

TO: Local Association Presidents and UCEA President
FROM: Carol Feinstein, Dominick Giordano, Roselouise Holz, and George Huk
RE: Non-Tenure/Non-Renewal Teacher and ESP Due Process
DATE: April 21, 2017

Teacher and ESP Non-Renewal Rights

Enclosed is information relative to non-tenured teachers' and ESP members' legal rights with respect to next year's employment. We wish to point out that the Velasquez decision still permits a Donaldson hearing before the Board of Education but does not obligate the Board to vote after a member's appearance.

Call if you have questions.

/dmg
Enclosure

NON-RENEWAL PROCEDURES
CERTIFIED AND ESP EMPLOYEES
IMPORTANT TIME LIMITS

NOTIFICATION OF NON-RENEWAL

May 15 is the statutory date (on or before) to notify non-tenure teaching staff members who have been continuously employed since September 30 of the renewal or non-renewal of their employment contract. ESP employees without tenure must be notified before the expiration of their contract with the Board.

WITHIN 15 CALENDAR DAYS OF RECEIPT OF NOTICE OF NON-RENEWAL:

Member may request, in writing, a written statement of reasons for non-reemployment.

WITHIN 30 CALENDAR DAYS OF RECEIPT OF WRITTEN REQUEST:

Board must provide a written statement of reasons for non-reemployment.

WITHIN 10 CALENDAR DAYS OF RECEIPT OF WRITTEN STATEMENT OF REASONS:

Member may make a written request to the Board for an informal appearance before the Board.

WITHIN 30 CALENDAR DAYS OF RECEIPT OF THE REQUESTED STATEMENT OF INFORMAL APPEARANCE BEFORE THE BOARD BY MEMBER:

Board must schedule an informal appearance (Donaldson hearing).

WITHIN 3 DAYS FOLLOWING THE INFORMAL APPEARANCE (Donaldson hearing):

Board must notify the affected member, in writing, of the final determination.

ON OR BEFORE JUNE 1 (Certified Members):

In the event that the non-tenure teaching staff member received an offer of continued employment for the following school year or if no notice is given by May 15, the non-tenure teacher must accept the Board's offer of employment in writing by **June 1**.

N.B. In order to prepare for the informal appearance before the Board, the member must assemble all observations, evaluations, attendance record, and any other pertinent documentation in support of the member's continuing employment by the Board.

Recent Cases and Laws Concerning the Renewal of Non-Tenured
Teachers and ESP Members

1992 – Rotondo v. Carlstadt-E. Rutherford Regional H.S. District

- A Board member challenged when the other Board member hired a music teacher who was not recommended by the Superintendent.
- The State Board held that all hiring must be with the recommendation of the Chief School Administrator.

1992 – N.J.S.A. 18A:27-4.1 – Statute went into effect in June 1995 and made laws consistent with the Rotondo case. It states that a board may hire only upon recommendation of the Chief School Administrator. If the employee does not receive a recommendation, they shall be deemed non-renewed.

- The law preserved, however, the right to an informal appearance before the Board (Donaldson hearing).

1996 – Velasquez v. Brielle Board of Education

- A non-tenured teacher challenged that the Board failed to take a vote following his appearance in order to persuade them to offer re-employment.
- ALJ found a contradiction in the statute between the Superintendent's sole power and the right to appear before the Board, but failed to insist that the Board must vote.
- Commissioner of Education tried to reconcile the contradiction by stating that the purpose of the (Donaldson) hearing was for the employee to appeal to the board on which the Superintendent sits as a non-voting member in the hope of persuading the district decision makers to renew.

1997 – Velasquez appealed to the State Board of Education who ruled that the Statute does not require a board to vote; therefore, employees are not entitled to a vote. The State Board of Education refused to direct the Brielle Board to take a vote, but the implication is that a board could do so.

2011 – Tuck-Lynn v. Newark, 2011, N.J. Super. (App. Div. 3/3/11)

The failure to strictly comply with statutory teacher or ESP evaluation procedures does not preclude a Board of Education from not renewing a non-tenured employee's contract.

LAW AND REGULATIONS CONCERNING THE CONTINUATION OR NON-RENEWAL OF NON-TENURED TEACHERS

1. **N.J.A.S.A. 18A:27-4.1**

Notwithstanding the provisions of any law, rule or regulation to the contrary,

- b. A board of education shall renew the employment contract of a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons. A nontenured officer or employee who is not recommended for renewal by the chief school administrator shall be deemed nonrenewed. Prior to notifying the officer or employee of the nonrenewal, the chief school administrator shall notify the board of the recommendation not to renew the officer's or employee's contract and the reasons for the recommendation. An officer or employee whose employment contract is not renewed shall have the right to a written statement of reasons for nonrenewal pursuant to section 2 of P.L.1975, c. 132 (C. 18A:27-3.2) and to an informal appearance before the board. The purpose of the appearance shall be to permit the staff member to convince the members of the board to offer reemployment. The chief school administrator shall notify the officer or employee of the nonrenewal pursuant, where applicable, to the provisions of section 1 of P.L.1971, c. 436 (C. 18A:27-10).

2. **N.J.S.A. 18A:27-10**

On or before May 15 in each year, every board of education in this State shall give to each nontenure teaching staff member continuously employed by it since the preceding September 30 either:

- a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary as may be required by law or policies of the board of education, or
- b. A written notice that such employment will not be offered.

