

EDU #2457-97
C # 654-97
SB # 1-98

IN THE MATTER OF THE TENURE :
HEARING OF JOHN WILSON, SCHOOL : STATE BOARD OF EDUCATION
DISTRICT OF SOUTH BRUNSWICK, : DECISION ON MOTION
MIDDLESEX COUNTY. :

Decided by the Commissioner of Education, December 22, 1997

For the Petitioner-Respondent, Carroll & Weiss (John E. Collins, Esq., of
Counsel)

For the Respondent-Appellant, Klausner & Hunter (David L Rosenberg, Esq.,
of Counsel)

Respondent alleged that the South Brunswick Board had failed to wait until expiration of the allotted 15-day period following his receipt of tenure charges filed by the Board to certify those charges to the Commissioner of Education, as required by N.J.A.C. 6:24-5.1(b). The Commissioner concluded that, under the particular circumstances herein—in which the Board had acted to certify the charges on the evening of the fifteenth day and there was no claim by respondent that he had intended or attempted to answer the charges—the procedural defect did not represent such an egregious and unwarranted disregard of the tenure proceeding laws as to require dismissal of the tenure charges. Accordingly, the Commissioner remanded those charges to the Office of Administrative Law for a hearing.

Respondent filed the instant motion to the State Board for leave to appeal an interlocutory decision of the Commissioner.

We grant respondent's request for interlocutory review, and, after consideration of the record and the parties' submissions, including the supplemental briefs, we affirm the Commissioner's determination that the procedural defect in this case did not warrant dismissal of the tenure charges. In so doing, we reject respondent's contention that the Commissioner's decision in In the Matter of the Tenure Hearing of William Wenisch, decided by the Commissioner, January 15, 1998, appeal pending, State Board Docket #15-98, alters that result.

In Wenisch, the district board acted to certify tenure charges to the Commissioner on the twelfth day following receipt of those charges by the respondent therein. Since an appeal from the Commissioner's decision in that case is currently pending before us, we do not address the merits of that decision. However, it is evident that the particular facts in the matter now before us differ significantly from the facts in Wenisch. Here, the Board acted on the evening of the fifteenth day following respondent's receipt of the charges. Moreover, as pointed out by the Commissioner, respondent does not allege that he had attempted or intended to answer the charges but had been prevented from doing so by the Board's action or by any other circumstances. Under these particular facts, we agree with the Commissioner that the procedural defect in this instance was not fatal.

April 1, 1998

Date of mailing _____