiation or evidence of significant impropriety in those charges***, those charges, standing alone, do not warrant further tenure proceedings.” (*Id.* at 2)

Upon his independent and careful review of the record in this matter, the Commissioner agrees with the conclusion of the ALJ that charges A1, 2, 3, 4 and B1, 2, 3, 4 and 5 must be dismissed because the within Board failed to accord respondent a 90-day improvement period. In so determining the Commissioner is persuaded that this matter is analogous to *In the*

Matter of the Tenure Hearing of April Renee Bradley, School District of the City of Newark, Essex County, 1990 S.L.D. 790, aff'd as modified by the State Board of Education, 1991 S.L.D. 2521. Here, as in *Bradley*, the Board filed performance based tenure charges against respondent, a teaching staff member of 28 years' service, relying on what it alleges was unsatisfactory job performance beginning with the 1996-97 school year and thereafter, a relatively short period within the context of respondent's overall employment. The ALJ observes, and the record does not refute, that prior to this time respondent had received generally favorable performance evaluations. Moreover, the Commissioner observes, as did the ALJ, that, while respondent was charged with unsatisfactory performance during this limited period, the within record reflects that during this same period respondent received a letter from her supervisor, the very person who had conducted the majority of respondent's negative evaluations, praising her "efforts," "excellence," "enthusiasm," and "dedication to helping our students and families become a 'Community of Learners.'" (See Initial Decision at 6-7) Under these particular circumstances, the Commissioner finds applicable the State Board's holding that:

a teacher whose teaching effectiveness is called into question after years of meritorious service in a school district should, in recognition of that contribution, be afforded an opportunity [through the procedural protections afforded by *N.J.S.A. 18A:6-11*] to demonstrate that he [or she] is still capable of effective teaching."

(*Bradley, supra*, at 2524, citing *In the Matter of the Tenure Hearing of Donald Rowley, School District of Manalapan-Englishtown Regional, Monmouth County*, decided by the State Board of Education, 1984 *S.L.D. 2006, 2007, rev'd on other grounds*, Docket #A-4666-83T7 (App. Div. 1985))

Having so determined, the Commissioner declines to reach the further issues discussed at 13-15 of the Initial Decision, since they are unnecessary for resolution of the instant matter.

Additionally, the Commissioner has reviewed the remaining charges, B6 and B7, pursuant to *N.J.S.A.* 18A:6-16, and finds them sufficient, if true, to warrant dismissal **or** reduction in salary.

Accordingly, except as to the discussion at 13-15 of the Initial Decision, which is *not* adopted by the Commissioner, the recommendation of the OAL is affirmed. The Board's tenure charges A1, 2, 3, 4 and B1, 2, 3, 4 and 5 are dismissed, without prejudice. This matter is hereby remanded to the OAL for further proceedings on charges B6 and B7.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: March 10, 2000

* This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.