3. If employment is offered (2.a. above), then accept offer of employment **(N.J.S.A. 18A:27-12):**

If the teaching staff member desires to accept such employment, he shall notify the board of education of such acceptance, in writing, on or before June 1 in which event such employment shall continue as provided for herein. In the absence of such notice of acceptance, the provisions of this article shall no longer be applicable.

4. If employment is not offered (2.b. above), then request reasons for non-reemployment **(N.J.S.A. 18A:27-3.2):**

Any teaching staff member receiving notice that a teaching contract for the succeeding school year will not be offered may, within 15 days thereafter, request in writing a statement of the reasons for such non-reemployment which shall be given to the teaching staff member in writing within 30 days after the receipt of such request.

5. After the receipt of the reasons for non-reemployment (4. above), request informal appearance before board **(N.J.A.C. 6:3-4.2):**

- (a) Whenever a nontenured teaching staff member has requested in writing and has received a written statement of reasons of non-reemployment pursuant to **N.J.S.A. 18A:27-3.2**, he or she may request in writing an informal appearance before the district board of education. Such written request must be submitted to the board within 10 calendar days of receipt of the board's statement of reasons.
- (b) Such an informal appearance shall be scheduled within 30 calendar days from receipt of the board's statement of reasons.
- (c) Under the circumstances described in this section, a nontenured teaching staff member's appearance before the board shall not be an adversary proceeding. The purpose of such an appearance shall be to permit the staff member to convince the members of the board to offer reemployment.
- (d) Each district board shall exercise discretion in determining a reasonable length of time of the proceeding, depending upon the specific circumstances in each instance.
- (e) Each district board shall provide adequate written notice to the employee regarding the date and time of the informal appearance.
- (f) The nontenured teaching staff member may be represented by counsel or one individual of his or her own choosing.

- (g) The staff member may present witnesses on his or her behalf. Such witnesses need not present testimony under oath and shall not be cross-examined by the board. Witnesses shall be called into the meeting to address the board one at a time and shall be excused from the meeting after making their statements.
 - (h) The proceeding of an informal appearance before the district board as described herein may be conducted pursuant to **N.J.S.A. 10:4-12 (b)(8)**.
 - (i) Within three days following the informal appearance, the board shall notify the affected teaching staff member, in writing, of its final determination. Such notification may be delegated by the board to its superintendent or board secretary.
6. The informal appearance before the board is to be conducted pursuant to the “Open Public Meetings Act” (**N.J.S.A. 10:4-12(b)(8)**):
- b. A public body may exclude the public only from that portion of a meeting at which the public body discusses:
 - (8) Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected requested in writing that such matter or matters be discussed at a public meeting.
7. If the board reverses its decision and offers employment, accept employment (**N.J.S.A. 18A:27-12**) (3. above).
8. If the board confirms its decision not to offer employment, the decision may be appealed to the Commissioner of Education (**N.J.S.A. 18A:6-9**):
- The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the state board or of the commissioner.

and **N.J.A.C. 6:24-1.2**:

- (a) To initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws, a petitioner shall serve a copy of a petition upon each respondent. The petitioner shall then file proof of service and the original and two copies of the petition with the Commissioner, c/o the Director of the Bureau of Controversies and Disputes, New Jersey Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.
- (b) Proof of service shall be in the form of one of the following:
 - 1. An acknowledgment of service signed by the attorney for the respondent or signed and acknowledged by the respondent or its agent;
 - 2. A sworn affidavit of the person making service;
 - 3. A certificate of service signed by the attorney making service; or
 - 4. A receipt of certified mailing.
- (c) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.
- (c) When the State of New Jersey Department of Education or one of its agents is named as a party, proof of service to the Attorney General of the State of New Jersey is required.

- 9. If the board fails to give notice by May 15 (neither **N.J.S.A. 18A:27-10** a. nor b. occur), then continued employment has been offered (**N.J.S.A. 18A:27-11**):

Should any board of education fail to give to any nontenure teaching staff member either an offer of contract for employment for the next succeeding year or a notice that such employment will not be offered, all within the time and in the manner provided by this act, then said board of education shall be deemed to have offered to that teaching staff member continued employment for the next succeeding school year upon the same terms and conditions but with increases in salary as may be required by law or policies of the board of education.

- 10. If the board fails to give notice, then accept offer of employment in accordance with **N.J.S.A. 18A:27-12** (3. above).

Laws and Regulations
Concerning the
Continuation or Non-Renewal of
Non-Tenured Teachers and ESP Members

Recommendation of supervisor
to the superintendent

Recommendation of superintendent
to the board

Notice from the board
N.J.S.A. 18A:27-10

Board fails to give notice
N.J.S.A. 18A:27-11

A. If offered a contract,
accept offer of
employment.
N.J.S.A. 18A:27-12

B. If not offered
employment,
request statement of reasons.
N.J.S.A. 18A:27-3.2

Accept offer of
employment.
N.J.S.A. 18A:27-12

Request informal appearance before board
N.J.A.C. 6:3-4.2; N.J.S.A. 10:4-12 (b)(8);
N.J.S.A. 18-A: 27-4.1

Rice Notice
N.J.S.A. 10:4-12 (b)(8)

If board reverses decision,
accept offer of employment.
N.J.S.A. 18A:27-12

If the board confirms its decision not to offer
employment, the decision may be appealed to
the Commissioner of Education.
N.J.S.A. 18A:6-9 and N.J.A.C. 6:24-1.2