

To: New Jersey Law Revision Commission
From: Karyn L. White, Counsel
Re: Right to a Public Hearing on Tenure Charges
(*Simadiris v. Paterson Public School District*, 466 N.J. Super. 40 (App. Div. 2021))
Date: December 6, 2021

MEMORANDUM

Project Summary

The Tenured Employees Hearing Law, at N.J.S. 18A:6-11, states that the “consideration and actions” of a board of education as to a charge made against an employee “shall not take place at a public meeting.”¹ The Open Public Meetings Act, at N.J.S. 10:4-12(b)(8), provides that a “public body may exclude the public” from a portion of an otherwise public meeting when the public body discusses a matter involving specified matters concerning employment unless “the individual employees...whose rights could be adversely affected request in writing that the matter... be discussed at a public meeting.”²

In *Simadiris v. Paterson Public School District*³, a school board of education certified tenure charges against a tenured employee in a closed session. Two days later, the employee filed an action asserting that the notice she had been provided was insufficient and that she had a right to request that the board consider tenure charges against her in a public session.⁴ The issue before the court was the reconciliation of two statutes: the Tenured Employees Hearing Law,⁵ and the Open Public Meetings Act⁶ (OPMA). The *Simadiris* Court concluded that the relevant provision of the Tenured Employees Hearing Law constitutes an exception to the OPMA, and that the board’s consideration should not take place at a public meeting.⁷

Relevant Statutes

N.J.S. 18A:6-11, entitled “Written charges, statement of evidence; filing; statement of position by employee; certification of determination; notice” states, in pertinent part, that:

Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board. The board of education shall forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an

¹ N.J.S. 18A:6-11.

² N.J.S. 10:4-12(b)(8).

³*Simadiris v. Paterson Public School District*, 466 N.J. Super. 40 (App. Div. 2021).

⁴ *Id.* at 43.

⁵ N.J.S. 18A:6-10 to -25.

⁶ N.J.S. 10:4-6 to -21.

⁷ *Simadiris*, 466 N.J. Super. at 50.

opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. After consideration of the charge, statement of position and statements of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probable cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary . . . **The consideration and actions of the board as to any charge shall not take place at a public meeting.**⁸

The relevant portion of N.J.S. 10:4-12(b)(8) entitled, “Meetings open to public; Exceptions” states that:

b. A public body may exclude the public only from that portion of a meeting at which the public body discusses any:

* * *

(8) 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 **request in writing that the matter or matters be discussed at a public meeting;**⁹

* * *

Background

The Paterson Public School District appealed a summary determination of the trial court that the certification of tenure charges against plaintiff Marcella Simadiris violated her right to have the charges considered at a public hearing.¹⁰ The Board of Education brought tenure charges against the plaintiff.¹¹ Her attorney was given only informal notice of the charges by email two days before the board meeting.¹² The board certified the changes at the meeting in a closed session.¹³ Two days later, the plaintiff filed an action seeking to have the board’s action declared void because she had not been given sufficient notice.¹⁴ The trial court concluded that the board’s resolution was invalid because the failure to provide the plaintiff with proper notice deprived her

⁸ N.J.S. 18A:6-11 [emphasis added]

⁹ N.J.S. 10:4-12(b)(8) [emphasis added]

¹⁰ *Simadiris*, 466 N.J. Super. at 42.

¹¹ *Id.* at 43.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

of the chance to request consideration of the charges in a public meeting.¹⁵

Analysis

The Appellate Division said that “[b]efore us is only a question of law: does N.J.S. 18A:6-11, which prohibits the discussion of personnel matters involving tenured employees in public, take precedence over N.J.S. 10:4-12(b)(8), which grants in general affected public employees the right to demand a public hearing?”¹⁶

To address the question, the Court reviewed *Rice v. Union County Regional High School Board of Education*.¹⁷ The court in *Rice* found that “all employees whose rights could be adversely affected” have the right to request a public hearing and, as a result, that these employees were entitled to “reasonable advanced notice” in order to do so.¹⁸ That required notice is known as a “Rice notice.”¹⁹

