

#164-01

IN THE MATTER OF THE TENURE :
HEARING OF JOHN H. YOUNG, :
SCHOOL DISTRICT OF THE CITY OF : COMMISSIONER OF EDUCATION
ORANGE TOWNSHIP, ESSEX COUNTY. :
_____ :
DECISION

SYNOPSIS

Petitioning school district filed tenure charges of inefficiency against respondent, an assistant principal in its employ, alleging, *inter alia*, that respondent failed to perform certain administrative duties, follow proper procedures and perform other duties. Respondent denied all charges.

After three days of hearing at the Office of Administrative Law (OAL), the parties reached a settlement, which was memorialized in an agreement attached to the ALJ's decision approving the settlement.

Upon review, the Commissioner rejected the settlement and remanded the case to the OAL, concluding that the settlement failed to include an explanation of the circumstances justifying the settlement, or demonstrate why the agreement is in the public interest as required by rule.

May 24, 2001

OAL DKT. NO. EDU 7214-00
AGENCY DKT. NO. 198-6/00

IN THE MATTER OF THE TENURE :
HEARING OF JOHN H. YOUNG, :
SCHOOL DISTRICT OF THE CITY OF : COMMISSIONER OF EDUCATION
ORANGE TOWNSHIP, ESSEX COUNTY. :
_____ :
DECISION

The record of this matter, Initial Decision of the Office of Administrative Law(OAL) and the Settlement Agreement and Release have been reviewed. Initially, the Commissioner notes that, pursuant to *N.J.A.C. 6A:3-5.6(a)*, once tenure charges are certified to him, such charges may be settled only with his approval; any proposed settlement, whether submitted to the Commissioner or to the Administrative Law Judge, must address the standards established by the State Board of Education in the matter entitled, *In re Cardonick*, 1990 *S.L.D.* 842, 846. Specifically, the proposed settlement must: 1) Be accompanied by documentation as to the nature of the charges; 2) Include an explanation of the circumstances justifying the settlement or withdrawal; 3) Evidence the consent of both the charged and the charging parties; 4) Indicate that the charged party entered into the agreement with a full understanding of his or her rights; 5) Demonstrate that the agreement is in the public interest; and 6) Where the charged party is a teaching staff member, indicate that he or she has been advised of the Commissioner's duty to refer tenure determinations resulting in loss of position to the State Board of Examiners for possible loss of certificate. *N.J.A.C. 6A:3-5.6*.

Here, the proposed settlement fails to include an explanation of the circumstances justifying the settlement or to demonstrate why the agreement is in the public's interest. It is

well-established that, having once taken up the burden of tenure charges, the District may not lay it down without setting forth in the record a reasonably specific explanation of why such charges can no longer be pursued or why it is now in the public interest not to pursue them. *See, In the Matter of the Tenure Hearing of Kenneth Smith, School District of the City of Orange, Essex County*, Commissioner Decision No. 90-82, decision on remand, 1983 *S.L.D.* 420, *aff'd with modification* by the State Board of Education November 2, 1983, 1983 *S.L.D.* 489, *aff'd* N.J. Superior Court, Appellate Division, January 30, 1986.

While the Commissioner does not preclude the possibility of settlement in this matter, he stresses that in order for him to meet his own obligation to the schools and children of this state, he must be assured that any settlement is consistent with appropriate standards for setting aside tenure matters as expressed in *Cardonick, supra*.

Accordingly, the proposed settlement is rejected for the reasons expressed herein. The Commissioner hereby remands this matter to the OAL for further revision of the documents and expansion of the record, consistent with the concerns set forth above. If the parties are unwilling or unable to reach accord on a modified agreement for submission to the Commissioner, the matter shall proceed to a hearing on the merits.¹

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: May 24, 2001

Date of Mailing: May 24, 2001

¹ Additionally, should the parties agree to a revised agreement on remand of this matter, the record should include an indication that the revised terms have been approved by the Board of Education. *N.J.A.C.* 6A:3-5.6(b).

² This decision 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.* 6A:4-1.1 *et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.