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Boards Have Strict Obligations Before Certifying Tenure Charges of Inefficiency

By Anthony P. Sciarrillo

The New Jersey Commissioner of Education's August 2008 decision in *In the Matter of the Tenure Hearing of Maria Parise, School District of the Borough of Butler, Morris County*, clarified that before certifying tenure charges of inefficiency against an employee, a school district, without exception, must provide the employee with (1) a 90-day remediation period; (2) reasonable, positive assistance during this period; and (3) a modification of her professional improvement plan ("PIP").

The Butler Board of Education filed tenure charges of inefficiency, among other charges, against Ms. Parise, a district social worker. The Board advised her that she had 90 days to correct the inefficiencies set forth in the charges, and if any such inefficiencies remained uncorrected at the conclusion of the 90 days, the Board might certify those charges to the Commissioner. The Board did not provide Ms. Parise with a modification of her PIP, and it did not place a modified plan on the record before the administrative law judge ("ALJ"), who first heard the case.

When a board brings tenure charges for inefficiency against an employee, *N.J.S.A. 18A:6-11* requires that, "prior to making its determination as to certification, the board shall provide the employee with written notice of the alleged inefficiency, specifying the nature thereto, and allow at least 90 days in which to correct and overcome the inefficiency." Regulation *N.J.A.C. 6A:3-5.1(c)* further requires that concurrent with notifying the employee of the tenure charges of inefficiency, "the district board of education or the State district superintendent shall direct that there will be a modification of the individual professional improvement plan mandated by *N.J.A.C. 6A:32-4.3*, to assure that such plan addresses the specific charges of inefficiency and comports with the timelines established for correction."

The ALJ recognized that a failure to abide by the aforementioned procedures ordinarily constitutes a fatal flaw to tenure charges of inefficiency, thereby requiring dismissal. However, the ALJ decided that based on Ms. Parise's overall performance and (cont'd ►)

conduct, the Board's compliance with the procedures would be futile and she should be dismissed.

On review by the Commissioner, Ms. Parise argued that the Board's failure to comply with its obligation to modify her PIP or to provide her any assistance during the 90-day remediation period was fatal to the case. The Board argued that it introduced witness testimony that Ms. Parise had resisted all efforts from staff to help her before and after the tenure charges.

The Commissioner cited the Appellate Division's holding that "the administration bears the heavy responsibility to render positive assistance to the [individual] in an effort to overcome [her] inefficiencies" when such charges are filed. Furthermore, the Commissioner explained the 90-day remediation procedure is based on the rationale "that an employee whose effectiveness is called into question after meritorious service in a school district should, in recognition of that contribution, be afforded an opportunity to demonstrate that he or she is still capable of effective performance."

The Commissioner found no evidence or documentation that the employee was provided with any modifications made to her

PIP. Neither did the Commissioner observe a modified plan on the record. The Commissioner also noted the record lacked testimonial or documentary evidence demonstrating the Board acted upon its obligation of providing the employee with reasonable, positive assistance in overcoming her inefficiencies during the remediation period. The Commissioner stated the administration's heavy burden was not satisfied by Ms. Parise's supervisor when she informed Ms. Parise that her door was always open if Ms. Parise wanted to talk.

The Commissioner concluded that a board must provide an employee with a modified PIP, a 90-day remediation period, and reasonable, positive assistance during the period before it may certify tenure charges of inefficiency. With the instant case lacking these prerequisites, the Commissioner dismissed the charges of inefficiency against Ms. Parise.



The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarillo of the EdLaw Group at edlawgroup@lindabury.com.



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