

CERTIFICATION OF TENURE CHARGES
TEACHING STAFF MEMBERS

The Board of Education will challenge the continued employment of any tenured teaching staff member who demonstrates inefficiency in the performance of his/her duties is incapable of performing those duties, violates by unbecoming conduct the public trust placed with employees of this district, or by other means demonstrates unfitness for district employment. When charges are filed against a tenured teaching staff member by any person, the Board shall determine the gravity of the charges and the probity of supporting evidence in accordance with law and these guidelines:

1. Charges may be instituted against a tenured teaching staff member of the district by any person by filing with the Board Secretary a written statement, signed by the charging person, that sets forth the specific charges and the statutory ground on which each is based. The statement of charges must be accompanied by a written statement of evidence made under oath in support of the charges. The Board Secretary shall promptly notify the Superintendent and the Board President that such charges have been filed.
2. Where the charges allege incapacity, unbecoming conduct, or good cause other than inefficiency, a copy of the charges and a copy of the statement of evidence shall, within seventy-two hours of the time charges have been filed with the Board Secretary, be served on the charged employee together with a letter offering the employee the opportunity of submitting to the Board Secretary a written statement of position and a written statement of evidence under oath, provided that such statements are filed with the Board Secretary no later than fifteen days after the date on which the charges were served on the employee.
3. Where the charges alleges inefficiency, the following actions will be taken:
 - a. A copy of the charges and a copy of the statement of evidence shall, within seventy-two hours of the time charges have been filed with the Board Secretary, be served on the charged employee together with a letter informing the employee that, unless the specified inefficiencies are corrected within a specified improvement period of ninety or more days, the Board shall certify those charges of inefficiency to the Commissioner of Education.

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- b. At the same time, the employee's professional improvement plan will be revised to address the specific charges of inefficiency and to assist the employee toward improvement within the specified period.
 - c. The employee's performance will be observed and evaluated over the improvement period, excluding summer vacation.
 - d. At the conclusion of the specified improvement period, the Superintendent shall report to the Board an assessment of the employee's progress.
 - e. Thereafter, the Board will determine in private session whether the employee has corrected all the inefficiencies originally charged. If all the charged inefficiencies have been corrected, the Board shall advise the employee within thirty days of the end of the improvement period that the charges are withdrawn. If the Board finds that any or all charged inefficiencies have not been corrected, the Board Secretary shall serve the employee, within thirty days of the end of the improvement period, a copy of the charges and a copy of the statement of evidence together with a letter offering the employee the opportunity of submitting to the Board Secretary a written statement of position and a written statement of evidence under oath, provided that such statements are filed with the Board Secretary no later than fifteen days after the date on which the charges were served on the employee.
4. Within forty-five days of the time the employee files written statements of position and evidence or the expiration of the fifteen day period within which the employee may submit such statements, whichever first occurs, the Board shall meet in private session to determine, by a majority of the full Board, (a) whether the charges, if true, are sufficiently serious to warrant the imposition of sanctions by the Commissioner and (b) whether there is probable cause to credit the evidence in support of the charges.

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5. If the Board determines to certify charges against the employee, the Board Secretary will file the charges and a certificate of determination with the Commissioner of Education and serve notice of such certification on the employee in accordance with rules of the State Board of Education.
6. If no action is taken with regard to the charges within the requisite periods of time set forth in this policy, the charges will be considered dismissed and no further action may be taken on them. The charged employee will be promptly notified whenever charges are dismissed by Board action or inaction.

N.J.S.A. 18A:6-8.3; 18A:6-10 et seq;
18A:25-6; 18A: 25-7

N.J.A.C. 6:11-3.4; 11-3.5; 6:24-5.1 et seq.

Dated: September 21, 2005

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A. Definition

1. For the purposes of Policy 4117.6 and this regulation, "day" means business day when the period specified is less than seven days, and calendar day when the period specified is seven days or more; provided however, that calculations do not include the day of the action from which they are computed but do not include the last day of the period being computed unless such day falls on a Saturday, Sunday or holiday, in which case the last day shall be deemed the next business day immediately following. Filings received after the close of business (4:15p.m.) shall be deemed filed on the next business day.

