

To: Commission
From: Vito J. Petitti
Re: Clarification of Tenure Issues
Date: February 6, 2017

Memorandum

Background

This project began with the work of an NJLRC extern who informed the Commission of three separate decisions regarding the tenure of secretaries, assistant secretaries, school business administrators, business managers, and secretarial and clerical employees who raised statutory clarification issues. The Commission authorized Staff to undertake a project in this area when it was ascertained that cases such as these frequently arise in New Jersey.

In September 2016, the Commission considered comments received in response to a Tentative Report on this project, along with new language proposed by the Department of Education in subsection d.2. specifying a “not tenure-eligible” and not “covered by another chapter” to bring the statute directly in line with applicable case law.

The Commission discussed the fact that the statute, as written, does not make a distinction between voluntary and involuntary transfers, and it was unlikely the Legislature intended to create a tenure gap in the period between two positions within the same job category. Upon agreement that the provision should have the same structure as the statutes relating to teachers and superintendents, Staff was asked to provide additional revisions prior to release of a Draft Final Report, intended to protect the tenure rights of individuals staying within the same overall job category.

Proposed Revisions

The Appendix, below, provides the text of N.J.S. 18A:17-2, with new and previously proposed revisions. New language (in italics) is intended to address a concern articulated by the Commission at the September 2016 meeting that the statute does not make a distinction between voluntary and involuntary transfers. There would not seem to be an issue as regards subsection d.1., as this provision is forward-looking and merely sets out the requirements for obtaining tenure in a new position.

Under subsection d.2., the proposed word “voluntarily” is intended to protect those tenured individuals who are involuntarily transferred into either non-tenured positions, or to positions not within the same job category.

To address the Commission’s concern that non-teachers are to be treated similarly to teachers, an additional subsection, d.3., is proposed, with language derived from N.J.S. 18A:28-6, as recommended by the Commission, which would provide that a tenured individual, whether

voluntarily or involuntarily transferred or promoted, would be returned to a former tenured position in case the new position is terminated before tenure is obtained there.

Conclusion

If the Commission is satisfied that the proposed revisions in the Appendix, below, are responsive to the Commission's recommendations, or upon the Commission's further guidance, Staff requests authorization to release a Revised Draft Tentative Report for additional comments on the latest revisions.

Appendix—Proposed Changes to Existing New Jersey Statute

The text of 18A:17-2, with originally proposed revisions shown with underlining and strikethrough. The more recent revisions are italicized, as follows:

18A:17-2. Tenure of secretaries, assistant secretaries, school business administrators, business managers and secretarial and clerical employees

- a. Any secretary, assistant secretary, school business administrator or business manager of a board of education of any school district who has or shall have devoted his full time to the duties of his office and has or shall have served therein for three consecutive calendar years, and
- b. Any person holding any secretarial or clerical position or employment under a board of education of any school district or under any officer thereof, after
 1. The expiration of a period of employment of three consecutive calendar years in the district or such shorter period as may be fixed by the board or officer employing him, or
 2. Employment for three consecutive academic years, together with employment at the beginning of the next succeeding academic year, an academic year being the period between the time when school opens in the district after the general summer vacation and the beginning of the next succeeding summer vacation, and
- c. Any person, who has acquired, or shall hereafter acquire, tenure in any secretarial or clerical office, position or employment under the board of education of a school district and has been appointed district clerk or secretary, or shall hereafter be appointed secretary of said district, as such secretary,

shall hold his office, position or employment under tenure during good behavior and efficiency and shall not be dismissed or suspended or reduced in compensation, except for neglect, misbehavior or other offense and only in the manner prescribed by sub-article B of article 2 of chapter 6 of this title.

d. Any person identified in a. or b. of this section, under tenure or eligible to obtain tenure under this chapter:

1. Who is transferred or promoted to another position covered by this chapter shall not obtain tenure in the new position until after meeting the specific tenure requirements for the new position;
2. Who voluntarily transfers or accepts promotion from the tenured position, to a position that is not tenure-eligible, or to a position that is covered by another chapter, forfeits tenure of the office, position, or employment held prior to such transfer or promotion.
3. Who transfers or accepts promotion from the tenured position, to a position that is tenure-eligible, but is terminated before tenure is obtained therein, and who has tenure in the same

district and under the same chapter, shall be returned to the former position at the salary which would have been received had the transfer or promotion not occurred together with any increase to which the individual would have been entitled during the period of such transfer or promotion.