

REGULATION 3219 CRIMINAL CHARGES AGAINST A TEACHING STAFF MEMBER

I. Procedure Following Arrest and Charge of An Employee

A. Determine Available Information

Where it is brought to the attention of the Board that an employee has been arrested and charged with a crime, the Board shall first ascertain what information is available regarding the charge from law enforcement authorities. While official police reports or criminal complaints are quite helpful in this regard, information during a police investigation may frequently be difficult to obtain.

B. Determine if Information is Sufficient to Draft Charges

If there is sufficient credible information to draft a tenure charge which, if true, would warrant the dismissal or reduction in salary of the employee, the Board should consult with legal counsel to assist in the drafting of such charge. The provisions of N.J.S.A. 18A:6-10 and N.J.A.C. 6:24-5.1 et seq. should be strictly followed.

C. Confidentiality

All discussions regarding the preparation and filing of tenure charges related to a criminal action shall be conducted in executive session, even if the employee requests otherwise. The Board recognizes that pursuant to *Cirangle v. Maywood Board of Education*, 164 N.J. Super 595 (App. Div. 1979), tenure charge preparation and determination is not subject to the Open Public Meetings Act.

D. Interim Suspension With Pay

In the event that there is insufficient evidence to proceed with the filing of tenure charges in good faith, the Board of Education shall determine, after consultation with the Board Attorney, whether suspension with pay pursuant to N.J.S.A. 18A:25-6 is appropriate. In making such a determination, the Board shall weigh the nature and severity of the crime charged, the connection with violent tendencies, and the possibility of endangering the safety or welfare of students.

E. Suspension Without Pay

The Board recognizes that until an indictment is handed down, suspensions without pay may be imposed only where tenure charges have been filed; and in that instance, only for 120 days. The Board recognizes, however, that where an employee has been indicted and the Board has formally acted to suspend the employee, salary need not be paid pending the outcome of the criminal trial, pursuant to N.J.S.A. 18A:6-8.3.

II. Procedure Upon Dismissal of Charges

In the event the charges against an employee are dismissed, the Board shall, after consultation with Board Counsel, determine whether sufficient evidence of the underlying conduct is available to certify tenure charges in good faith, notwithstanding the fact that criminal conduct could not be proven beyond a reasonable doubt. The Board shall particularly investigate the availability of hearing transcripts, evidence, and witness availability when making this determination.

III. Procedure Upon Guilty Plea or Conviction

A. The Board shall determine upon advice of counsel whether the offenses leading to the conviction fall under N.J.S.A. 2C:51.2, mandating automatic forfeiture of position. If so, the Board shall deem the employee to have forfeited his or her position automatically upon the date of the guilty plea or conviction.

B. The Board shall further assure that the Superintendent carry out his or her responsibilities under N.J.A.C. 6:113.7(b)ii, to notify the Commissioner of Education directly of such a criminal conviction involving a certificate holder, as described in N.J.S.A. 2C:51-2a so that the Commissioner may notify the Board of Examiners of such conviction.

IV. Settlement of Tenure Charges Involving Criminal Conduct

Once tenure charges have been certified to the Commissioner, the Board shall carefully consider settlement alternatives if the option arises. Where a lump sum is to be exchanged for the letter of resignation, the Board shall not pay any sums contemplated by the Consent Order of Withdrawal or Stipulation of Settlement Agreement unless and until the Commissioner of Education approves the entire settlements. The Board is cognizant of both the jurisdiction of the Commissioner to approve or reject such settlements and the difficulty of reacquiring monies paid in error in the event that the Commissioner does not find the settlement to be in the public interest.

V. Background Check Upon Initial Settlement

The Board shall insure that the Superintendent or designee complies with all statutes and regulations involving criminal background checks of employees prior to hiring, and verifies that teaching certificates are in full force and effect when employing a teaching staff member.

N.J.S.A. 18A:6-10

N.J.S.A. 18A:25-6

N.J.S.A. 18A:6-8.3

N.J.S.A. 2C:51.2

N.J.S.A. 2C:52.2a

N.J.A.C. 6:24-5.1 et seq.

N.J.A.C. 6:11-3.7(b)ii

Cirangle v. Maywood Board of Education,
164 N.J. Super 595

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