B. Procedures and Timelines

1. In all instances of the filing and certification of tenure charges, other than for reasons of inefficiency, the following procedures and timelines shall be observed:
 - a. Charges shall be stated with specificity as to the action or behavior underlying the charges and shall be filed in writing with the Secretary of the Board of Education or the State District Superintendent, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.
 - b. Charges along with the required sworn statement of evidence shall be transmitted to the affected tenured employee and the employee's representative, if known, within three working days of the date they were filed with the Secretary of the Board of Education or the State District Superintendent. Proof of mailing or hand delivery shall constitute proof of transmittal.

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- c. The affected tenured employee shall have an opportunity to submit to the Board of Education or the State District Superintendent a written statement of position and a written statement of evidence, both of which shall be executed under oath with respect thereto within fifteen days of receipt of the tenure charges.
- d. Upon receipt of the tenured employee's written statements of position and evidence under oath, or upon expiration of the allotted fifteen-day time period, the Board of Education shall determine by a majority vote of its full membership, or the State District Superintendent shall determine, within forty-five days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary.
- e. The Board of Education or the State District Superintendent shall, within three working days, provide written notification of the determination to the employee against whom the charge has been made, in person or by certified mail to the last known address of the employee and the employee's representative, if known.
- f. In the event the Board of Education or the State District Superintendent finds that such probable cause exists and the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the Board or the State District Superintendent shall, within fifteen days, file such written charges with the Commissioner. The charges shall be stated with specificity as to the action or behavior underlying the charges and shall be accompanied by the required certificate of determination together with the name of the attorney who is anticipated for administrative purposes will be representing the Board or State District Superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

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Superintendent shall direct that there be a modification of the individual professional development plan mandated by N.J.A.C. 6A:32-4.3 or 4.4, to assure that such plan addresses the specific charges of inefficiency and complies with the timelines established for correction.

- e. Upon completion of the minimal ninety-day period for improvement, or such longer period as may be provided by the Board of Education or the State District Superintendent, the administrator(s) responsible for bringing such charges to the attention of the Board or the State District Superintendent shall notify the Board or the State District Superintendent in writing of what charges, if any, have not been corrected. In the event the charges are against a Chief School Administrator, the Board of Education shall determine by majority vote of the full Board what charges, if any, have not been corrected.
- f. The Board of Education or the State District Superintendent, upon receipt of the written notification or upon the Board's determination in the case of a Chief School Administrator, shall notify the affected employee in writing that all of the inefficiencies have been corrected or, in the alternative, which of the inefficiencies have not been corrected. The time from the expiration of the minimal ninety-day period, or such longer period as may be provided by the Board of Education or the State District Superintendent, to the notification of the employee by the Board of Education or the State District Superintendent shall not exceed thirty calendar days.
- g. In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within fifteen days of the receipt of said notification of inefficiency by filing a statement of evidence under oath in opposition to those charges.
- h. Upon receipt of such written statement of evidence under oath or upon expiration of the allotted fifteen-day time period, the Board of Education shall determine by a majority vote of its full membership, or the State District Superintendent shall determine,

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within forty-five days, whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal or reduction in salary.

- i. In the event the Board of Education or the State District Superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the Board or the State District Superintendent shall, within fifteen days, file such written charges with the Commissioner. The charge(s) shall be stated with specificity as to the nature of the inefficiency alleged, and shall be accompanied by the required certificate of determination together with the name of the attorney who is anticipated for administrative purposes will be representing the Board of Education or State District Superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.
 - j. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the Board of Education with respect to such charges shall take place at a closed/executive session meeting.
3. The provisions of this section shall not apply to employees of Charter Schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

