

193-00

OAL DKT. NO. EDU 897-00

AGENCY DKT. NO. 59-2/00

IN THE MATTER OF THE TENURE :
HEARING OF LENORE M. ALLEN, :
SCHOOL DISTRICT OF THE TOWNSHIP : COMMISSIONER OF EDUCATION
OF OLD BRIDGE, MIDDLESEX COUNTY. : DECISION
_____ :

The record, Settlement Agreement, and Initial Decision issued by the Office of Administrative Law (OAL), pursuant to *N.J.A.C. 1:1-19.1*, have been reviewed.

Upon careful and independent review of the full record of this matter and the terms of the proposed settlement agreement, the Commissioner is compelled to reject such agreement, since he cannot be satisfied that it meets the *Cardonick* standards for settlement of tenure matters. *In re Cardonick*, decided by the Commissioner April 7, 1982, *affirmed* State Board of Education April 6, 1983, 1990 *S.L.D.* 842, 846.

Here, respondent, a school librarian, is charged with unbecoming conduct by virtue of (1) her alleged use of corporal punishment, and her response to student behavioral issues with violence, and (2) her alleged failure to adopt recommendations for reducing stress at work, together with her inability to cope with personal conflicts, creating a volatile classroom environment. The District now affirms that:

in light of the nature of the charges and potential for protracted litigation, it is in the best interest of the parties and the public to resolve the charges before the Commissioner of Education.
(Settlement at 1)

The agreement provides, in relevant part, that respondent shall resign from employment in the District within 60 days from the date of the approval of this Agreement, and the District will withdraw its charges against her.

It is clear that where charges are made against any tenured employee of a District, the Commissioner anticipates that the charges are fully investigated and evaluated, vis-a-vis the evidence thereto, prior to the District bringing the weight of the legal process down on the teaching staff member:

Certification of tenure charges by a [district] is predicated on the [district's] belief that the charges *** and the evidence in support of the charges would be sufficient, if true in fact, to warrant a dismissal or reduction in salary. *N.J.S.A. 18A:6-11.*

On the basis that the board believes the teacher is unfit, it makes the commitment to expend its monetary resources, provide [district] personnel, and hire legal counsel to obtain relief; *i.e.*, dismissal or reduction in salary. Where the facts of a case are clear, using the settlement process to achieve either of the statutorily prescribed results is prudent. Where the facts are not clear, or in dispute, a settlement for less than dismissal may be justified, bearing in mind that settlement may be inappropriate in certain matters. *Where it is in the public interest to fully determine the issues, a plenary hearing is required.* (emphasis added)
(*Cardonick* at 850)

Notwithstanding the parties' bare assertion that the instant settlement protects the public's interest, the Commissioner disagrees. In tenure matters such as this, where a teaching staff member loses tenure and/or is dismissed for inefficiency, incapacity, conduct unbecoming or other just cause, the case is forwarded to the State Board of Examiners for a determination as to possible revocation or suspension of the teaching staff member's certificate. Upon such referral, and after review of the record, the State Board of Examiners "shall determine by public vote whether or not the offense [*as proven*] is of such a nature as to warrant revocation or suspension consideration, or dismissal of the case." (emphasis added) (*N.J.A.C. 6:11-3.6*)

Therefore, although the within agreement acknowledges respondent's awareness of the Commissioner's duty to refer this matter to the State Board of Examiners pursuant to *N.J.A.C.* 6:11-3.6, absent any factual findings on the record with respect to the specific allegations, and noting that respondent does not admit to the charges, it is unlikely that the Board of Examiners would have any basis for meaningful review and determination. Thus, the Commissioner cannot find that the public good is served by the within agreement. In this connection, the Commissioner underscores that:

the mere fact that one of the terms of a proposed settlement *** calls for the teaching staff member's resignation does not in and of itself assure [the Commissioner] that the *Cardonick* standards have been met because concern for the public interest extends beyond the boundaries of the particular district certifying the tenure charges.*** (*In re Robert Barnes Driscoll, Board of Education of Cape May County Vocational-Technical School District, Cape May County*, decided November 10, 1999, Slip Opinion at 5)

Accordingly, the proposed settlement is rejected for the reasons expressed herein. The Commissioner hereby remands this matter to the OAL for revision of the settlement documents consistent with the decision, which revisions shall specify that respondent *will not oppose* proceedings before the State Board of Examiners to suspend or revoke her certificate(s) pursuant to *N.J.A.C.* 6:11-3.6. However, if the parties are unwilling or unable to reach accord on an agreement modified in this fashion for submission to the Commissioner, the matter shall proceed to a hearing on the merits so that charges may either be proven, or respondent vindicated.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 19, 2000
Date of Mailing: June 19, 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.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.