

IN THE MATTER OF THE TENURE HEARING :
OF CHRISTINE GILLESPIE, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION ON REMAND
OF THE CITY OF NEWARK, :
ESSEX COUNTY. :

SYNOPSIS

This case dates back to 2003, when the petitioning Board filed tenure charges of incapacity and excessive absenteeism against respondent, a tenured teacher, and sought to terminate her employment with the district. The matter was transmitted to the Office of Administrative Law, but the tenure hearing was delayed for several years due to the pendency of a related workers' compensation case. The case was restored to the active list in January 2011. Thereafter, respondent failed to appear at a hearing scheduled for June 10, 2011. Respondent subsequently submitted a written explanation of her failure to appear, and the Commissioner found that the facts surrounding her absence did not warrant summary decision by default. The case was remanded to the OAL in August 2011 for fact finding and legal recommendations, with a directive from the Commissioner that respondent provide the OAL and petitioner with specific contact information for communicating with Ms. Gillespie, and that: "...respondent will not be excused if she fails to reply to notices, pleadings and communications sent to the phone numbers and addresses that she provides."

Following the Commissioner's remand, two hearing dates were scheduled (in December 2011 and May 2012) and subsequently adjourned by the OAL before the matter was again put on the inactive list pending resolution of the workers' compensation case. The case was reactivated in May 2015, and counsel for petitioner indicated in June 2015 that the workers' compensation case had been dismissed for lack of prosecution. Subsequently, OAL sent a notice to the parties that the remand hearing was scheduled for November 4, 2015. Respondent once again failed to appear, and also failed to offer any explanation of her non-appearance; accordingly, it seems that respondent has abandoned her defense of the tenure charges.

The Commissioner found, *inter alia*, that pursuant to *N.J.A.C. 1:1-14.4(d)* and applicable case law, an Initial Decision is required in tenure charge cases that were filed prior to the enactment of the TEACHNJ Act, *P.L.2012, c.26 (C.18A:6-117 et al.)*. In cases such as this one, the judge may enter an Initial Decision on the merits based on *ex parte* proofs, provided the failure to appear is memorialized in the decision. Accordingly, the Commissioner remanded the matter to the OAL for an *ex parte* proof hearing pursuant to *N.J.A.C. 1:1-14.4(d)*, followed by the issuance of an Initial Decision with findings of fact and legal recommendations as to the merits of this tenure matter.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

OAL DKT. NO. EDU 9195-11
(EDU 3399-03 ON REMAND)
AGENCY DKT NO. 67-2/03

IN THE MATTER OF THE TENURE HEARING :
OF CHRISTINE GILLESPIE, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION ON REMAND
OF THE CITY OF NEWARK, :
ESSEX COUNTY. :

For the Petitioner, Cherie L. Adams, Esq., Adams Gutierrez & Lattiboudere, LLC
Respondent, Christine Gillespie, *pro se*

Upon review of the record in this longstanding tenure matter, the Commissioner is constrained to remand it to the Office of Administrative Law for an *ex parte* proof hearing pursuant to *N.J.A.C.* 1:1-14.4(d), as an Initial Decision is required in tenure charge cases that were filed prior to the enactment of the Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act, *P.L.*2012, *c.*26 (C.18A:6-117 *et al.*).¹ *See, e.g., In the Matter of the Tenure Hearing of Irandokht Toorzani, School District of the Borough of Elmwood Park, Bergen County, OAL Dkt. No. EDU 9713-11, Commissioner Decision No. 49-12, Issued February 8, 2012; Rowley v. Bd. of Educ. of Manalapan-Englishtown Reg. Sch. Dist., 205 N.J. Super. 65, 76 (App. Div. 1985).*

This case began as a controversy before the Commissioner in February 2003, when the District filed tenure charges against respondent alleging excessive absenteeism, absence without leave/abandonment of her position, and/or incapacity pursuant to *N.J.S.A.* 18A:6-11 *et seq.* and *N.J.S.A.* 18A:7A-39 *et seq.* Following receipt of respondent's answer, the matter was transmitted to

¹ Under *N.J.S.A.* 18A:6-17.5, "Any tenure charge transmitted to the Office of Administrative Law pursuant to *N.J.S.A.* 18A:6-16 prior to the effective date of *P.L.*2012, *c.*26 (C.18A:6-117 *et al.*) shall be determined in accordance with the provisions of sub article B of Article 2 of chapter 6 of Title 18A of the New Jersey Statutes, *N.J.S.*18A:6-10 *et seq.*, as the same read prior to the effective date of *P.L.*2012, *c.*26 (C.18A:6-117 *et al.*). Here, the tenure charges were transmitted to the OAL in 2003.

the OAL, but the tenure hearing was delayed for several years (with the parties' consent) due to the pendency of respondent's workers' compensation claim and related proceedings.² Ultimately, as of January 2011, the tenure matter had been restored to the active list. Respondent filed a motion to dismiss the tenure charges, arguing that the OAL lacked jurisdiction; petitioner cross-moved for summary decision; and the Administrative Law Judge (ALJ) denied both motions. *In the Matter of the Tenure Hearing of Christine Gillespie, State-Operated School District of the City of Newark*, Initial Decision, OAL Dkt. No. EDU 3399-03, issued April 27, 2011. Thereafter, respondent failed to appear for a scheduled hearing at the OAL on June 10, 2011 and the file was returned to the Department for disposition pursuant to *N.J.A.C. 1:1-3.3(b)*.