The Appellate Division in *Simadiris* indicated that no prior decisions citing *Rice* held that a tenured employee is entitled to a “Rice notice” when a board meets to consider tenure charges.²⁰ The Court said that it found “little guidance from these past examinations of *Rice*”, “no clarity in the arguments of the parties or the amici curiae as to the current practice in this State”, and “no legislative history to illuminate the Legislature’s intent about the relationship between the Open Public Meetings Act and the current version of N.J.S.A. 18A:6-11.”²¹ It concluded that “a tenured employee in this specific circumstance does not have a right to a public discussion of matters falling within the scope of N.J.S. 18A:6-11.”²²

The Court found that the OPMA, applicable to all public bodies, provides only “broad strokes as to the rights of public employees” and the Legislature “could determine that some specific groups of public employees would be excepted from” what the OPMA allows.²³ The Court indicated that “there is nothing inconsistent about the structure of the Open Public Meetings Act when compared with the Legislature’s later creation of a different approach for tenured board-of-education employees.”²⁴

The Court said that it was guided by the “plain and unambiguous language of N.J.S. 18A:6-11, which makes no provision for a tenured employee’s right to demand a public hearing” and that

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 43, referencing *Rice v. Union County Regional High School Board of Education*, 155 N.J. Super. 64, 382 (App. Div. 1977).

¹⁸ *Id.* at 44, citing *Rice*, 155 N.J. Super. at 73.

¹⁹ *Id.*

²⁰ *Id.* at 45.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 47.

²⁴ *Id.*

it “must assume the Legislature meant what it said when it declared that all such discussions ‘shall not’ occur at a public meeting.”²⁵

The Court concluded that “N.J.S. 18A:6-11 constitutes one of the exceptions to the Open Public Meetings Act . . . and requires that when boards of education engage in the processes described in N.J.S. 18A:6-11 that its ‘consideration and actions ... shall not take place at a public meeting.’ And, because such ‘consideration and actions’ cannot occur in public, plaintiff was not entitled to a *Rice* notice.”²⁶

Legislation

Currently, there are several pending bills that concern N.J.S. 10:4-12 (A1865²⁷, S3629²⁸, and S2570²⁹). The first two bills eliminate the requirement that a public body discuss an employment matter in a public meeting at an employee’s request for prospective employees, but retain it for current employees.³⁰ The third requires that a public body provide sufficient advance notice to “enable the employees... to determine whether a public discussion is desirable” and, if to, to submit a written request for such a discussion whenever “the public body places on its agenda for discussion or action any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance, promotion, or discipline of” a prospective or current public officer or employee.³¹ None of these bills would change the language in N.J.S. 18A:6-11.

Conclusion

Staff seeks authorization to conduct additional research and outreach to determine whether any modification of the statutes is appropriate to clarify the interplay between the Tenured Employees Hearing Law, at N.J.S. 18A:6-11, and the Open Public Meetings Act, at N.J.S. 10:4-12(b)(8), as discussed by the court in *Simadiris v. Paterson Public School District*.³²

²⁵ *Id.* at 48.

²⁶ *Id.* at 49.

²⁷ A1865, 219th Leg. (N.J. 2020) (proposing elimination of the requirement that a public body discuss a prospective employee’s matter in a public meeting when requested by the employee, but retains that requirement as it applies to current employees; this bill was introduced in the prior session as well).

²⁸ S3629, 219th Leg. (N.J. 2021) (proposing elimination of the requirement that a public body discuss a prospective employee’s matter in a public meeting when requested by the employee, but retains that requirement as it applies to current employees; this bill was introduced in the prior session as well).

²⁹ S2570, 219th Leg. (N.J. 2020) (requires a public body to provide advance written notice to employees when employment status is to be considered at a meeting; this bill was introduced in the prior session as well).

³⁰ A1865 and S3629, 219th Leg. (N.J. 2020).

³¹ S2570, 219th Leg. (N.J. 2020).

³² 466 N.J. Super. 40 (2021).