

OAL DKT. NOS. EDU 5073-07 AND EDU 12540-07 (CONSOLIDATED)  
AGENCY DKT. NOS. 96-4/07 AND 360-4/07

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2009 MAY 15 P 1:44

IN THE MATTER OF THE TENURE :  
HEARING OF LOURDES LEON, :  
SCHOOL DISTRICT OF THE CITY :  
OF ELIZABETH, UNION COUNTY. :  
\_\_\_\_\_ :

STATE OF NEW JERSEY  
OFFICE OF EDUCATION  
COMMISSIONER OF EDUCATION  
DECISION

Moscowitz

The record of these consolidated matters, the parties' proposed Settlement Agreement, and the Initial Decision of the Office of Administrative Law have been reviewed pursuant to *N.J.A.C. 1:1-19.1*.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) that – with qualification as set forth below – the proposed settlement is consistent with established standards governing settlement of tenure matters. *In re Cardonick*, decided by the Commissioner April 7, 1982, *aff'd* State Board April 6, 1983, 1990 *S.L.D.* 842, 846. Specifically, the Commissioner concurs that – in view of the fact that respondent has accepted “full responsibility” for her actions as addressed in two appended reprimands<sup>1</sup> and “will not dispute or litigate same” and has, furthermore, agreed to resign from employment with the district at the end of the current school year – no useful purpose would be served by directing the continuance of protracted tenure proceedings, necessitating multiple days of hearing, significant expenditure of funds and serious disruption to the district’s educational program through the absences of numerous students and staff. The Commissioner further concurs that the *Cardonick* standard is satisfied by respondent’s stated understanding, through testimony on the day she

<sup>1</sup> The Commissioner notes that one of the referenced reprimands is dated March 15, 2007, notwithstanding that both the Settlement Agreement (Term 4) and the Initial Decision (at 3) give the date of both as March 14, 2007.

signed the Settlement Agreement, that the Commissioner may refer this matter to the State Board of Examiners for possible action against respondent's certificate notwithstanding the provisions of Terms 7 and 8 of the agreement.<sup>2</sup>

The Commissioner most emphatically does *not* concur, however, with the view of the parties and the ALJ that referral to the Board of Examiners is not warranted in this instance. Respondent – a certified principal – has been charged with, and agreed not to dispute engaging in, conduct including: manipulation of student attendance records so as to conceal the absences and tardiness of favored students (Reprimand of March 14, 2007); derogatory comments to and about staff, including remarks about medical condition and sexual orientation; harassment and unfair, inappropriate or unreasonable treatment of employees; engaging in crotch grabbing when giving directives and/or making derogatory comments; and giving the “middle finger” to school employees (Reprimand of March 15, 2007). Notwithstanding that it may be prudent to discontinue tenure proceedings under the circumstances, the Commissioner cannot countenance such behavior or allow it to occur with impunity – as will effectively be the case if respondent is simply allowed to resign in good standing<sup>3</sup> from her present position without consideration by

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<sup>2</sup> As the ALJ implicitly understood, these terms can be of no force or effect beyond expressing the opinion or desire of the parties – since no tenure charge involving a teaching staff member may be settled in a manner that forecloses the Commissioner of Education from referring it to the Board of Examiners, or relieves the district board of education of its obligation to cooperate with any inquiry or action that body may choose to initiate.

<sup>3</sup> In this regard, the Commissioner reminds the parties that any disclosure of information regarding respondent's employment with the district must comport with the requirements of New Jersey's Open Public Records Act, *N.J.S.A. 47:1A-1 et seq.*, stating, in pertinent part, that the following employment information shall be public:

An individual's name, title, position, salary, payroll record, length of service in the instrumentality of government and in the government, *date of separation and the reason therefor*; and the amount and type of any pension received \*\*\*.  
(emphasis added) *N.J.S.A. 47:1A-10*

The Commissioner further reminds the parties that the filing of tenure charges, tenure charge documents, and any record of or determination related to these, are also a matter of public record. See *Williams v. The Board of Educ. of the Atlantic City Public Schools et al.*, 329 *N.J. Super.* 308 (App. Div. 2000); see also *N.J.A.C. 1:1-14.1(a)*.

the State Board of Examiners, pursuant to *N.J.A.C. 6A:9-17.1 et seq.*, of her continuing fitness to serve as a teaching staff member in New Jersey public schools.

Accordingly, with qualification as noted above, the settlement is hereby approved and the tenure matter dismissed, subject to compliance with the terms of the settlement. A copy of this decision shall be forwarded to the State Board of Examiners for action against respondent's certification as it deems appropriate.

IT IS SO ORDERED.<sup>4</sup>



COMMISSIONER OF EDUCATION

Date of Decision: 5/07/09

Date of Mailing: 5/07/09

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<sup>4</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.