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# EdLawAlert

By the EdLaw Group at Lindabury

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**TWO ALERTS**

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## Two Appellate Division Decisions

### *Deficient Tenure Charge Filing Still Adequate*

By Joshua S. Sklarin

On July 28, 2009, the Appellate Division, in *IMO Tenure Hearing of William Thomas, School District of the City of Plainfield, Union County*, affirmed the finding of the Commissioner of Education, who had refused to invalidate the district's tenure charges due to its technically deficient filing because the underlying facts were nevertheless "adequately articulated and subsequently proven."

The School District of the City of Plainfield filed tenure charges against the appellant after he was arrested and indicted for possession of cocaine and drug paraphernalia. In November 2003, the appellant was assigned to the Washington Community Elementary School as Acting Principal. On May 4, 2004, the appellant was arrested in Greenbrook Park on the aforementioned charges by Officer Dennis P. O'Connell. The appellant applied for and was admitted into the Pre-Trial Intervention (PTI) program, a diversionary program which does not require an admission of criminal culpability. After twenty-four (24) months of court supervision, sixty (60) hours of community service, random drug testing, substance abuse treatment program and the payment of mandatory fees, the appellant successfully completed PTI on March 16, 2007.

After the first hearing on this matter, the Administrative Law Judge ("ALJ") issued his recommendations to the Commissioner based upon the parties' stipulation of facts as noted above. The Commissioner rejected this approach and remanded the matter back to the ALJ to focus the inquiry not on the appellant's participation in PTI, "but rather, whether [the appellant] exhibited behavior underlying those charges which amounts to unbecoming conduct."

On remand, the ALJ heard testimony from Officer O'Connell wherein he recounted that on the day of the arrest he had found one (1) bag of cocaine on the table where the appellant had been sitting, and nine (9) additional bags at his feet. Officer O'Connell also testified that the appellant admitted to him that he had a drug problem with cocaine. The appellant denied ever making such a statement, and also denied that the cocaine was his, explaining that upon entering the park he met a parent of one of his students who was with a friend. All three of them sat at a picnic table in the park together. After the two others left, the appellant claimed he stayed to finish his lunch, which was when Officer O'Connell arrived. The ALJ rejected the appellant's testimony as a matter of credibility. This finding was affirmed by the Commissioner.

(cont'd ➔)

On appeal, the appellant argued that the district's tenure complaint against him was deficient because it "merely recite[d] the various procedural events following his arrest, without identifying, with particularity, the actual possession of drugs as the basis." The Appellate Division held that such an argument was insufficient, and quoted the Commissioner, who reasoned that "the public good is [not] served by invalidating charges – the factual basis of which were adequately articulated and subsequently proven – solely because the charges were drafted in a way that appeared to put more emphasis on legal procedure than on the underlying factual circumstances and their ramifications." The Appellate Division pointed out that it was bound to uphold the decision of a State administrative agency absent a showing that such a decision was arbitrary, capricious, or that its factual findings were unsupported by the evidence. In the matter at hand, the Appellate Division held that the record was clear that the appellant was afforded his full due process rights, where all the underlying facts were adequately presented.

### ***Premature Determination of Child's Future Education***

**By Denise Del Priore**

In a recent decision, the New Jersey Superior Court Appellate Division overruled the trial court's "premature determination" of a child's future education. *Simms v. Basralian*, involved a property settlement agreement (PSA) that was incorporated in the parties' judgment of divorce, which provided that the couple would have joint legal custody of their child, and would equally share the cost of private preschool, kindergarten, summer camp, and college education. The PSA stated that each party shall pay one-half of the costs of a specific pre-school, West Hill School, or, in the alternative, a mutually selected school which costs an equivalent amount of money. The PSA, however, was silent as to whether the child would attend private or public school between kindergarten and college.

When the child was four years old, the plaintiff mother filed a motion to compel the defendant father to pay one-half of the costs at the Shipley School, an exclusive private school, with a tuition rate almost triple of that of the West Hill School. The father asserted that he never agreed to enroll their child in a school that was more costly than the West Hill School. The father also filed a cross-motion seeking the appointment of a parent coordinator to assist the parties in promoting their child's best interests.

The trial court found that the father had not agreed to enroll the couple's child in the Shipley School, and that if the mother elected to enroll the child, the father's financial obligation would be limited to his portion of the cost of the West Hill School. The court also appointed a parenting coordinator, and it required the mother to cooperate with the parenting coordinator. The trial court's order further stated that the parties' PSA "shall otherwise govern [the child's] education, which Agreement only allows [the child's] enrollment in private school for pre-school and kindergarten."

The mother appealed stating, among other things, that the trial court's spontaneous ruling regarding the child's post-kindergarten education violated both the mother and the child's due process rights and improperly rewrote the couple's divorce agreement without a legal basis. The Appellate Court held that because the PSA was silent regarding the child's enrollment in public school after kindergarten, and the evidence produced at trial was insufficient to support a reliable finding that the parties had agreed that the child would attend public school after kindergarten, the trial court erred in prematurely determining the child's future education.



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