

EDU #11545-96
C # 105-98
SB # 36-98

IN THE MATTER OF THE TENURE :
HEARING OF ELAINE FROST, SCHOOL : STATE BOARD OF EDUCATION
DISTRICT OF THE BOROUGH OF : DECISION
BOGOTA, BERGEN COUNTY. :

Decided by the Commissioner of Education, March 10, 1998

For the Petitioner-Respondent, Lane J. Biviano, Esq.

For the Respondent-Appellant, Balk, Oxfeld, Mandell & Cohen (Nancy I.
Oxfeld, Esq., of Counsel)

This matter was initiated when the Board of Education of the Borough of Bogota (hereinafter "Board") certified tenure charges to the Commissioner of Education against Elaine Frost (hereinafter "respondent"), a tenured school social worker and the chairperson of the district's Child Study Team, alleging unbecoming conduct, neglect of duty, insubordination and incompetency. The matter was transmitted to the Office of Administrative Law for determination and scheduled for hearing. However, after reviewing the circumstances and taking into consideration a number of mitigating circumstances, the Board sought to withdraw the charges prior to hearing, determining instead to impose minor discipline on respondent in the form of a written reprimand and to withhold a salary increment.

Respondent opposed withdrawal of the charges because the Board indicated that it would pursue minor discipline. Accordingly, the Administrative Law Judge (“ALJ”) could not consider the matter to have been settled. Nonetheless, based on the Board’s representations, the ALJ recommended that the Commissioner approve withdrawal of the charges.

The Commissioner adopted the ALJ’s recommendation, concluding that withdrawal of the charges was appropriate under the circumstances. Hence, he approved the withdrawal and granted respondent’s claim for expungement of the suspension which the Board had imposed on her. In doing so, the Commissioner stressed that he was not making any findings concerning the facts surrounding the matter and that no import could be attached to his approval of the withdrawal with respect to any subsequent disciplinary action taken by the Board.

Respondent appealed to the State Board, maintaining that approval of the withdrawal of the tenure charges constitutes an acceptance of the Board’s findings of fact and determination of penalty. She therefore is seeking reversal of the Commissioner’s determination and a remand to the Commissioner for a hearing.

After reviewing the record in this matter, we conclude that the withdrawal of tenure charges in this case is consistent with the principles articulated in Cardonick v. Board of Education of the Borough of Brooklawn, decided by the State Board of Education, April 6, 1983. Accordingly, we affirm the Commissioner’s determination substantially for the reasons expressed therein. In doing so, we stress that the authority to impose minor discipline is distinct from the statutory framework governing tenure proceedings, and that in the event that the Board imposes such discipline, N.J.S.A.

34:13A-42 ensures that respondent has appropriate recourse through the grievance procedure and binding arbitration.

Sam Podietz did not participate in deliberations in this matter.

July 1, 1998

Date of mailing _____