

IN THE MATTER OF THE TENURE :
HEARING OF VALERIE GARDNER, : COMMISSIONER OF EDUCATION
NEW JERSEY DEPARTMENT OF : DECISION
HUMAN SERVICES. :
_____:

SYNOPSIS

Petitioner, Department of Human Services, certified tenure charges of unbecoming conduct/insubordination against special education teacher for her continued refusal to comply with directives that her students participate in regular education classes as part of the school inclusion program.

ALJ determined that although respondent was acting based on her honest belief in what was best for her students, insubordination and unbecoming conduct on behalf of any teacher cannot be countenanced since it disrupts the educational process and interferes with the basic purpose of the school. Respondent was found guilty of the charges; however, in view of her good disciplinary record, her reputation as a very good teacher, and her acting in good faith, the ALJ concluded that suspension without pay for a period of ten days was the appropriate penalty.

Commissioner concurred with the ALJ that the Department of Human Services sufficiently demonstrated that respondent was guilty of unbecoming conduct by her continued refusal to comply with direct orders that she participate in the school inclusion program, and that such conduct additionally constituted insubordination. Commissioner found that petitioner's decision to suspend respondent for ten days without pay was fair and appropriate.

AUGUST 20, 1997

OAL DKT. NO. EDU 8512-96
AGENCY DKT. NO. 350-8/96

IN THE MATTER OF THE TENURE :
HEARING OF VALERIE GARDNER, : COMMISSIONER OF EDUCATION
NEW JERSEY DEPARTMENT OF : DECISION
HUMAN SERVICES. :
_____ :

The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ) that the Department of Human Services has sufficiently demonstrated that respondent is guilty of conduct unbecoming a teaching staff member by her continued refusal to comply with direct orders that she participate in the school inclusion program, and that such conduct additionally constitutes insubordination. The Commissioner finds that the Department's decision to suspend respondent for ten days without pay is fair and appropriate.

Moreover, notwithstanding the ALJ's consideration of respondent's "****good faith belief that she was acting in the best interests of her students****" (Initial Decision at p. 12) in determining the appropriate penalty in this matter, the Commissioner stresses that, as the ALJ instructs, where a student's educational program is guided by the Individuals With Disabilities Education Act (IDEA), it is the student's parents and the school's child study team, in

consideration of relevant local and State policies and in collaboration with school staff, who determine a student's educational plan. "It is not up to the teacher to [unilaterally] make this determination." (*Id.* at p. 11)

Accordingly, the conclusions and order of the ALJ in his initial decision are adopted for the reasons expressed therein. Respondent is directed to serve her ten-day suspension, if she has not already done so.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 20, 1997