C. Format of Certificate of Determination

1. The certificate of determination which accompanies the written charges shall contain a certification by the Board of Education Secretary or the State District Superintendent:
 - a. That the Board of Education or the State District Superintendent has determined the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;
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- b. Of the date, place, and time of the meeting at which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay;
 - c. That such determination was made by a majority vote of the full Board or by the State District Superintendent in accordance with N.J.S.A. 18A:7A-39; and
 - d. In the case of a charge of inefficiency, that the employee was given at least ninety days prior written notice of the nature and particulars of the alleged inefficiency.
2. The provisions of this section shall not apply to employees of Charter Schools, who are governed by the provisions of N.J.A.C. 6A:11-6.
- D. Filing and Service of Answer to Written Charges
1. An individual against whom tenure charges are certified shall have fifteen days from the date such charges are filed with the Commissioner to file a written response to the charges. Except as to the time for filing, the answer shall conform to the requirements of N.J.A.C. 6A:3-1.5(a) through (d).
 - a. Consistent with N.J.A.C. 6A:3-1.5(g), nothing in N.J.A.C. 6A:3-5.3 precludes the filing of a motion to dismiss in lieu of an answer to the charges, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner, or by the Administrative Law Judge (ALJ) if the motion is to be briefed following transmittal to the Office of Administrative Law (OAL).
 2. Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown consistent with the provisions of N.J.S.A. 18A:6-16. Such application shall be received prior to the expiration of the fifteen-day answer period, and a copy shall be served upon the charging Board of Education or the State District Superintendent.

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The Board of Education or State District Superintendent shall promptly notify the Commissioner of any opposition to the request.

- a. A request for extension which is not filed within the fifteen-day period allotted for answer to tenure charges will be considered only in the event of demonstrated emergency or other unforeseeable circumstance such that the request could not have been made within the requisite filing period.
3. Where no answer is filed within the requisite time period and no request for extension is made, or such request is denied by the Commissioner, or where the charged employee submits an answer or other responsive filing indicating the employee does not contest the charges, the charges shall be deemed admitted by the charged employee.
4. The provisions of this section shall not apply to employees of Charter Schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

E. Determination of Sufficiency and Transmittal for Hearing

1. Within fifteen days of receipt of the charged party's answer or expiration of the time for its filing, the Commissioner shall determine whether such charge(s) are sufficient, if true, to warrant dismissal or reduction in salary. Where the charges are determined insufficient, they shall be dismissed and the parties shall be notified accordingly. Where the charges are determined sufficient, the matter shall, within ten days of such determination, be transmitted to the OAL for further proceedings, unless the Commissioner retains the matter pursuant to N.J.A.C. 6A:3-1.11 or 1.12.
 - a. A notice of transmittal shall be issued to the parties by the Department of Education on the same date as the matter is transmitted to the OAL.
2. Where a party to a tenure matter so requests, the Commissioner may agree to hold the matter in abeyance at any time prior to transmittal to the OAL. Thereafter, requests to hold the matter in abeyance shall be directed to the OAL Clerk or the ALJ in accordance with the rules of the OAL. Any

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request for abeyance, whether directed to the Commissioner or the OAL, shall be consistent with the intent of N.J.S.A. 18A:6-16 as amended by P.L. 1998, c.42.

F. Withdrawal, Settlement, or Mooting of Tenure Charges

1. Once tenure charges are certified to the Commissioner, such charges may be withdrawn or settled only with the Commissioner's approval. Any proposed withdrawal or settlement, whether submitted to the Commissioner or to the ALJ, shall address the following standards established by the State Board of Education in the matter entitled *In re Cardonick*, State Board decision of April 6, 1983 (1990 *School Law Decisions* (S.L.D.) 842, 846):
 - a. Accompaniment by documentation as to the nature of the charges;
 - b. Explication of the circumstances justifying settlement or withdrawal;
 - c. Consent of both the charged and charging parties;
 - d. Indication that the charged party entered into the agreement with a full understanding of his or her rights;
 - e. A showing that the agreement is in the public interest; and
 - f. Where the charged party is a teaching staff member, a showing that the teaching staff member 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 suspension or revocation of certificate.
2. A settlement agreement shall not propose terms that would restrict access to information or records deemed public by law or result in misrepresentation of the reason for an employee's separation from service. Where tenure charges have been certified to the Commissioner by a Board of Education, any proposed settlement shall indicate, by signature of the Board Attorney or inclusion of a Board of Education resolution