On August 3, 2011, the Commissioner remanded this matter to the OAL for fact finding and legal recommendations following respondent's failure to appear. *In the Matter of the Tenure Hearing of Christine Gillespie, State-Operated School District of the City of Newark*, Commissioner Decision No. 313-11, issued August 3, 2011. At that time, the Commissioner found that the facts surrounding respondent's absence from the scheduled June 10, 2011 hearing date – which were explained by respondent in writing – did not warrant summary decision by default. To avoid any further miscommunication, however, the Commissioner ordered: “Respondent shall provide the OAL and petitioner with specific contact information within 10 days of the mailing date of this order, the OAL and petitioner shall use only that contact information to communicate with respondent, and respondent will not be excused if she fails to reply to notices, pleadings and communications sent to the phone numbers and addresses that she provides.”

Following the Commissioner's remand, two hearing dates (one in December 2011 and one in May 2012) were scheduled and subsequently adjourned by the OAL. On May 18, 2012,

² The protracted procedural history will not be reiterated at length herein, since it is recited in detail within ALJ Gerson's Order denying the parties' motions to dismiss and for summary decision. *In the Matter of the Tenure Hearing of Christine Gillespie, State-Operated School District of the City of Newark*, OAL Dkt. No. EDU 3399-03, Initial Decision issued April 27, 2011.

the ALJ signed an order placing the case on an inactive list for six months – with the parties’ consent – due to respondent’s pending workers’ compensation case and appeal. Another order was entered on September 18, 2013, continuing the case on the inactive list – with the parties’ consent – for six more months. On May 12, 2015, the ALJ notified the parties in writing that the order of inactivity had expired and further inquired about the status of the related workers’ compensation matter. On June 3, 2015, counsel for petitioner replied and indicated that respondent’s workers’ compensation case was dismissed for lack of prosecution. Respondent submitted a letter to the ALJ confirming that she no longer had a workers’ compensation action pending – although she expressed disagreement with the notion that she failed to prosecute it.

In any event, on June 9, 2015, the parties were sent a notice from the OAL indicating that the remand hearing was scheduled for November 4, 2015 at 9 am. Respondent failed to appear at the scheduled hearing. The OAL then sent respondent a notice – pursuant to *N.J.A.C. 1:1-3.3(c)* – advising that she had 13 days to proffer an explanation in writing to the Department as to why she did not appear, and once again returned the file to the Department for disposition pursuant to *N.J.A.C. 1:1-3.3(b)*, without an Initial Decision on the merits. Although respondent was undoubtedly familiar with this process – as she had offered a written explanation for her non-appearance in 2011 – no such explanation was received in regard to her recent non-appearance. A once-active participant in this matter, as reflected by the large volume of written submissions found in the record, respondent appears to have abandoned her defense of the tenure charges.

N.J.A.C. 1:1-14.4(d) provides that “If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the *ex parte* proofs, provided the failure to appear is memorialized in the decision.” Despite respondent’s failure to appear, the Commissioner finds that an Initial Decision on the merits is required from the OAL in order to bring this longstanding matter to an orderly conclusion. Two prior decisions lend support to the Commissioner’s determination herein. First, the

Appellate Division held that “the orderly function of the administrative process” requires the merits of a tenure matter “to be first addressed by the administrative law judge and then reviewed by the Commissioner.” *Rowley v. Bd. of Educ. of Manalapan-Englishtown Reg. Sch. Dist.*, 205 N.J. Super. 65, 76 (App. Div. 1985). Second, in a case with striking similarities to the present controversy, the Commissioner held that tenure matters filed prior to the enactment of TEACHNJ require an Initial Decision on the merits. *In the Matter of the Tenure Hearing of Irandokht Toorzani, School District of the Borough of Elmwood Park, Bergen County*, OAL Dkt. No. EDU 9713-11, Commissioner Decision No. 49-12, Issued February 8, 2012.

Toorzani, a *pro se* respondent, answered the tenure charges brought against her and submitted multiple filings – including a Motion to Dismiss, which was denied by the ALJ – but subsequently failed to appear despite having received appropriate notice of the OAL hearing date. After holding the matter for a day as required by *N.J.A.C. 1:1-14.4(a)* in order to provide respondent with an opportunity to explain her non-appearance, and having received no explanation, the ALJ held an *ex parte* proof hearing as per *N.J.A.C. 1:1-14.4(d)*. The District submitted a brief and proposed findings of fact, based on the *ex parte* hearing, and the ALJ subsequently issued his Initial Decision and returned the matter to the Department. In his final decision, the Commissioner held – over respondent’s objections – that “the ALJ’s proceeding with an *ex parte* hearing was entirely appropriate” under the circumstances and “because the District required an Initial Decision on its tenure charges, the ALJ was well within his authority, pursuant to *N.J.A.C. 1:1-14.4(d)*, to take *ex parte* proofs from the District with respect to its charges and to render his Initial Decision based on these *ex parte* proofs.” *Toorzani, supra*, at 7-12.

Upon careful review of the record, the Commissioner finds that respondent was notified in writing almost five months in advance of the November 4, 2015 scheduled hearing date, yet has offered no reason to the Department, as permitted by *N.J.A.C. 1:1-3.3(c)*, for her failure to appear. Therefore, under these circumstances – akin to those in *Toorzani* – the District is now

required to present its *ex parte* proofs in support of the tenure charges to the ALJ so that an Initial Decision can be issued addressing the merits of this case.

Accordingly, the Commissioner is constrained to remand this matter to the OAL for an *ex parte* proof hearing pursuant to *N.J.A.C.* 1:1-14.4(d), followed by the issuance of an Initial Decision with findings of fact and legal recommendations as to the merits of this tenure matter.³

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: December 17, 2015

Date of Mailing: December 17, 2015

³ On December 11, 2015, the Bureau of Controversies and Disputes received a letter from the District's attorney requesting that the Commissioner summarily dispose of this matter. The Commissioner declines to do so for the reasons expressed herein.

⁴ Commissioner decisions may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1) and applicable court rules.